

Subject:	Update on Planning Obligations	Status:	For Publication
Report to:	Cabinet	Date:	22 nd October 2014
Report of:	Director of Business	Portfolio Holder:	Operations and Development Control
Key Decision:	<input type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	General Exception <input type="checkbox"/>	Special Urgency <input type="checkbox"/>
Equality Impact Assessment:	Required	Yes/No	Attached: Yes/No
Biodiversity Impact Assessment	Required:	Yes/No	Attached: Yes/No
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1.	RECOMMENDATION(S)
1.1	That members take note of this Report in particular the contributions received, where these contributions are being spent, and changes to the system of seeking contributions that will be implemented in April 2015.

2. PURPOSE OF REPORT

- 2.1 To report on the level of contributions that the Council has received, identifying where these contributions are being spent, and developments where contributions can be expected. A brief summary of the legislation relating to planning obligations and the Community Infrastructure Levy is also included for members' reference.

3. CORPORATE PRIORITIES

- 3.1 The matters discussed in this report impact directly on the following corporate priorities:
- **Regenerating Rossendale:** This priority focuses on regeneration in its broadest sense, so it means supporting communities that get on well together, attracting sustainable investment, promoting Rossendale, as well as working as an enabler to promote the physical regeneration of Rossendale.
 - **Responsive Value for Money Services:** This priority is about the Council working collaboratively, being a provider, procurer and a commissioner of services that are efficient and that meet the needs of local people.
 - **Clean Green Rossendale:** This priority focuses on clean streets and town centres and well managed open spaces, whilst recognising that the Council has to work with communities and as a partner to deliver this ambition.

4. RISK ASSESSMENT IMPLICATIONS

- 4.1 This Report has been written based on the position as of August 2014 and to the best of officers' knowledge.

- 4.2 S.106s need to be agreed with developers where they meet the legal tests as set out in para 5.1 below (i.e. necessary, related and reasonable). The Government places great emphasis on ensuring that agreements are not so burdensome as to make developments unviable. Similarly s.106 agreements should not be seen as ‘planning bribes’.
- 4.3 Having negotiated and agreed s.106 agreements with developers it is essential that the development is monitored so that any trigger points for collection of payments are identified. Where monies have been paid but not spent, or not spent in accordance with the agreement, the developer can be entitled to a refund, plus interest. If the s.106 payment is not collected and spent appropriately, the development will place unacceptable burdens on existing infrastructure, in particular: highway capacity and safety; public open space, play space, playing pitches; education facilities etc.
- 4.4 An audit of the Council’s s.106 procedures was undertaken in February this year. The Report accepted that there has been much improvement, particularly in respect of the quarterly meetings, attended by key Council teams (Legal, Finance, Planning, Parks and Open Space, and Localities), and chaired by the Director of Business. Concern was expressed about monitoring s.106s and recommendations put forward include increasing the frequency of site visits, and closer co-operation with Council Tax in respect of identifying occupation of dwellings, often a trigger point in collecting payments from housing schemes.

5. BACKGROUND AND OPTIONS

- 5.1 The law requires planning contributions may only be required from developers, where they are:
- necessary to make the development acceptable in planning terms;
 - are directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 5.2 Rossendale Borough Council, together with Lancashire County Council, can enter into legal agreements with developers and request s.106 contributions towards infrastructure, so long as it is in accordance with the statutory tests set out above. Policy 22 of the adopted Core Strategy identifies where contributions may be sought, though this list is not exhaustive.
- 5.3 Rossendale BC requires affordable housing to be provided on site, with commuted sum payments acceptable in exceptional circumstances (Policy 4 of the Adopted Core Strategy, 2011). Public Open Space (POS) contributions are often sought where it is considered the development will place extra burdens on existing provision, in line with the Council’s Open Space and Play Equipment SPD. These contributions can be split according to maintenance and capital schemes. In addition Lancashire County Council may ask for contributions to highways and transport improvements and for larger developments a contribution towards education facilities may be expected.

S.106 agreements can be amended via a Deed of Variation if circumstances change, such as spending the money elsewhere or on different infrastructure, so long as all parties agree.

- 5.4 Planning obligations can be agreed on all types of development, though the obligation must accord with the three legal tests identified in para 5.1. In the main though they are associated with major planning applications. As the Planning Manager’s Report to Cabinet (Managing Major Planning Applications – Major application Protocol) on 9th July 2014 notes it can take time to agree the details and hence it is imperative that the need is identified at

an early stage so that a draft agreement can be submitted as part of a planning application. Developers will be encouraged to hold pre-application discussions with members and this would be an opportunity to discuss any planning obligations that may be sought from the development. The Protocol now introduces a Stage 3 formal consultation with elected members. (This had previously been informal). It is anticipated these discussions would be held with members of the Development Control Committee and local members, as appropriate.

