

Committee: Performance Select Committee

Date: 12 February 2009

Title: **Capital contributions received through Section 106 Agreements but not currently expended**

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Agenda Item

14

Item for
information

Summary

This report summarises the contributions received but currently not expended and the purposes to which they will be put, with indicative timescales. It arises from a request by the Committee for an assessment.

Recommendations

The report be noted

Background Papers

Register of S106 Agreements

Internal report: Legal Agreements, clauses and monitoring September 2008

Impact

Communication/Consultation	
Community Safety	
Equalities	
Finance	Contributions fund specified capital expenditure. Anticipated future contributions will fund revenue expenditure on maintenance of strategic open space and landscape planting
Human Rights	
Legal implications	The Council is required to maintain a register of Agreements
Sustainability	

Ward-specific impacts	Expenditure funded by contributions generally benefits the ward in which the contributing development is sited.
Workforce/Workplace	

Situation

▪ Legal and Policy Background.

- 1 The basis for entering into legal agreements was originally set out in Section 52 of the 1971 Planning Act, later superseded by Section 106 of the Town and Country Planning Act 1990. Planning Obligations, introduced in 1991, are similar in effect and may be bilateral or unilateral. Unilateral undertakings do not include the planning authority and are usually prepared in an appeal situation to enable a Planning Inspector to grant planning permission so as to enable development to take place if mitigation is necessary but a Council is unwilling to enter into agreement. Obligations binding a Council must not fetter it from performing any statutory function.
- 2 A Planning Obligation may reasonably
 - Restrict the development or use of the land.
 - Require specified operations or activities to be carried out in relation to the land.
 - Require the land to be used in any specified way.
 - Require payment of money providing such sums are for planning purposes and not disproportionately large.
- 3 In deciding what is reasonable, the test applied should ask:
 - Is the proposed requirement needed from a practical point of view to enable the development to proceed?
 - In the case of financial payment, will this contribute to meeting the cost of providing such facilities in the near future?
 - Is the suggested requirement fairly and reasonably related in scale and kind to the proposed development?
- 4 The content of Legal agreements must not be abused by seeking extraneous inducements or benefits as the price of granting planning permission or by developers offering unrelated benefits to achieve planning permission for an unacceptable development.
- 5 Legal Agreements may secure necessary offsite infrastructure or a financial contribution for similar works that cannot be secured by a planning condition.

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An obligation may relate to future maintenance, not only in respect of the site but exceptionally for a displacement arrangement on a different site.

- 6 The broad policy framework set out in the East of England Plan. This advises that Councils' should maximize the contribution of development in meeting consequent community and infrastructure needs. Policy SS2 advises large scale new development should contribute '...by making suitable and timely provision for the needs of the health and social sectors and primary, secondary further and higher education....'
- 7 The Uttlesford Core Strategy – Preferred Options November 2007 sets the scene for the District saying at Para 5.12 *'The delivery of the necessary infrastructure will be achieved mainly through developer contributions. Some contributions will be sought on a site by site basis. Other contributions may be sought by area, e.g. within school catchment areas. The mechanisms for achieving this will be set out in detail in the development Control and site specific DPD's (Development Plan Documents) and/or SPD's (Supplementary Planning Documents) as appropriate.*
- 8 Draft Policy DC3 states *'Development must take account of the needs of new and existing populations in terms of school classrooms, pre-school places, sports provision, primary health care and other community and cultural facilities including shops. Each development must address water supply, sewage disposal and flood risk issues and make provision for children's play space, open space and green infrastructure'*.
- 9 The Audit Commission in its 2005 review of the Council's Planning Services recommended that the Council should provide a greater range of written information in relation to S106 obligation requirements so applicants know what is expected of them. It also emphasised the need for additional guidance so that *'the use of S 106 is seen by the public and developers to be transparent, fair, and consistent...'* and where developers *'get a clear indication of what is expected of them early in the preparation of their schemes...'* The Commission also noted that this will also provide staff with clear guidance.
- 10 With the significant level of additional new homes in Uttlesford in the period to 2024, planning obligations will continue to play a vital role in securing appropriate infrastructure in accordance with the legal guidance set out above. Clear fair and consistent advice is needed for the development industry, the owners of land, the community and large and Council staff.
- 11 The sum of funds received by the Council but not expended is as follows:

Sum	Source	Purpose	Comments
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<p>£2,564,147.08</p>	<p>Stansted Airport 2003 Agreement. Funding received in 2004/5.</p>	<p>Provision of affordable housing through registered social landlords within Uttlesford, Harlow, and parts of East Hertfordshire and Braintree districts.</p>	<p>Funding underpinning the Stansted Area Housing Partnership. No money has been drawn down since receipt in 2004/5 because the SAHP has been able to attract other funding from the Housing Corporation and DCLG Growth Area Funding. The original sum (£2.2m) has accrued interest. The SAHP had been planning to seek agreement from the Council to draw down this sum to purchase development sites/ completed units in the current housing market conditions, but this is on hold pending resolution of the problems in the Council accessing its investments in Landsbanki Islands hf. No timescale is specified in the obligation for the expenditure of the sum.</p>
<p>£150,000</p>	<p>Charles Church Bellrope Meadows, Thaxted development. Funding received in 2007/8.</p>	<p>Off site provision of affordable housing within ten years of date of the agreement</p>	<p>This sum is allocated to support the funding of the homeless hostel, Manor Road, Stansted, 2008-10</p>

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£88,173	Barrett Homes, The Laurels, Takeley Funding received 3 September 2008	Community Facilities Enhancement sum (£146 per unit) and Community Facilities Equipment sum (£1,750 per unit). UDC to place community facilities sum in interest a/c and return unexpended sum on 10 th anniversary of receipt from developers.	Sum is allocated to the specific purposes stated in the Agreement
£41,472	Felsted School Ingrams, Felsted Agreement to provide affordable housing contribution	Off site affordable housing provision to be expended within 5 years of first occupation	Communities Committee will be recommended how best to use this funding in 2008/10.
£37,676 plus interest Sept 08 to date	Countryside Properties, Great Dunmow Agreement in 1989 to provide sum of £200,000 in instalments and place in interest bearing account.	Community facilities. Expenditure totalling £288,215 has been made over time to provide wide range of facilities. Balance remains available	Gt Dunmow Town Council is anticipated to request that the balance of £37,676 be allocated to the proposed Town Square project in the remainder of 2008/09.
£30,000	Estuary Housing development, Woodlands Park, Dunmow. Funding received in 2006/7.	Provision of play equipment	Funding proposed to be transferred to Gt Dunmow Town Council, for purchase of the equipment for installation on the land for a play area proposed to be conveyed to it.

1 A further sum of about £36,000 in respect of 'Section 52 Money, pre 1991' is included in the Council's accounts. However, no historical financial records

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exist that might assist in identifying the contributing developments and the purposes for which the contributions were intended. The Finance and Administration committee will be recommended to write off this sum and transfer the amount to capital accounts.

- 2 A comprehensive project has recently been completed to research the register of Agreements. All obligations including old Section 52 Agreements have been checked to ascertain which are outstanding, their triggers, and which have been discharged.
- 3 The Business Improvement study of the development control service is nearing completion and this will include proposals to ensure that processes are put in place to ensure that obligations are monitored, reported and contributions received in the future are accurately linked to obligations records.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Funds required by Obligations are not collected from parties to the Agreement/ Obligation	1 Checks have been made to ensure that obligations have been discharged. Improved systems will be implemented shortly through the BI process	3 Funds enable services and facilities to be provided, the need for which arose from the development	Regular ongoing monitoring of databases; Implementation of BI proposals
Funds collected are not used	1 Recent obligations reflect clear advice in government circulars so that they are only collected where necessary	2 Oversights are most likely to occur with contributions of relatively modest amounts where a specific purpose is not stated	As above. Action plans should be devised.
The Council is unable to recover sums invested in Landsbanki	4	4	See report to Full Council 21 October

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Islands hf from the receiver			
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