

**Manchester City Council
Report for Information**

Report to: Resources and Governance Scrutiny Committee -
8 November 2018

Subject: Annual S106 Monitoring Report

Report of: Head of Planning, Building Control and Licensing

Summary

This report provides information on the 2017/18 financial year's activity in relation to S106 Agreements and specifically on associated financial obligations.

The report also sets out the legislative framework for negotiating S106 agreements, an update on CIL and viability, the latter a key factor in the planning process.

Recommendation

For Members to note and comment on the report.

Wards Affected: All

Manchester Strategy outcomes	Summary of the contribution to the strategy
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	The planning system plays a key role in the delivery of outcomes to support economic growth and sustainable neighbourhoods. This includes the use of S106 obligations.
A highly skilled city: world class and home grown talent sustaining the city's economic success	See above
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	Through supporting growth and new homes, the planning process seeks to provide opportunities for Manchester residents to raise individual and collective aspirations.
A liveable and low carbon city: a destination of choice to live, visit, work	The planning system strives to deliver environments and development that responds to the Councils quality agenda.
A connected city: world class infrastructure and connectivity to drive growth	See above

Full details are in the body of the report, along with any implications for

- Equal Opportunities Policy
 - Risk Management
 - Legal Considerations
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Financial Consequences – Revenue

S106 agreements generate a small management fee to support the monitoring of associated obligations by the planning service. However, this does not extend to any revenue consequences of the implementation of capital schemes.

Financial Consequences – Capital

Financial contributions received from S106 agreements are used to support a range of environmental improvements, physical infrastructure and affordable housing. The latter will contribute to the Housing Affordability Fund.

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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.

S106 Monitoring Report to Resources and Governance – July 2017
Housing Affordability Fund Paper to Executive - October 2017
Planning and Viability Report to Executive – May 2018

1.0 Background

- 1.1 The Committee considered the previous monitoring report in July 2017. This provided an overview of activity relating to Section 106 (S106) agreements during the 2016/17 financial year and included an update on the Community Infrastructure Levy (CIL), which has a direct bearing on how local planning authorities negotiate S106 agreements.
- 1.2 The report also provided a breakdown of S106 agreements on a ward by ward basis.
- 1.3 Following discussion on the report, Members asked that:
 - An updated list of S106 contributions on a ward by ward basis be circulated and information on when S106 agreements are made, when S106 contributions are received, and when S106 contributions are required to be spent.
 - That Planning Officers consult with all Ward Councillors on S106 proposals associated to their respective wards;
 - A briefing paper be provided to members of the Committee on the implications of the GM Mayor introducing a Strategic Infrastructure tariff and what effect this would have on the city;
 - Refer to the Neighbourhoods and Economy Scrutiny Committee the issue of the provision of affordable housing connected to S106 agreements; and
 - That a training offer on S106 agreements for all members of the Council be arranged.
- 1.3 An updated list was circulated following the meeting, however, as noted in that earlier report officers had started to work on a more effective and informative way of monitoring and reporting on this part of the planning process. This is still work in progress, however, information on agreements is appended. (The information is based on the wards prior to the boundary changes this year, however, where a change to the ward is known this is reflected under the site location column and will be fully reconciled over the next month).
- 1.4 On consultation, Members receive a list of planning applications in their ward. Where it is likely a S106 agreement will be required the aim is to seek heads of terms as part of the planning submission on validation. Further, planning applications with associated agreements are also reported to the Planning and Highways Committee. Discussions around planning proposals are also discussed at many Ward coordination meetings which provides a further opportunity to talk through any required obligation.
- 1.5 This report includes a response to the question of the GM Mayor Strategic Infrastructure Levy and as Members will be aware the matter of Affordable Housing has been subject of reports to the Executive.