Summary of Contributions (Paid and Unpaid)

5.4 The table below shows a summary of the payments that RBC has received, as well as where monies are still unpaid.

Live Deposits - RBC	
Maintenance	£127,791
Capital schemes	£184,788
Total	£312,579
Live Deposits - LCC	£327,660
Unpaid Deposits	£894,424

Monies Received

5.5 The maintenance figure above (£127,791) represents the monies that the Council still holds and which it is able to spend in respect of maintaining landscaped areas and children's play areas. This money is often tied to areas in the locality of the development and is not available to be spent Borough-wide. A brief summary of the larger amounts is given below:

MAINTENANCE MONIES RECEIVED BY					
Developer / Applicant	Site Name	Development Name	Locality	Approx amount	Expenditure, as agreed in s.106
McDermott's	Douglas Rd / Tong Lane	Woodland Grange	Bacup	£100,000	Tools and landscape area maintenance

5.6 In addition the s.106 obligations may also refer to capital scheme projects. Developments where the Council still retains deposits of more than £30,000 are listed below. Where appropriate deposits have been amalgamated.

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CAPITAL MONIES RECEIVED BY RBC					
Developer / Applicant	Site Name	Development Name	Locality	Approx amount Received	Expenditure, as agreed in s.106
Yearsley (2002/261 and 2010/433)	Eastgate	Eastgate	Whitworth	£110,000	Affordable Housing (£45,000) Open Spaces (45,000) and transport/access improvements for pedestrians, cyclists, bus services/terminus etc) (£20,000).
Persimmon	Orama Mill	Orama Mill	Whitworth	£85,000 ¹	Open Spaces (116,000) and Youth/Community (£30,000) and Transport (96,200)
5.7 Crook Hill Properties	Crook Hill Wind Turbines	Crook Hill	Whitworth	£50,000	To school and residents for energy saving measures

Monies Held on Behalf of Lancashire County Council

As members will be aware there is a significant amount of money held on behalf of Lancashire County Council. Many of these relate to Traffic Regulation Orders (TROs) for small amounts of money, generally between £1500 and £2500. Some larger amounts relate to approved applications, and discussions are taking place with LCC to enable the transport schemes (including cycleways) to go ahead:

- Eastgate
- Weavers Dene
- Orama Mill (see previously)

Unpaid Monies

5.8 The as yet unpaid deposits total £894,424. These relate to approved applications where (a) development has not started, but the approval is still extant, or (b) where the development has started but the appropriate payment trigger has not been reached. This is money that the Council could receive but it should be noted that developments may not necessarily go ahead, or be completed. The table below identifies those particular sites where it is likely that the Council will achieve contributions.

¹ This money (apart from £10,000 spent) is ear-marked for LCC for the junction improvements at Cowm Park Way South / Market St, needed as a result of the additional traffic generated by this development.

5.9 Unpaid Monies

Developer / Applicant	Site Name	Marketing Name	Locality	Approx amount un-paid (total) to RBC	Trigger for Payment	Expenditure, as agreed in s.106
McDermott's (2004/401)	Douglas Rd / Tong Lane	Woodland Grange	Bacup	£100,000	Occupation of 150th and 194th dwelling	Tools and landscape area maintenance
Persimmon (2010/667)	Orama Mill	Orama Mill	Whitworth	£166,000	Occupation of 40th, 65th and 85th dwelling	Open Spaces (£116,000) and Youth/Community (£30,000) and Transport (£96,000) + extra £9562 (through variation)
Barnfield Construction (2011/637)	Land at Rockcliffe Farm	N/A	Bacup	£147,000	Commencement of (market housing) development, and occupation of 24th, 26th and 48th dwelling	Open Space/Play facilities; Primary School facilities, Youth and Community facilities/services; pedestrian/cycleway links and bus shelter and bus services. No breakdown of monies specified in agreement.
Taylor Wimpey (2012/162)	Former Rossendale Hospital	Dale View	Rawtenstall	£165,432	Occupation of first and 75th dwelling	To RBC -Sports provision (£97,161). To LCC Education (£23,271)and Highways (£45,000)
Berkshire Homes (2013/0041)	Land opp 449-457 Bacup Road	Woodland Rise	Waterfoot	£23,220 ²	Occupation of first dwelling - overage clause	Play space/Open space and / or pedestrian/cycle access improvements
Greenvale Homes (2013/0277)	Mytholme House	Whitewell Court	Waterfoot	£16,392	Prior to first occupation	Public Open Space
Greenvale Homes (2013/0556)	Land adj to Bacup Hub	Not marketed as yet	Bacup	£27,320	Prior to first occupation	Public Open Space, Affordable rent, TRO (paid)

² This is subject to an 'overage clause' so payments will only be due if there is sufficient profit

5.10 The table above shows that it is expected that about £650,000 could be expected from larger schemes that have started or are expect to start soon. Smaller schemes, or those that will deliver small payments (such as for Traffic Regulation Orders) have been excluded.

