

**Select Committee on Regeneration, Culture and Adult Education –
13th September 2010**

Report of the Director of the Urban Environment

Planning Obligations Report for 2009/10 Financial Year

Planning obligation monies approved, received and spent within between 1st April 2009 and 31st March 2010, and S106 and Unilateral Undertaking Legal Agreements signed within the same period.

Purpose of Report

1. To provide information on contributions that were approved, received and spent under the Town and Country Planning Act 1990 (as amended) during the financial year of 2009/10 together with information on the S106 and Unilateral Undertaking Legal Agreements that were signed during 2009/10.

Background

2. For several years now this Committee has received reports on planning obligations received for each financial year from 2001/02. This report provides a summary of all the financial planning obligations approved, received and spent during the 2009/10 financial year, along with information on the S106 Agreements and Unilateral undertakings that were signed during this period.
3. It may be helpful to set out the national background for seeking developer contributions. Circular 05/2005 (Planning Obligations) defines such undertakings as follows:

“Planning obligations (or S106 Agreements) are private agreements negotiated usually in the context of planning applications, between local planning authorities and persons with an interest in a piece of land (or “developers”), and intended to make acceptable development which would otherwise be unacceptable in planning terms. Obligations can also be secured through unilateral undertakings.....”

4. The Circular goes on to set out the background of development contributions; i.e. what can and cannot be sought during the processing of a planning application. Such obligations can prescribe the nature of the development (e.g. private affordable housing), compensate for loss arising (e.g. provide public open space) and mitigate against the impact of a development (e.g. enhanced off-site public open space).

5. As a result of the Community Infrastructure Levy (CIL) Regulations which came into effect on 6th April 2010 it is now unlawful for a planning obligation to be taken into account when determining a planning application, that is capable of being charged CIL, if the obligation does not meet all of the following tests:
 - (a) necessary to make the development acceptable in planning terms
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development
6. The planning obligations secured relate to the policies in the Council's adopted Unitary Development Plan 2005. The Planning Obligations Supplementary Planning Document (SPD) was originally adopted in December 2007 and expands upon the Unitary Development Plan 2005, aiming to reduce uncertainty and ensure a consistent approach to planning obligations across the Borough. It introduced a range of new planning obligations for future developments within the Borough. In line with good practice following its first year of implementation, a revised SPD was adopted in March 2009 in order to ensure that required planning obligations continue to be reasonable and realistic. Preliminary works are underway for the next review.
7. As set out in the SPD, planning obligations in the form of financial contributions are not held together in a central fund; rather they are kept within specific budgetary codes dependant upon the purpose of the contribution. These contributions must be spent within any timescales defined by the legal agreement, and any unspent monies are liable to be paid back to the developer with accrued interest.

S106 Agreements and Unilateral Undertakings signed 2009/10

8. During 2009/10 a total of forty-two Legal Agreements were signed, made up of twenty-six S106 Agreements and sixteen Unilateral Undertakings; these are detailed in **Appendix 1**. It is important to note that the signing of the legal agreement does not necessarily mean that contributions have simultaneously been received. There are two main reasons for this:
 - In the majority of cases the payment of monies is not required until development commences.
 - The S106 is signed on the Outline Application but until the follow on Reserved Matters application has been approved no monies are required.

For these reasons there is often a time lag from when the legal agreement is signed to the receipt by the Council of the financial contributions.

Financial Planning Obligations Approved 2009/10

9. Between 1st April 2009 and 31st March 2010 financial planning obligations totalling **£1,372,229.84** were approved. These monies were approved from a total of 135 planning applications for the following areas of infrastructure:
 - Transport Infrastructure Improvements - £206,478.35
 - Public Realm Improvements - £179,086.02
 - Open Space, Sport and Recreation - £631,776.30

- Nature Conservation - £191,379.79
- Libraries - £51,283.77
- Other:
 - Bus Shelter Contribution - £25,000.00
 - Traffic Regulation Orders - £20,000.00
 - Air Quality Equipment - £67,225.61

10. In the vast majority of cases, the contributions are required to be paid to the Council on commencement of development, therefore there will be a time lag between when the obligations were approved and when the monies are received by the Council. This information on approved obligations is being reported to this Committee as background information only, once monies are received they will be reported to this Committee using the existing reporting mechanism. Monies will be allocated and spent in line with the member engagement process as agreed by this Committee on 4th March 2009; this process requires engagement with Ward Members on allocation and spend, and subsequent approval by relevant Cabinet Members for inclusion in the Capital Programme to be endorsed by Cabinet.

