



Report for: ACTION/INFORMATION
Item Number: 15

Contains Confidential or Exempt Information	NO
Title	Approval of expenditure of Section 106 funding received by Ealing Council
Responsible Officer(s)	David Moore – Interim Director of Regeneration & Planning
Author(s)	Henry Kennedy-Skipton, Head of Regeneration Mark Isles, S106 Officer
Portfolio(s)	Councillor Julian Bell – Regeneration
For Consideration By	Cabinet
Date to be Considered	13 th February 2018
Implementation Date if Not Called In	26 th February 2018
Affected Wards	All
Keywords/Index	S106 agreement, monitoring

Purpose of Report: To seek Cabinet approval for expenditure of Section 106 funding received by Ealing Council.
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1. Recommendations

It is recommended that Cabinet:

- 1.1 Review and approve the proposals for expenditure of £6.805m of new S106 funds received or triggered since January 2017 as set out in Appendix 1;
- 1.2 Review and approve the proposals for expenditure of £0.168m of other S106 repurposed funds as set out in Appendix 2;
- 1.3 Approve that, where expenditure against the proposals in 1.1 and 1.2 above (if approved) is identified as Capital spend, that spend be included in the Capital Programme;
- 1.4 Note the details of ongoing expenditure of £13.416m of previously committed S106 funds as set out in Appendix 3 and that £0.122m of interest accrued from the Council’s holding account has been applied to those interest bearing agreements included in this schedule.

2. Reason for Decision and Options Considered

- 2.1 The proposed allocation of the S106 funds was prepared by officers, to enable delivery of important Council projects and secure best value for money. This was circulated to Members and comments have been received on the proposals.
- 2.2 The Council has received or has triggered £6.805m of new S106 money since January 2017, the date of the last S106 Cabinet report. Research has taken place with all relevant departments across the Council to ascertain whether previously allocated funds are still required for the projects they were previously allocated to or are available to be repurposed where the terms of the specific S106 agreements allow this. These repurposable funds amount to £0.168m. In some cases the projects have been implemented but were financed by funds other than S106; in others circumstances have precluded the original projects from going ahead.
- 2.3 Total funding available for Cabinet to commit is £6.97m, comprised of £6.805m new and £0.168m of repurposable S106 funding. The proposed uses of the funds are set out in Appendices 1 and 2. For information, included in these proposals is S106 money received from the following *large schemes* in the past year:

	£m
E91 Dickens Yard (Penultimate tranche)	3.302
A87 Oaks Shopping Centre Acton Phases 1 & 2 detailed	1.087
A102 Gibbon Road Acton W3	0.430
S57 St Bernard's Hospital Phase S2, Southall	0.238
N21 Plough Inn Mandeville Road Northolt	<u>0.221</u>
	5.278

3. Key Implications

- 3.1 A wide range of social, economic and environmental projects that meet the Council's priorities can be funded by legal agreements under S106 of the Town and Country Planning Act 1990, but these must fairly and reasonably relate in planning terms to the development proposal.

4 Financial Implications

- 4.1 S106 funds are amounts paid by developers as part of a planning agreement and are generally for a specific purpose and/or use in a specific location as set out in the terms of each S106 agreement. These funds are held in separate designated accounts within the Council's accounts and can be for either revenue or capital expenditure. The Council currently holds £20.389m of S106 monies as set out in Tables 1 and 2 below.

Table 1 – S106 monies

	£m
New S106 monies received/triggered since January 2017 - see Appendix 1	6,805
Re-purposable S106 funds identified since January 2017	0.168
S106 monies committed to existing or planned projects	13.416
Total	20.389

Table 2 – Use and geographical location of proposed spend

Purpose of proposed s106 spend	Housing	Transport	Education	Town Centres	Skills & Employment	CPZ	Parks	Health	TOTAL
£m	4.181	5.627	2.105	1.816	0.860	0.167	3.393	2.240	20.389
Geographical location of proposed spend	Acton	Park Royal	Ealing	Hanwell	Southall	Northolt	Greenford	Perivale	
£m	6.013	2.857	6.081	0.418	2.864	0.663	0.423	1.070	20.389

- 4.2 The proposed uses and geographical location of the new, repurposed and previously committed S106 funds are summarised in Table 2 above.
- 4.3 Interest is calculated on an annual basis based on the average balance of each such agreement. For 2016/17 interest amounted to £0.122m, which has been applied to the relevant agreements and committed against the approved projects funded by those agreements as set out in Appendix 3. This £0.122m is included in the sum of £13.416m in Table 1.

Future Ealing

- 4.4 As part of the Future Ealing programme, officers also undertook a further exercise to review S106 funds allocated but not yet drawn down (see Table 3 below). A total of £2.494m was found and included in the Council's Future Ealing proposals, which is over and above the £20.389m referred to in this report.

