

REPORT TO CABINET

Title: **DEVELOPER CONTRIBUTIONS (S106 AGREEMENTS) -
UPDATED FORMULAE AND LIST OF PROJECTS &
FINANCIAL REPORT**

Date: 24 September 2009

Member Reporting: Councillor Mrs Knight

Contact Officer(s): Gail Kenyon – Planning Infrastructure and Transport Policy
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Wards affected: All

1. SUMMARY

1.1 Developer contributions, also known as 'S106 contributions', are funds collected from developers to offset any additional impact on infrastructure and services caused by a new development. They are negotiated by the Council as part of the planning application process, and are collected either at the time a development commences, or upon occupation.

1.2 The Developer Contributions (S106 Legal Agreements) Supplementary Planning Document (SPD) is produced in two parts:

- A Developers' Guide, December 2005, which sets out our general approach
- The second part "Infrastructure and Amenity Requirements (and Approved Programme of Schemes) 2005/2010" identifies how we calculate the contributions and where they may be spent.

The changes proposed will primarily affect the second document and if agreed would be incorporated for Development Control purposes. There is also an existing public open space Supplementary Planning Guidance (SPG), which has been in effect since 2002. The changes would also affect that SPG. The report focuses on the following:

- Update the project list against which developer contributions will be sought
- Update standard formulae where appropriate to reflect latest guidance and information
- Provide information on performance relating to S106 service for 2008/09.

1.3 The updated version of the SPD with the recommended alterations is available in the Group Rooms, Members Room, on the borough website and from Democratic Services. (appendix 1).

2. RECOMMENDATION That:

- a) The updated programme of schemes in the Supplementary Planning Document be endorsed for development control purposes with effect from 1 October 2009
- b) The updated costs and formulae in the Supplementary Planning Document be adopted and used for development control purposes with effect from 1 October 2009
- c) The revised version of the Supplementary Planning Document be posted on the Council's web site
- d) The financial overview outlined in Appendix 2 be noted.

What will be different for residents as a result of this decision?
Residents can be assured that developers will be required to pay for infrastructure and services that are needed as a result of new development in their area.

3. SUPPORTING INFORMATION

3.1 Background

- 3.1.1 The Council is keen to ensure development proposals contribute to local infrastructure in the most effective way. The system in place is very effective and a refresh is required to support Local Plan policy IMP1 (Infrastructure, facilities, amenities) and any future policies in the emerging LDF Core Strategy Document, and to assist with the process by which planning obligations (also known as Section 106 agreements) are secured.
- 3.1.2 Policy IMP1 is clarified in the Supplementary Planning Document (SPD), which sets out in its second document the formulae that are used to calculate the amounts of contributions for different service areas. This document also includes all projects that the Council considers could potentially benefit from developer contributions during the period up to 1 October 2010.
- 3.1.3 Cabinet last approved the project updates in September 2008. The updated version of the SPD showing amendments now recommended is available in the Members Rooms, Group Rooms and from Democratic Services. Proposed changes to current adopted Supplementary Planning Document (SPD) are indicated by underlining and in red for inserted text and ~~strikethrough and in blue~~ for deleted text.
- 3.1.4 Although we review our processes continually, this annual update provides the opportunity to update the projects by eliminating those which are completed or no longer relevant and including additional projects the needs of which have arisen through additional development pressure in the area.