Planning Contributions Received during 2009/10

11. Between 1st April 2009 and 31st March 2010 financial planning obligations totalling **£624,976.80** were received for the following areas of infrastructure:

- Transport Infrastructure Improvements - £92,333.60
- Public Realm Improvements - £109,474.17
- Open Space, Sport and Recreation - £253,659.91
- Nature Conservation - £95,404.88
- Libraries - £1,878.63
- Other:
 - Traffic Regulation Orders - £5,000.00
 - Air Quality Equipment - £67,225.61

Planning Contributions Spent during 2009/10

12. Between 1st April 2009 and 31st March 2010 financial planning obligations totalling **£482,244.08** were spent for the following areas of infrastructure:

- Open Space, Sport and Recreation - £255,033.97
- Transport Infrastructure Improvements - £20,420.87
- Air Quality Monitoring Equipment - £33,987.00
- Affordable Housing - £107,000.00
- Education - £65,802.24

13. A detailed breakdown of all monies received and spent during 2009/10 can be found in the following appendices:

Transport Infrastructure Improvements –	Appendix 2
Open Space, Sport and Recreation -	Appendix 3
Nature Conservation -	Appendix 4
Public Realm -	Appendix 5
Libraries and Other -	Appendix 6

14. As set out in paragraph 10 above, each of the relevant services have procedures in place for the allocation and spending of monies received, including a procedure for consultation and engagement with Ward Members and subsequent approval by relevant Cabinet Members.

Affordable Housing

15. No financial contributions for affordable housing were received during 2009/10. Of existing monies a total of £107,000 was spent. In terms of on-site provision of affordable housing a total of 196 dwellings were built in 2009/10. This comprised of 24 via S106 Agreements and the remaining having been provided by other means outside of the S106 process, for example funding from Homes and Communities Agency. Details of all affordable housing planning obligations can be found in **Appendix 7A**.

Economic and Community Development Statements

16. During the 2009/10 financial year a total of sixteen planning applications were approved with obligations to enter into Economic and Community Development Statements with the Council. These Statements are required on large developments across the Borough and secure commitments from developers to promote training and job opportunities for local unemployed residents, and source local construction materials; each Statement is specifically tailored to the individual development. Details of the planning permissions approved during 2009/10 requiring these Statements is set out in **Appendix 7B**.

Finance

17. This report is financial in nature and relevant information is contained within the body of the report and the attached Appendices.

Law

18. The relevant law is:

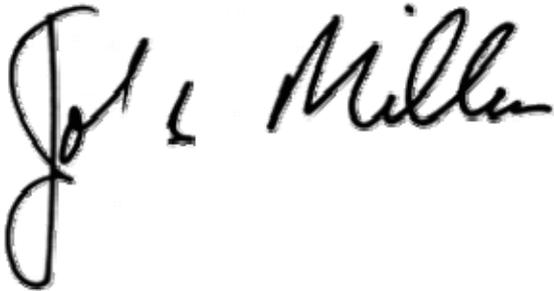
- S106 of the Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004
- Circular 05/2005 – Planning Obligations
- CIL Regulations (April 2010)

Equality Impact

19. The proposals take into account the Council's Equal Opportunities Policy and seek to enable all sections of the community (including young children and young people) within the Borough to gain from the effective implementation and planning obligations and the associated benefits envisaged.

Recommendation

20. It is recommended that the Select Committee note the report.



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List of Background Papers

Circular 05/2005 – Planning Obligations
Planning Obligations Supplementary Planning Document
Dudley Unitary Development Plan