

Report to: Cabinet
Date of meeting: 7 July 2014
Report of: Jane Custance, Head of Regeneration & Development
Title: Watford Health Campus S106 Approval

1.0 SUMMARY

1.1 Planning obligations are made under section 106 of the 1990 Town and Country Planning Act as amended. They are generally entered into by agreement between local planning authorities and landowners in relation to specific applications for planning permission, although a landowner may also offer a unilateral, "one-sided", s106 obligation to the local planning authority .

Planning obligations are linked to a planning application decision, made either by the local planning authority or by the Planning Inspectorate in the case of an appeal against a refusal of planning permission. The planning obligation relates to the land to which the planning application relates, rather than the person or organisation that intends to actually undertake the development. It is therefore recorded as a land charge, and the obligations under it run with the land ownership until they are fully complied with, often indefinitely.

Planning Obligations are used for three purposes to:

- **prescribe** the nature of development to comply with policy (for example, requiring a given portion of housing to be affordable),
- **compensate** for loss or damage created by a development (for example, loss of open space), or
- **mitigate** a development's impact (for example, through contributions to mitigate against harm to the Special Protection Area).

1.2 The Watford Health Campus Partnership LLP (LABV) has submitted two planning applications for the Watford Health Campus site, It is going to be a requirement of the Council as local planning authority that a S106 obligation will be needed to be entered into to comply with the council's planning policies to secure financial contributions towards local infrastructure, education and community facilities, affordable housing and other site specific mitigation. The Council is a significant landowner within the application site and will therefore be required to enter into the S106 Planning obligation as landowner.

1.3 As the Council is both Landowner and Local Planning Authority, it legally cannot enter into a S106 Agreement with itself. However the Council does do have an agreement with Hertfordshire County Council who are also the Local Planning Authority, that in such circumstances they enter the agreement as LPA where we are landowner and vice versa where they are.
As the planning applications also cover land within the ownership of WHHT they too will need to agree to be a party to the s106.

1.4 As the Council will be required to enter into the S106 Agreement as Landowner, Cabinet approval is required.

2.0 RECOMMENDATIONS

- 2.1 That Cabinet approve the Council enter into a S106 Agreement in relation to the planning applications (*insert application numbers*) for the Health Campus.
- 2.2 That Cabinet delegates to the Portfolio Holder for Property authority to agree to enter into any subsequent planning obligations under S106 of the Town and Country Planning Act 1990 as amended, necessary in relation to any future planning applications for the Health Campus site, where the Council is landowner.

Contact Officer:

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Report approved by: Jane Custance, Head of Regeneration & Development

3.0 **DETAILED PROPOSAL**

- 3.1 Planning obligations are made under section 106 of the 1990 Town and Country Planning Act as amended. They are generally entered into by agreement between local planning authorities and landowners, although a landowner may also offer a unilateral, "one-sided", s106 obligation.

Planning obligations are linked to a planning application decision, made either by the local planning authority or by the Planning Inspectorate in the case of an appeal against a refusal of planning permission. The planning obligation relates to the land to which the planning application relates, rather than the person or organisation that develops the land. It is therefore recorded as a land charge, and the obligations under it run with the land ownership until they are fully complied with, often indefinitely.

Planning Obligations are used for three purposes to:

- **prescribe** the nature of development to comply with policy (for example, requiring a given portion of housing to be affordable),
- **compensate** for loss or damage created by a development (for example, loss of open space), or
- **mitigate** a development's impact (for example, through contributions to mitigate against harm to the Special Protection Area).

- 3.2 The common uses of planning obligations are to secure affordable housing, and to specify the type and timing of this housing; and to secure financial contributions to provide infrastructure or affordable housing. However, these are not the only uses for a s106 Obligation. A S106 Obligation can:

1. restrict the development or use of the land in any specified way;
2. require specified operations or activities to be carried out in, on, under or over the land;
3. required the land to be used in any specified way; or
4. require a sum or sums to be paid to the local planning authority on a specified date or dates periodically.

- 3.3 The legal tests for when you can use a S106 planning obligation are set out in regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 as amended. The tests are:
1. necessary to make the development acceptable in planning terms;
 2. directly related to the development; and
 3. fairly and reasonably related in scale and kind to the development.

- 3.4 If the S106 is not complied with, it is enforceable against the person that entered into the obligation and any subsequent owner. The S106 can be enforced by injunction. In the case of a breach of the obligation, the authority can take direct action and recover expenses.
- 3.5 The planning obligation is a deed, which states that it is an obligation for planning purposes, identifies the relevant land, the person entering the obligation and their interest and the relevant local planning authority that would enforce the obligation. The obligation can be a unilateral obligation or a multi party agreement.
- 3.6 The obligation is registrable as a land charge.
- 3.7 The planning applications for the Watford Health Campus have been submitted by the Watford Health Campus Partnership LLP which is the Local Asset Backed Vehicle (LABV) comprising Watford Borough Council and Kier Project Investment Ltd.
- 3.8 The Council is a significant landowner within the applications sites and is therefore required to enter into a S106 Planning obligation to secure financial contributions towards local infrastructure, education and community facilities, affordable housing and other site specific mitigation, in accordance with the council's policies as local planning authority.
- 3.9 As the Council is both Landowner and Local Planning Authority, it cannot enter into a S106 Agreement with itself as the Local Planning Authority.
- 3.10 The Council do have an agreement in place with Hertfordshire County Council who are also legally recognised as being the Local Planning Authority that will enter into the S106 as local planning authority where Watford Borough Council are the landowner.
- 3.11 As the Council will be required to enter into the S106 Agreement as Landowner, Cabinet approval is required.
- 3.12 It is recommended that Cabinet agrees to the Council entering into a S106 Agreement in relation to these planning applications as landowner.
- 3.13 It is likely that there will be further planning applications coming forward as the Health Campus development progresses and it is also recommended that the Portfolio Holder for Property be given delegated authority to agree any subsequent requirement for the Council as landowner to enter in any future S106 obligations.

4.0 Next Steps

- 4.1 Subject to decisions made by Cabinet in relation to the above recommendation, further work will progress on negotiating the terms to be included within the S106 Agreements accompanying the two planning applications for the Watford Health Campus. The planning applications will be presented to the Council's Development Control Committee in due course.

5.0 IMPLICATIONS

5.1 Financial

- 5.1.1 The Director of Finance comments that there are no financial implications as a result of this report.

5.2 Legal Issues (Monitoring Officer)

- 5.2.1 The Head of Democracy and Governance comments that the legal implications are set out in

the body of the report. Under the Development Agreement for the LABV it will only draw down land from the Council when certain preconditions in relation to a particular development zone are met, and this includes the granting of a satisfactory planning permission, hence the need for the Council as landowner to enter into any required S106 obligations. Once the land is drawn down and passes into the LABV's ownership it becomes responsible for complying with any outstanding obligations.

5.3 **Equalities**

5.3.1 There are no equalities implications arising from this report.

5.4 **Potential Risks**

5.4.1 Health Campus Project has its own risk register and risks associated with it are also captured in both the Corporate and Service Risk Registers.

There is the risk that if Cabinet were not to agree with the recommendation of this report, the failure to undertake a S106 Agreement could result in the refusal of planning permission

5.5 **Staffing**

5.5.1 There are no staffing implications from this report.

5.6 **Accommodation**

5.6.1 There are no accommodation implications from this report.

5.7 **Community Safety**

5.7.1 There are no community safety implications from this report.

5.8 **Sustainability**

5.8.1 There are no sustainability implications from this report.

Appendices

None

Background Papers

None

File Reference

None