

**Committee:** Scrutiny Committee  
**Date:** 7 December 2010  
**Title:** **Infrastructure contributions received through Section 106 Agreements**  
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**Agenda Item**

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Item for information

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## Summary

This report summarises the current situation.

## 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- 1 The basis for entering into legal agreements was originally set out in Section 52 of the 1971 Planning Act, later superseded by Section 106 of the Town and Country Planning Act 1990.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. 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 is set out in the council's adopted local plan which states: Development will not be permitted unless it makes provision at the appropriate time for community facilities, school capacity, public services, transport provision, drainage and other infrastructure that are made necessary by the proposed development. In localities where the cumulative impact of developments necessitates such provision, developers may be required to contribute to the costs of such provision by the relevant statutory authority.
- 7 Since the adoption of the local plan in 2005, provision has been made in statute relatively recently for councils to charge a Community Infrastructure Levy. This came into affect in April 2010. At the same time, the scope of S106

agreements was scaled back to the funding of affordable housing and addressing the impacts directly caused by a particular development.

- 8 The Decentralisation Minister, Greg Clark, announced in November, that the Community Infrastructure Levy arrangements introduced by the previous government would be continued because it provides a fairer system of funding new infrastructure. The levy will give councils the option to raise funds from developers building new projects in their area, and provide a more certain and flexible system for housebuilders. He also announced that the levy will be reformed to ensure that neighbourhoods share the advantages of development by receiving a proportion of the funds councils raise from developers, suggesting that these will be passed directly to the local neighbourhood so that community groups can spend the money locally on the facilities they want, either by contributing to larger projects funded by the council, or funding smaller projects. The neighbourhood element of the CIL is intended to complement the New Homes Bonus scheme on which the Government is currently consulting.
- 9 The Community Infrastructure Levy has to be based on a policy in an adopted core strategy. The testing of a core strategy at public examination will include the justification for the proposed levy rate, the type of development to which it would apply and the parts of a district where a levy would be required. This is intended as a check that unreasonably high rates are not being set by councils.
- 10 The sum of capital infrastructure contributions received by the Council but not expended is as follows:

Sum	Source	Purpose	Comments
£2,673,253.59	Stansted Airport 2003 Agreement. Funding received in 2004/5.	Provision of affordable housing through registered social landlords within Uttlesford, Harlow, and parts of East Hertfordshire and Braintree districts.	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. Although delegation arrangements

			were put in place recently to make it easier for partner authorities to draw down funds for schemes in their areas, no requests have been received. No timescale is specified in the obligation for the expenditure of the sum.
£430,419.18	Forest Hall Park (Rochford Nurseries), Birchanger and Stansted	Community facilities payments	First of two index-linked instalments by Taylor Wimpey towards indoor sports facilities or other leisure recreational and / or community facilities in the District arising out of or reasonably related to the needs of Forest Hall Park residents. Any money that is unspent and uncommitted ten years after the second instalment is paid is required to be returned to the developer.
£203, 239.08	Priors Green, Takeley and Little Canfield £13,272 received 2008 £88,173.08 received 2008 £115,066 received 2010	Community Facilities Enhancement sum (£146 per unit) and Community Facilities Equipment sum (£1,750 per unit). UDC to	Sum is allocated to the specific purposes stated in the Agreement

		place community facilities sum in interest a/c and return unexpended sum on 10 <sup>th</sup> anniversary of receipt from developers.	
£150,000	Charles Church Bellrope Meadows, Thaxted development. Funding received in 2007/8.	Off site provision of affordable housing within ten years of date of the agreement	This sum has been intended to support the funding of the homeless hostel, Manor Road, Stansted, but alternative arrangements involving the conversion of existing stock in Molehill Green were funded from the HRA. This sum is now earmarked for the redevelopment of Holloway Crescent, Leaden Roding.
£106,446.13	Woodlands Park, Great Dunmow £116,363.75 received 2008/9 and £20,825 received 2009/10 £30,742.62 drawn down 2009/10	Landscape commuted sum Sum drawn down to pay for equipping of playground	Sum is to pay for landscape maintenance
£41,472	Felsted School Ingrams, Felsted Agreement to provide affordable	Off site affordable housing provision to be expended within 5 years of first	This sum is now earmarked for the redevelopment of Holloway Crescent,

	housing contribution	occupation	Leaden Roding.
£32,865	Bell College Saffron Walden (Crabtrees, Countryside Properties' development)		Sum for remedial works to the playing fields in lieu of obligation to provide pitches to a suitable standard
£19,887	Fritch Green	£9518.16 and £7000 received in 2007/8 for community facilities £2,899.20 drawn down in 2008/9 £4,100.80 drawn down in 2009/10 £10,368.97 received in 2010	Sum is allocated to the specific purposes in the agreement
£18,149	Dunmow Eastern sector		Sum represents outstanding balance after £38,000 contribution made to heart of Dunmow project

## Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Funds required by Obligations are not collected from parties to the Agreement/ Obligation	1 Checks are made to ensure that obligations have been discharged.	3 Funds enable services and facilities to be provided, the need for which arose from the development	Regular ongoing monitoring of databases;
Funds collected are not used	1 Recent obligations reflect clear advice in government	2 Oversights are most likely to occur with contributions of relatively	As above.

	circulars so that they are only collected where necessary	modest amounts where a specific purpose is not stated	
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