2.0 Introduction

- 2.1 As noted, the annual monitoring report has provided Members with information on S106 financial obligations, where these have been received having met the necessary triggers (i.e. implementation of the planning consent), where money has been reserved against a project and how much had been negotiated/refunded. In addition it has provided information on S106 agreements by ward.
- 2.2 Whilst the purpose of this current report is to provide the same level of information on money received, it also includes a brief summary of S106 agreements and their use, changes that have been made and those being introduced following a recent publication by Government.
- 2.3 Previous reports have also referenced the Community Infrastructure Levy (CIL). Although Manchester's position has not changed and CIL is not yet being considered, the Government is seeking to amend the present system of setting CIL and developer contributions locally to support housing delivery.
- 2.4 As Manchester has recently improved transparency in the planning process regarding viability which relates directly to our ability to negotiate S106 contributions, this is also covered in the report.

3.0 Planning Obligations

- 3.1 Planning obligations also known as S106 agreements are legally, enforceable obligations entered into to mitigate impacts of a proposed development. They are agreements between a developer and the local planning authority.
- 3.2 New development can bring many benefits. In Manchester the focus has been to deliver key outcomes through development to meet corporate priorities. Examples include job opportunities, new or upgraded infrastructure to accommodate new homes, replacement/enhanced leisure facilities, supporting residents parking schemes or contributions towards homes that are affordable.
- 3.3 Developers can enter into planning obligations to meet these requirements or can provide them 'in kind' by building or providing directly the matters necessary to fulfil the obligation. In Manchester the starting point for negotiations is to include any requirements as part of the application itself. For example the substantial public realm and place making proposals that are being brought forward as part of scheme proposals notably in the city centre are provided as part of the development. Where they are not provided directly, the alternative is a financial contribution, payable to the local planning authority by way of a S106 legal agreement.
- 3.4 Not all obligations are financial and can be used to:
 - Restrict the development in a specified way
 - Require specified operations or activities to be carried out, and
 - Require the land to be used in a specific way.

- 3.5 There are three specific purposes to an obligation:
- Prescribe the nature of development
 - Compensate for loss or damage by development, or
 - Mitigate a developments impact.
- 3.6 A Planning obligation must help to meet objectives set out in the development plan (in Manchester this is the Core Strategy). In 2010 the then Government tightened the use of obligations by introducing three legal tests which have to be met which gave mandatory status to had previously been guidance. This means that an obligation can only be used:
- Where it is necessary to make a development acceptable in planning terms
 - It is directly related to the development; and
 - It fairly and reasonably relates in scale and kind to the development (i.e. it is proportionate)
- 3.7 These tests are reflected in the National Planning Policy Framework (NPPF). The NPPF also states that where obligations are being sought or revised, there is a requirement to take account of changes in the market and be sufficiently flexible to prevent planned development being stalled.
- 3.8 Each obligation is registered as a local land charge; this means the land not the person who undertakes the development is bound by the obligation.
- 3.9 A planning obligation can be modified or discharged at any time by agreement with the LPA. In Manchester this is rare with negotiations tending to revolve around amending triggers rather than removing an obligation all together. If an applicant is not happy with a decision to modify or discharge an agreement there is a right of appeal.
- 3.10 The City Council has a track record of working in partnership to deliver economic and residential growth, this can include using our assets as part of, for example, land agreements. Where this is significant we would look to address outcomes that would otherwise be achieved through the S106 process through a developer agreement. The result is one rather than two separate agreements.
- 3.11 Members may recall a report to the Executive in October 2017 (and subsequent associated reports) on the establishment of a Manchester Affordability Housing Fund (HAS). The objective of HAS is to bring together a range of funding streams targeted at the provision of affordable homes. This will include development contributions through both the planning process and the City as landowner, and other funding streams into one pot.
- 3.12 Since the concept of 'viability' was introduced into the NPPF, developers have sought to use viability assessments to help demonstrate why certain requirements would make a scheme economically unviable. Viability assessments now play an important part in the planning process. However, as

developers have submitted information on a confidential basis due to commercially sensitive information, assessments have until very recently not been in the public domain.