- 3.1.5 In general, it is not appropriate to alter formulae because of the loss of credibility and statutory “weight” compared to the original formulae, which were the subject of full consultation and adoption through the SPD process in 2005. The current formulae are well established and are generally accepted at appeal. In this update we have therefore retained the existing formulae. However, where more accurate figures for the costs and other statistical assumptions underlying those formulae are now available, these have been used to ensure the SPD remains robust.
- 3.1.6 The current economic climate has led to a reduction in S106 income of approximately 20% over the past year (from £2,952,258.15 in 2007/08 to £2,312,008.17 in 2008/09 - See Appendix 2). Whilst this reduction is not as great as has been experienced nationally, it is acknowledged that against this background there is little scope for introducing new categories for which developer contributions could be sought. Indeed, the reduction in economic activity has led to a reduction in national tender prices and hence the cost of new community buildings and this is reflected in the updated formulae.
- 3.1.7 The balance of S106 funds rolled forward from previous years is £10,228,217.03 (See Appendix 2). Of the balances rolled forward into 2009/10, a total of £6,659,238 is anticipated to be spent in the current financial year 2009/10. This comprises £5,902,738 of S106 funds included in the Council Capital Programme for 2009/10, plus an estimated spend of £756,000 S106 monies not included within the current programme. Given the current economic climate, it is difficult to predict the precise effect on S106 income for the current year. However, it is likely this will be less than the £2.3 million achieved in 2008/09. It is therefore anticipated that the net effect of this expenditure together with the reduction in predicted s106 income will serve to significantly reduce the S106 balance during the current financial year.
- 3.1.8 The main changes to the SPD can be summarised as follows:
- Updating of the project lists
 - Updating of the relevant cost assumptions and other statistical data underlying the formulae for each of the service areas, where appropriate. (In this update costs have been revised for Education, Community facilities, Library services, Public art and Town Centre Management).
- 3.1.9 Members may recall at the last S106 update in September 2008, a paper was presented as part of the report detailing future changes to the S106 process using a Community Infrastructure Levy system. Since that time the Government indicated that it will be consulting on the draft Regulations during the summer of 2009. The Government consultation on these regulations has now been received and a full report will be presented to 22nd October 2009 Cabinet.

4 OPTIONS AVAILABLE AND RISK ASSESSMENT

4.1 Options

	Option	Comments	Financial Implications
1.	Accept the Recommendations in this report.	The recommendation set out in this report will keep the SPD up to date and provide a stronger basis for negotiation and implementation This is the recommended action.	Revenue – n/a Capital – annual income for 2008/09 was £2,312,008.17
2.	Do nothing.	Retaining a less up to date SPD would potentially reduce the general credibility of the document and would make it harder to justify in general. In certain cases it might result in us losing contributions or applying them to less relevant or completed projects.	Revenue – n/a Capital – the loss of income as above.

4.2 Risk assessment

- Projects requested will not be capable of delivery. Mitigation - the updated SPD will ensure that all planning permissions are accompanied by appropriate, up to date mitigation measures that link to identified projects, thereby giving projects the best chance of accruing funding.
- Given the current economic climate the trend in reduction of s106 will continue. Mitigation – whilst there is little within the sphere of s106 that can be done to minimise this national trend, an up-to-date and well evidenced SPD will enable robust negotiation and ensure the ‘best deal’ is struck for residents, having regard to viability.
- Expectation from residents and other interested parties that projects will be delivered. Mitigation - Expectations will be managed through communication and explanation that only appropriate mitigation measures and projects can be sought as a result of development in their area.

5 CONSULTATIONS CARRIED OUT

- 5.1 Consultation with representatives of the relevant service departments and all Ward, Parish and Town Councils was carried out between 1st and 30th June 2009.
- 5.2 The 15 Town & Parish Councils and 57 Ward Councillors were consulted, with responses being received from 12 Parish Councils and 1 Ward member (see Appendix 3).
- 5.3 The Cycle Forum was also consulted and has contributed to the schemes listed in Sections 2(ii) of the SPD under “Part 5) Schedule of Cycle Network

Schemes”.

6 COMMENTS FROM THE OVERVIEW AND SCRUTINY PANEL

Comment from Corporate Overview and Scrutiny Panel on 11th August 2009:

Members considered the report due to be submitted to Cabinet on 24 September 2009 on proposed changes to the Developer Contributions (S106 Legal Agreements) Supplementary Planning Document. Members were advised that the changes would also affect the existing public open space Supplementary Planning Guidance.