Table 3 – Future Ealing Funding

	£m
Housing	0
Transport & Highways	0.190
Education	1.945
Town Centres	0.151
Skills & Employment	0
CPZ	0
Parks	0.208
Health	0
Total	2.494

5. Legal

- 5.1 S106 obligations under the Town & Country Planning Act 1990 are legal documents either entered into between the Council and developers or provided unilaterally by a developer. The intention of the obligation is to mitigate and offset any harmful impacts of a development. This can include contributions to, or provision of, facilities at a local level or a contribution to provision of infrastructure and facilities at a borough-wide level to ensure capacity of facilities in the borough can accommodate the new developments.
- 5.2 Money paid to the Council pursuant to a S106 obligation can only be applied for the purposes set out in the relevant agreement.
- 5.3 The Council has the power to modify S106 obligations in accordance with S106A of the Town & Country Planning Act 1990 by agreement between the Council and the person/s against whom the obligation is enforceable.

6. Value for Money

- 6.1 S106 funding enables the Council to undertake projects that mitigate the impact of development and enhance the borough. Agreements are negotiated as part of the planning process and form a pre-condition of planning consent.
- 6.2 Through this report Cabinet approve the use of S106 monies and continuous monitoring ensures that monies are collected when they become due and that they are allocated for the purpose they were intended.
- 6.3 To ensure value for money, contracts for works are awarded in adherence to the Council's contract procedures rules and preferred suppliers are used where appropriate.
- 6.4 Where third parties are used to undertake projects (e.g. highways works), contracts will be commissioned in accordance with the Council's Contract Procedure Rules in accordance with the terms of any framework agreement.

7. Sustainability Impact Appraisal

- 7.1 It is considered that the report proposals should not have any significant impact on sustainability objectives. Any sustainability issues are dealt with at the point of granting planning and building control permission on the sites to which the S106 agreements relate

8. Risk Management

- 8.1 There is a potential risk of repurposing S106 contributions if the new purpose is not consistent with the terms of the original agreement. A review exercise has been undertaken to ensure that where any money is proposed to be re-purposed the money is still applied within the terms of the respective agreements.

9. Community Safety

- 9.1 This is a consideration for projects in shaping how funds will be used, for example in highways, lighting or other areas.

10. Links to the 6 Priorities for the Borough

- 10.1 Funds from the agreements will help to make the borough more prosperous, improve transport, public realm and education. It will help make the borough safer by improving highway and pedestrian safety, improving public services and facilities. They will help secure jobs and homes and address health aims of the borough.

11. Equalities, Human Rights and Community Cohesion

- 11.1 Analysis would indicate that an equalities analysis assessment is not required. The purpose of this report is to approve specific projects within the parameters set when the planning agreements were negotiated with developers. Equality implications are considered at this earlier stage in the process, in accordance with the Draft Legal Agreements SPD. Some of the S106 money will make a positive contribution to equalities.
- 11.2 Residents will be consulted on various schemes and proposals as appropriate when detailed schemes are being compiled. Consultation will also be undertaken on individual legal agreements where appropriate. Where a proposed development is considered to have a social impact, the Council will notify local people and community and voluntary sector organisations. Individuals and organisations can also comment at planning application stage on whether they consider a legal agreement would be appropriate, and also be kept informed of its progress and implementation
- 11.3 In addition, the Council's draft Draft Legal Agreements SPD, refers to the need to take into account equality implications in negotiating s. 106 agreements and fulfils the Council's duty to have due regard to the disability

equality duty by emphasising in particular the requirement to ensure access for disabled people.

12. Staffing/Workforce and Accommodation implications:

N/A.

13. Property and Assets

The investment made via S106 funding will lead to improvements in the borough and there will be some positive impact on the Council's property and assets.

14. Any other implications:

N/A.

15. Consultation

Consultation with members was undertaken in accordance with Economic Development's Councillor Consultation Protocol. Recommendations to Cabinet for spend for all such funds are drawn up by officers, arising from discussions between relevant Ward Members, area managers and spending departments. The proposals were circulated to Members. In addition, a presentation to the Labour group will take place on 12 February 2018.

16. Timetable for Implementation

Implementation date if not called in – 26th February 2018

17. Appendices

- Appendix 1 - new funds
- Appendix 2 - repurposable funds
- Appendix 3 - previously-committed S106 funds

18. Background Information

Section 106 agreements and records

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
David Moore	Interim Director of Regeneration & Planning	17/01/2018		
Jackie Adams	Head of Legal (Property & Regulatory) Legal	17/01/2018	24/1/18	
Nish Popat	Finance Business Partner – Consultancy	17/01/2018		
John Prince	Finance Business Advisor	17/01/2018	25/1/2018	
External				
N/A				

Report History

Decision type:	Urgency item?
Key decision	No
Report no.:	Mark Isles – S106 Officer, x 9925