3.13 This matter has generated much debate and a recent national planning practice guidance note addresses the question of publicity and the form such assessments should take. Both this and how Manchester approaches viability assessments were the subject of a report to the Executive earlier this year, the overarching theme of the report being based on how we can improve transparency and confidence in the decision making process. This is expanded on in section 7 below.

4.0 The interaction between a planning obligation and the Community Infrastructure Levy (CIL)

4.1 Originally introduced in 2010, the levy is a charge on new development, essentially to help pay for supporting infrastructure rather than making individual applications acceptable in planning terms which is a fundamental difference to a planning obligation.

4.2 In order to ensure that planning obligations and the levy operate in a complementary way and the purposes of the two regimes are clarified, the regulations scaled back the way planning obligations operate.

4.3 Limitations were placed on the use of planning obligations in three respects:

- Placing policy tests on the use of planning obligations on a statutory basis for developments which are capable of being charged the levy
- ensuring the local use of the levy and planning obligations does not overlap; and
- limiting pooled contributions from planning obligations towards infrastructure which may be funded by the levy

4.4 The significance of this is that there has been a tightening of the use of S106 agreements as referred to in 3.6.

4.5 Earlier this year the Government published a package of planning reforms aimed at speeding up housing delivery in England. These reforms follow on from the Housing White Paper published in February 2017. A key proposal includes changes to the Community Infrastructure Levy. However, it should be noted that these proposals have not yet been implemented and further information as to what will be introduced is awaited.

4.6 One potential change is the removal, in certain circumstances, of the restriction from pooling funds for an infrastructure project, or type of infrastructure, from more than five planning schemes for an authority to operate a CIL; or where development is planned on several strategic sites, even where a CIL has not been adopted.

- 4.7 Also it is understood Government is looking to introduce Strategic Infrastructure Tariffs. The proposal being that Combined Authorities or joint committees of authorities should be able to establish a Strategic Infrastructure Tariff (SIT) similar to the London Mayoral CIL where they have planning powers. This would be used to fund a specific piece of infrastructure or for mitigation works across local authority boundaries. At this time there is little information as to how this would or could operate across GM.
- 4.8 As reported in previous reports to this committee, the Council has decided not to implement CIL in Manchester at this time. This has primarily been due to the concerns the approach could have on development in the wake of the down turn in the economy. It was also considered that a review of CIL and its impact should take place alongside that of the local plan (the Core Strategy). It is hoped this will begin shortly, and as part of this a robust assessment of the potential of CIL in Manchester should be undertaken.
- 4.9 As part of the assessment of the merits of CIL in Manchester, it will be important to consider whether changes in national and local policy on viability and developer contributions affect the impact of CIL compared to the incumbent approach.

5.0 S106 Activity during 2017-18

5.1 During 2017/18 year 19 S106 agreements were signed. Of these 5 relate to deeds of variation of previously signed agreements as the associated schemes have been subject to amendment. There were, however, no changes to the obligations themselves.

5.2 The schedule below sets out these agreements:

Signed s106 Agreements in Financial Year 2017 / 2018

Ward	Planning App	Location	Obligation	Date Signed	Deed of Variation
City Centre Ward (2004)	113870/FO/2016	2 - 4 Chester Road Manchester M15 4QG	£282k Affordable Housing	05-Apr-17	
Crumpsall Ward (2004)	114849/JO/2016	Bowker Bank Industrial Park Bowker Bank Avenue Manchester	Management of woodland	10-Apr-17	Yes
Whalley Range Ward (2004)	112570/FO/2016/S1	45 St Werburghs Road Whalley Range Manchester M21 0UN	£23k trees	09-May-17	