Arising from the discussion, Members made a number of comments on the document and the officers responded to a number of questions raised by Members as follows:-

- a. The Officers advised that the schemes listed in the document were not ranked in any particular order and were not progressed in the order that they were detailed in the document - Action taken: noted and no action required.
- b. A Member questioned whether the allocation of £246,000 for the proposed new footway on Harvest Hill Road, Maidenhead was sufficient. Action taken: Scheme has been re estimated and a new figure of £300,000 has been inserted on page 19 scheme 45 appendix 1.
- c. The small number of schemes proposed for Desborough School was queried. Members were advised that the list of projects relating to schools were those as identified within the relevant Asset Management Plans as at August 2008 and that any clarification on the compilation of the schemes should be sought from Education Officers. Action taken: noted and no action required.
- d. With regard to the allocation of funding for Allotments/Archives, Members were advised that consideration was given to the impact of new development on a variety of existing Council services, which also included allotments and archives, as approved by Cabinet last year. Action taken: noted and no action required.
- e. With regard to comments raised on the use of Agresso to better manage S106 funding, Members were advised that Agresso had been used since 1 April, although a few amendments to the system were required in order to ensure the robustness of the data. It was confirmed that information could be extracted from Agresso that showed the accumulated receipts against spend, although it was stressed that some small reconciliation issues were still to be addressed. It was suggested that charts showing that information against Parish areas and Service areas be presented to the Panel at the next meeting. Action taken: A report will be presented to the 1st December 2009 Corporate Overview and Scrutiny Panel.
- f. Members received details on the process and triggers for collecting S106 money from developers and the action that was taken, on a

- case by case basis, with defaulters/potential defaulters. Action taken: noted and no action required.
- g. A Member requested that, if the New Road, Ascot drainage scheme was not included in the capital programme then it be S106 list of schemes. Action taken: Scheme has been added to the list of schemes in the SPD update.
 - h. The Officers outlined the process of adding new schemes to the lists should Members consider that certain items were missing. Action taken: noted and no action required.
 - i. The appropriateness of applying a deflationary index to the formulae was questioned. Confirmation was sought as to whether a policy decision had been taken to adopt that approach. Action taken: We have taken a judgment that under the current economic climate we have only raised the figures where the costs are petroleum based i.e., Highway works.
 - j. The Officers commented upon the mechanism in place, through the Council's prioritisation model, to enable projects with a large pool of funds, to which additional corporate funding may be allocated, to be brought forward and implemented. Action taken: noted and no action required.
 - k. It was suggested future reports include the reasons for the rolling over of funding into subsequent years. Action taken: noted and will be presented in the next reporting cycle.
 - l. It was noted that the amount of funding that could be reclaimed by developers was relatively small (£45,000). Action taken: noted and no action required.
 - m. Members were advised that all travel plans were subject to monitoring and a process was in place to review with businesses the performance of their existing travel plans. Action taken: noted and no action required.
 - n. It was suggested that consideration should be given to the inclusion of a reference to the implications on the pupil yield figure in the current document arising from the change in policy relating to Rising 5s, which would come into effect in September 2010. Action taken: noted and will be changed once the new Rising 5s policy comes into place in 2010.
 - o. Concern was expressed that the economic development contribution calculations were based on a skills gaps analysis survey that had been undertaken over 5 years ago. It was suggested that the contribution rates should be reconsidered and based on more up-to-date information. Action taken: figures have been amended to accommodate new survey and report as detailed on page 118 appendix 1.

RESOLVED UNANIMOUSLY: That Cabinet be advised that the Panel endorses the proposed revisions to the Planning Obligations and Developer Contributions Supplementary Planning Document, subject to the inclusion of the comments and suggested amendments as outlined above.

7 IMPLICATIONS

The following implications have been addressed where indicated below.

Financial	Legal	Human Rights Act	Planning	Sustainable Development	Diversity & Equality
✓	✓	✓	✓	✓	✓

Background Paper:

Planning Obligations and Developer Contributions, Supplementary Planning Document (SPD) – Infrastructure and Amenity requirements (and approved Programme of Schemes) 2005/2010 including Formulae and list of Projects, Revised September 2008 (with effect from 1 October 2008)

Other Council Strategies and Plans as noted in Appendix 1 – Proposed updated Planning Obligations and Developer Contributions, Supplementary Planning Document (SPD) – Infrastructure and Amenity requirements (and approved Programme of Schemes) 2005/2010 including Formulae and list of Projects, Revised September 2009 (with effect from 1 October 2009)