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| Report for: ACTION/INFORMATION |
| Item Number: 9 |

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| Contains Confidential or Exempt Information | NO |
| Title | Approval of expenditure of new and repurposed Section 106 funding received by Ealing since February 2018 |
| Responsible Officer(s) | Lucy Taylor –Director of Regeneration & Planning x 9036 |
| Author(s) | Mark Isles – S106 Officer |
| Portfolio(s) | Councillor Peter Mason - Housing, Planning and Transformation |
| For Consideration By | Cabinet |
| Date to be Considered | 19 th March 2019 |
| Implementation Date if Not Called In | 1 st April 2019 |
| Affected Wards | All |
| Keywords/Index | S106, Allocation, Monitoring |

Purpose of Report:

To seek Cabinet approval for expenditure of new and repurposed Section 106 funding received by Ealing Council since February 2018.

1. Recommendations

It is recommended that Cabinet:

- 1.1 Review and approve the proposals for expenditure of £3.504m of new S106 funds received since February 2018 as set out in Appendix 1;
- 1.2 Review and approve the proposals for expenditure of £0.048m of re-purposable S106 funds identified since February 2018 as set out in Appendix 2;
- 1.3 Note 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 £11.688m of previously committed S106 funds as set out in Appendix 3 and that £0.043m 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 Council has received £3.504m of new S106 money since February 2018, the date of the last S106 Cabinet report. Research has also taken place with all relevant departments across the Council to ascertain whether previously committed funds are still required for the projects they were previously committed to, or are available to be repurposed where the terms of the specific S106 agreements allow this. These repurposable funds amount to £0.048m. In some cases the projects have taken place but were financed by funds other than S106; in others, circumstances have precluded the projects from going ahead.

2.2 In total there is around £3.552m of new and repurposable S106 funding and the proposed uses of the funds are set out in Appendices 1 & 2.

2.3 Included in these proposals is S106 money received from the following large schemes in the past year:

| | £m |
|---|--------------|
| A87 Oaks Shopping Centre, Acton | 1.088 |
| A107 100 Bollo Lane, Acton | 0.618 |
| E133 BHS site 104 - 110 the Broadway W13 | 0.574 |
| PR72 First Central, Park Royal | 0.437 |
| <u>E91B Dickens Yard - Affordable Housing - 4th DoV</u> | <u>0.300</u> |
| Total | 3.017 |

2.4 The proposals set out in Appendix 1 were drawn up in discussion with Officers. These were circulated to Members and comments have been received and addressed as appropriate.

2.5 The proposals set out in Appendices 2 and 3 were drawn up in discussion with Officers and Members. The report and appendices were circulated to Members on 20th December 2018.

2.6 Appendix 3 details previously committed S106 funds where projects are in progress.

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 and Implications on Budget

4.1 The S106 funds are treated as grant income to the Council, and add to other funds used for capital and revenue projects. S106 funds are 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.

Table 1 – S106 monies

| | £m |
|---|---------------|
| New S106 monies received since February 2018 – see Appendix 1 | 3.504 |
| Re-purposable S106 funds identified since February 2018 | 0.049 |
| S106 monies committed to existing or planned projects | 11.688 |
| Total | 15.241 |

- 4.2 Since February 2018, £3.504m of new S106 funding has been received by the Council. The details and terms of the various S106 agreements and the proposed use of those monies consistent with the terms of the individual agreements are set out in Appendix 1 for Cabinet to review and approve.
- 4.3 In some instances the original projects, for which S106 monies were identified, have been delivered using alternative funding sources such as grants, have cost less than anticipated or have not taken place at all due to other circumstances.

Table 2 – Purpose and geographical location of proposed spend

| Purpose of proposed S106 spend | Housing | Transport | Education | Town Centres | Skills & Employment | CPZ | Parks | Energy / Air Quality Monitoring | Health | TOTAL |
|--------------------------------|---------|-----------|-----------|--------------|---------------------|-------|-------|---------------------------------|--------|--------------|
| £m | 2.881 | 3.601 | 2.149 | 1.155 | 0.410 | 0.223 | 3.148 | 0.151 | 1.522 | 15.241 |

| Geographical location of proposed spend | Acton | Park Royal | Ealing | Hanwell | Southall | Northolt | Greenford | Perivale | TOTAL |
|---|-------|------------|--------|---------|----------|----------|-----------|----------|--------------|
| £m | 5.176 | 2.541 | 3.470 | 0.385 | 2.006 | 0.320 | 0.348 | 0.995 | 15.241 |

The proposed uses of the new, repurposed and previously committed S106 funds are summarised in Table 2 above by purpose and by geographical location.