Gorton South Ward (2004)	115299/FO/2017	Land North Of Melland Road Sports Field (Former Running Track) South Of Melland Road Manchester M18 7QR	£750k Sports/recreation facilities	11-Jul-17	
Ardwick Ward (2004)	115475/FO/2017	Vacant Plot North East Of The Vallance Centre Brunswick Street Manchester	£10k Residents parking	26-Jul-17	
Hulme Ward (2004)	115821/JO/2017	Land Under Development Between Radnor Street And Greenheys Lane West Hulme High Street Manchester M15 5JR	£60k Highways	17-Aug-17	Yes
Ancoats And Clayton Ward (2004)	115401/FO/2017	Brownsfield Mill Binns Place Manchester M4 5BP	£100k Affordable Housing	07-Sep-17	
Hulme Ward (2004)	115919/FO/2017	Land Adjacent To Hulme Hall Road Manchester M15 4LY	£100k Affordable housing	13-Oct-17	
Whalley Range Ward (2004)	116795/FO/2017	45 St Werburghs Road Manchester M21 0UN	£23k Trees	12-Dec-17	
Charlestown Ward (2004)	086932/OO/2008/N1	Booth Hall Childrens Hospital Charlestown Road Blackley Manchester M9 7AA	£697k Affordable housing	20-Dec-17	Yes

City Centre Ward (2004)	117054/FO/2017	1-5 New Wakefield Street Manchester M1 5NP	£500k Affordable Housing	22-Dec-17	
Ardwick Ward (2004)	117726/JO/2017	Vacant Plot North East Of The Vallance Centre Brunswick Street Manchester M13 9XF	£10k parking scheme	12-Jan-18	Yes
Ancoats And Clayton Ward (2004)	115178/FO/2017	Part Site Of Existing Car Park Bounded By Ducie Street, The Rochdale Canal, Peak Street, Tariff Street (Multi-Storey Car Park) And Remainder Of Surface Car Park Manchester M1 2JL	£100k Affordable Housing	16-Jan-18	
Ardwick Ward (2004)	112684/JO/2016	55 Hathersage Road Manchester M13 0EW	£85k Parking scheme	10-Feb-07	Yes
Ancoats and Clayton (2004)	118057/FO/2017	Cable Street/Cross Keys Street/Addington Street and Mason Street	£20k public realm	16-March-18	
Hulme Ward (2004)	116881/FO/2017	Unit 5 Bentinck Street Talbot Mills, 44 Ellesmere Street	£50k affordable housing	19-March-18	
	117595/FO/2017		£50k affordable housing	22-March-18	

Hulme Ward(2004)				
City Centre Ward(2004)	118839/JO/2018	1-5 New Wakefield Street	£500k affordable housing	26-March-18
Ancoats and Clayton Ward (2004)	117749/JO/17	4 Angel Court	£64k sustainable transport	28-March-18

5.3 During the same period £999,895 was received following triggers being met from existing agreements. The details of these agreements and obligations are set out below.

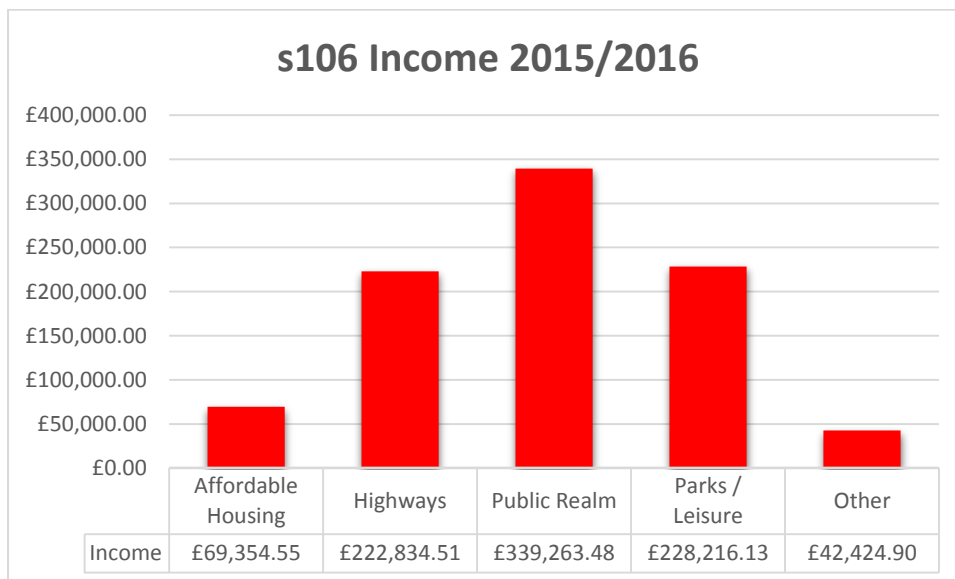
Income collected for s106 Agreements in Financial Year 2017 / 2018