5.11 In the past some developers have gone bankrupt, after completing the houses but before paying contributions. Examples include: Stately Developments (Kirkhill Avenue / Moorland Rise); Glengarth Construction (Whitewell Bottom), and Hurstwood (New Hall Hey).

Spent Contributions

5.12 The table below identifies some of the larger projects where s.106 monies have been spent. Please note this excludes on-site affordable housing and LCC monies.

Project	Location	Associated Development	Relevant Planning Approvals	Agreement Date	Monies spent (approx)
Snig Hole	Helmshore	Holmefield House and Free Lane developments	2011/0046 2010/428	6/3/12 1/5/10	£135,000
Worsley Park playground	Haslingden	Duckworth Clough	2001/003	13/05/2002	£10,000
Halo lighting	Haslingden	Albion Mill (new Health Centre)	2008/587	27/11/08	£28,000
Edgeside Park and Millennium Steps	Waterfoot	Land to west of Burnley Rd East, Whitewell Bottom	2006/696	04/04/2007	£20,000
Mill Row Recreation Area	Rawtenstall	Higher Mill, adj to East Parade	2005/729	05/04/2007	£15,000
Edenfield Community Centre - refurbishment	Edenfield	Packhorse Garage	2007/737	28/02/2008	£10,000
Healey Dell – fencing scheme	Whitworth	Orama Mill	2010/0667	28/11/11	£10,000
Affordable Housing	Rawtenstall	Eastgate	2002/261 2010/433	11/05/07 4/02/11	£18,000

5.13 Impact of the Community Infrastructure Levy Regulations (2012)

Members should note that the Community Infrastructure Levy Regulations will be implemented as of April 2015. This means that s.106 obligations can only be 'pooled' for up to five projects, for so long as the Regulations are in force. This is unless the Council adopts a Charging Schedule in order to apply a Community Infrastructure Levy (CIL) to new developments. The Forward Planning team as part of the Site Allocations and

Development Management DPD (Local Plan Part 2) is looking into whether preparing a Charging Schedule for new developments in Rossendale would be viable. It may be that CIL will only be viable for certain types of development or in certain parts of the Borough. Members will be kept informed of the outcome of this work, which is being undertaken by Keppie Massie.

COMMENTS FROM STATUTORY OFFICERS:

6. SECTION 151 OFFICER

6.1 Financial matters are noted in the report.

7. MONITORING OFFICER

7.1 Comments included in the Report.

8. POLICY IMPLICATIONS AND CONSULTATION CARRIED OUT

8.1 Development planning policies play a crucial role in securing appropriate planning obligations and ensuring that we enable the longer term vision for the Borough set out in the Core Strategy to be realised. Section 106 agreements are made with the applicant to offset any adverse impact, to enhance the physical environment or to contribute towards local facilities for the benefit of the future occupants of new developments and also for the benefit of existing residents in the vicinity of a new development.

8.2 There are implications for the Corporate Risk Register Plan 6 'Monitoring delivery on time of requirements of Section 106 planning obligations'.

8.3 This report has been written in consultation with the Council's Management Team and the Portfolio Holder for Operations and Development Control.

9. CONCLUSION

9.1 As the table above shows in the main monies have been spent on public open space projects. Monies will be allocated soon to pay for transport improvements in the vicinity of the Orama Mill that Lancashire County Council is in the process of designing. Monies will also be due soon from the Former Hospital Site, as the first property is about to be occupied.

9.2 An officer Working Group meets quarterly to ensure all s. 106 agreements are fully recorded (including any trigger points) and monitored so that money is spent in accordance with the signed Agreements or requests made to vary the details. Monitoring of the triggers is normally undertaken by the Forward Planning team, as it relates to the Team's work in respect of preparing the 5 Year Housing Land Supply (as most s.106 obligations relate to housing developments), and the Authority Monitoring Report (AMR), which monitors Local Plan policies. Invoices are sent when triggers have been reached and non-payment of contributions is followed up by Finance.

9.3 Under the Major Applications Protocol (2014) developers will be encouraged to invite local members to pre-application discussions, where planning obligations would be discussed.

Background Papers	
Document	Place of Inspection
Section 106 Agreements Adopted Core Strategy (2011) Open Space and Play Equipment SPD	Legal and Planning Teams, Business Centre, Futures Park www.rossendalebc.gov.uk