
**Manchester City Council
Report for Resolution**

Report to: Resources and Governance Overview and Scrutiny Committee -
22 July 2010

Subject: Section106 Annual Monitoring Report

Report of: Head of Planning

Summary

Previous reports to this Committee have outlined the introduction by the Planning Service of a more rigorous project management approach to S106 financial contributions, in addition to redefined governance arrangements for the negotiation of S106 agreements, integrated with the Gateway process.

In consideration of past reports Members asked for an annual monitoring report on S106 performance / activity to be presented to this Committee, to include statistics showing changes in the levels of money received through such agreements.

Recommendations

That Members note the content of the report.

Wards Affected:

All

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Background documents (available for public inspection)

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

Previous reports to Resources and Governance Overview and Scrutiny Committee

'S106 Governance Arrangements' - Resources & Governance Overview & Scrutiny Committee 16 July 2009 - Report of Head of Planning

'S106 Agreements' - Resources & Governance Overview & Scrutiny Committee 13 Dec 2007 - Report of Head of Planning

1.0 Introduction

1.1 The purpose of this report is to provide an overview of the monitoring of S106 Agreements, including the level of contributions agreed and subsequently received, and more detailed information for last financial year. The report also outlines the possible future of S106 agreements and that of the Community Infrastructure Levy, which has been referred to in previous reports to this Committee.

1.2 In considering this report, Members will recall the previous report to this Committee 12 months ago that sought to redefine governance arrangements. S106 contributions are part of the corporate approach to the Capital Programme to ensure that investment supports Council priorities and complements other investments, subject to the tests applied to S106.

2.0 Purpose of S106 Agreements

2.1 Planning agreements, under Section 106 of the Town and Country Planning Act 1990, are generally used to mitigate harm that may be caused by a development and are negotiated as part of the planning application process. The Act allows for Local Planning Authorities and developers to negotiate a range of obligations under such an agreement, which either can be linked to financial contributions, be restrictive in nature or require specific works or actions to take place. There is however a degree of flexibility about what a S106 can cover, provided the applicant agrees the content of the agreement.

2.2 S106 have been used to positive advantage in Manchester, including where they have been used to provide match funding for environmental schemes and to support community based service provision, in line with defined priorities.

3.0 S106 Monitoring Overview

3.1 Since June 1994, (the earliest agreement on record) 307 agreements have been signed containing 335 obligations. Of these 82 have sought non-financial contributions, the obligations in these instances requiring the developer to carry out particular works or provide certain facilities on site, or require the provision of an element of affordable housing within a residential development for example. Although there had been some S106 Agreement activity prior to 2000, it was after this time that the real momentum started with significant financial contributions. For this reason, the monitoring records effectively began in 2000 and a system is now in place to ensure that individual agreements are effectively managed and monitored.

- 3.2 It is crucial that developers provide financial contributions under S106 agreements in a timely manner. Contributions are usually due on commencement of the development, but occasionally this is upon signing of the obligation, or a later date, such as the first occupation of a residential unit. The date on which a non-financial obligation is triggered will vary and they are often 'in perpetuity'.
- 3.3 Following a review of the standard Heads of Terms, these now include a formal requirement for the developer to notify the City Council when development commences and thus the trigger for compliance, (although many contributions are paid without the need to pursue developers). The progress of each development is monitored to ensure both financial and non-financial obligations are complied, essentially project managing the implementation of the required works.

4.0 Financial Summary

- 4.1 The following summary provides financial details as at the end of the last financial year, 2009/10.

Agreements with Financial Obligations

- 4.2. The total value of S106 agreements negotiated since 2000/01 with financial contributions is £21,770,298. However, owing to the current economic situation and developments not proceeding, it is unlikely that this will all be realised.

Contributions Received

- 4.3 The value of contributions received amounts to £10,151,392, with a modest amount having been refunded (see below). Not all payments are made in full but may be made in instalments. Unfortunately, over the last 12 months and more the Service has received a growing number of requests to vary existing agreement to allow for phased payments to allow development to proceed in a difficult economic climate.

Refunds

- 4.4 Contributions from a number of obligations amounting to £689,000 needed to be refunded. The reason being that the financial contributions were paid on signing the agreement and the associated developments did not take place. In such situations the City Council is legally bound to return the contribution. This is unlikely to arise in the future as payment is now on commencement or first occupation or a combination and phased.

Contributions Reserved

- 4.5 Of the available monies received (£9,462,392) £8,791,681 is 'reserved' to projects. The 'reserved' monies will need to continue to be spent in

accordance with the terms of the agreements once development has commenced, by an agreed date and subject to the Council's Gateway approval process. This money is held for a particular project and managed by an identified project manager; so no other 'calls' can be made on the obligation. It includes an amount for the 'City Centre pool'.

Contributions Awaiting Reservation

- 4.6 A balance of £670,711 is awaiting reservation against projects and will be allocated as soon as developments permit this and in accordance with agreements made.

Expenditure – Released for Spend

- 4.7 Of the money received to date a total of £3,324,475 has been released to fund a variety of projects with a balance to be released of £6,137,917. Monies are claimed by project managers using the SAP code allocated by the Corporate Programmes Team through Gateway.

Unpaid Contributions

- 4.8 It is estimated that £1,425,761 is due to the Council as a consequence of work commencing to implement planning permissions, but has yet to be received. Payment is currently being sought and invoices have been raised to the respective developers. Whilst it is open to and preferable, particularly at a time of an economic down turn, for the City Council to renegotiate the terms of payment through a Deed of Variation, failure to pay ultimately can lead to Legal proceedings against the developer.

S106 Activity 2009/10

- 4.9 During the last financial year S106 agreements were signed with an overall value of £620,555 and contributions were received to a value of £956,515.

5.0 Future of Planning Obligations and the Community Infrastructure Levy (CIL)

- 5.1 Members are aware planning obligations have been used to deliver a variety of benefits beyond site-specific measures and have covered a wide range of contributions towards the cost of infrastructure to support new development. With the intention of assisting local authorities to fund infrastructure across their areas, the previous Government had legislated for the introduction of the Community Infrastructure Levy (CIL). The new regulations also made current guidance on the use of section 106 law. Therefore, a planning obligation can only be sought from a development if the contribution is:
- (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.

- 5.2 Whilst the current coalition Government has yet to formally announce on the matter, the Conservatives Open Source Planning Green Paper set out a clear intent to 'scrap' CIL and non-site specific planning obligations. In its place it proposed to introduce a single unified local tariff applicable to all residential and non-residential development, even single dwellings, at graded rates (subject to size and there will be exceptions such as affordable housing). Little detail was included at that time on how the tariff would operate; however, it was suggested that each LPA would set its own local tariff rates and publish in a local plan. A percentage of the money raised would then be passed down to the community in which the development takes place.
- 5.3 In advance of notification of any change in the system and within the restrictions set out in 5.1 above, the Planning Service will continue to negotiate for a range of obligations which secure the most appropriate level of mitigation arising from developments and which contribute to the strategic aims of the City Council.

6.0 Conclusions

- 6.1 S106 contributions can do much to mitigate potential harm that new developments might otherwise bring and provide wider benefits through integration with the surrounding area. The Service will continue to secure such contributions in accordance with financial procedures.
- 6.2 With monitoring systems now in place the required obligations secured through individual agreements are effectively managed and delivered through a transparent system.