- 4.4 The council currently has £11.688m of S106 monies previously approved and committed against existing and planned projects, the details of which are set out in Appendix 3.
- 4.5 Some S106 agreements are specified as interest bearing in that interest should be applied to balances held by the Council. Interest is calculated on an annual basis based on the average balance of each such agreement. For 2017/18 interest amounted to £0.043m, which has been applied to the relevant agreements.

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 used where appropriate.
- 6.4 Where third parties are used to undertake projects (e.g. highways works), it 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 could be some risk to re-purposing S106 contributions because in some cases the monies were intended for a specific purpose. A legal view has been sought on all principal S106 monies where the intention is to re-purpose the money to ensure that the money is applied within the terms of the respective agreements.

9. Community Safety

9.1 S106 funds may be negotiated to improve community safety.

10. Links to the 3 Priorities for the Borough

10.1 S106 agreements are negotiated on an individual development basis and in accordance with the priorities set out in the Draft Legal Agreements SPD. The council's administration has three key priorities for Ealing. They are:

- Good, genuinely affordable homes - agreements provide funding for affordable housing.
- Opportunities and Living Incomes - projects provide funding for employment and skills;
- A Healthy and Great Place to Live – projects include health facilities, improving highways and transport, public realm and education.

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 Legal Agreements SPD refers to the need to take into account equality implications in negotiating s. 106 agreements. This will fulfil 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:

12.1 None.

13. Property and Assets

13.1 None.

14. Any other implications:

14.1 None

15. Consultation

15.1 Consultation with members was undertaken. The report and appendices with the detail was circulated by e mail to Members on 20th December 2018 and comments invited. Comments were received and responded to. 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 set out in Appendix 1 were drawn up in discussion with Officers.

15.2 The proposals set out in Appendices 2 and 3 were drawn up in discussion with Officers and Members and meetings offered to the political groups in the communication of 20th December.

16. Timetable for Implementation

16.1 Implementation date if not called in – 1st April 2019

16.2 Various dates for implementation of individual projects, as shown in Appendices 1, 2 and 3.

17. Appendices

- Appendix 1 – new funds
- Appendix 2 - repurposable funds
- Appendix 3 - previously-committed S106 funds
- Appendix 4 – summary sheet showing sub-totals

18. Background Information

18.1 Section 106 agreements and records

Consultation

| Name of consultee | Post held | Date sent to consultee | Date response received | Comments appear in paragraph: |
|--------------------------|--|-------------------------------|-------------------------------|--------------------------------------|
| Internal | | | | |
| Lucy Taylor | Director of Regeneration & Planning | 20 Feb 2019 | 21 Feb 2019 | 4.4, 4.5, 15.1, 15.2 |
| Jackie Adams | Head of Legal (Property & Regulatory) Legal | 20 Feb 2019 | 21 Feb 2019 | |
| John Prince | Interim Finance Business Advisor, Regeneration & Housing | 20 Feb 2019 | 21 Feb 2019 | |
| Chris Bunting | Assistant Director Leisure | Nov 2018 | Nov 2018 | |
| Gillian Marston | Director of Environment | Nov 2018 | Nov 2018 | |
| Chris Cole | Transport Projects & Policy Manager | Nov 2018 | Nov 2018 | |
| Tony Singh | Head of Highways | Nov 2018 | Nov 2018 | |
| Gary Redhead | Asst Director Schools P&R | Nov 2018 | Nov 2018 | |
| Dave Baptiste | Head of Housing Development | Nov 2018 | Nov 2018 | |
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| External | | | | |
| N/A | | | | |
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Decision type:

Urgency item?

Report History

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| Key decision | No |
| Report no.: | Mark Isles – S106 Officer, x 9925 Mathew Bazergan – Finance & Projects Officer, x8058 Henry Kennedy-Skipton – Head of Regeneration, x5290 |
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