Ward name	Planning App	Location	Obligation	Total
Charlestown Ward (2004)	086932/O O/2008/N 1	Booth Hall Childrens Hospital Charlestown Road Blackley Manchester M9 7AA	Affordable housing	£291,208.06
Gorton South Ward (2004)	101869/F O/2013/N 2	Land To Rear Of GMPTE Social Club (former Sports Ground) Mount Road Gorton Manchester M19 3ET	Sports/ recreation	£41,778.18
Northenden Ward (2004)	102660/F O/2013/S 2	Camperlands Ltd Mill Lane Northenden Manchester M22 4HR	Env/ highways/ car parking/ public realm/affordable housing	£121,701.21
City Centre Ward (2004)	103665/F O/2013/C 1	8 King Street Manchester M2 6AQ	Env improvements/public realm	£111,964.29
Didsbury West Ward (2004)	103991/F O/2013/S 2	Wrengate House 221 Palatine Road West	Affordable housing	£194,086.21

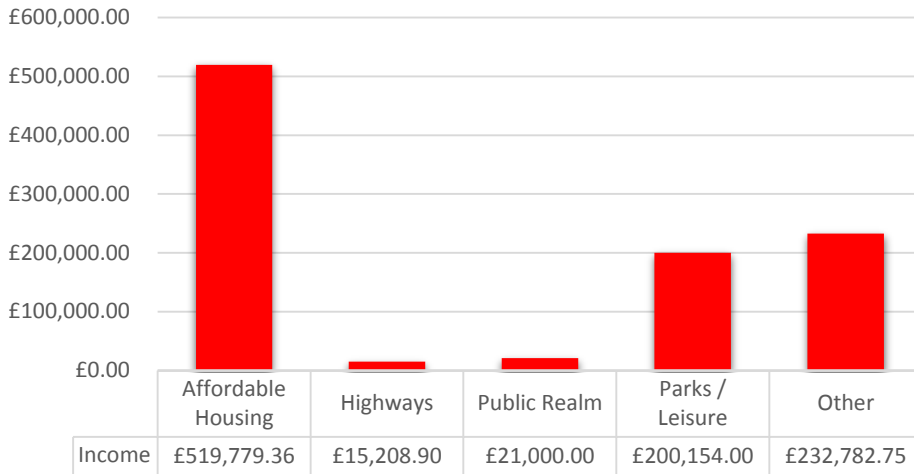
		Didsbury Manchester M20 2EE		
City Centre Ward (2004)	100982/F O/2012/C 2	1 Canal Street Manchester M1 3HE	Env improvements	£6,294.50
Manchester		TfGM	Trees	£150,000.00
Manchester		S106 A/MENT Talbot Mills, Ellesmere St - EVD3001/352	Affordable housing	£50,000.00
Whalley Range Ward (2004)	116795/F O/2017	45 St Werburghs Road Manchester M21 0UN	Trees	£23,847.05

In addition to the above £600k was received in lieu of a S106 agreement via a capital receipt for a development at Siemens. This is a contribution towards affordable housing.

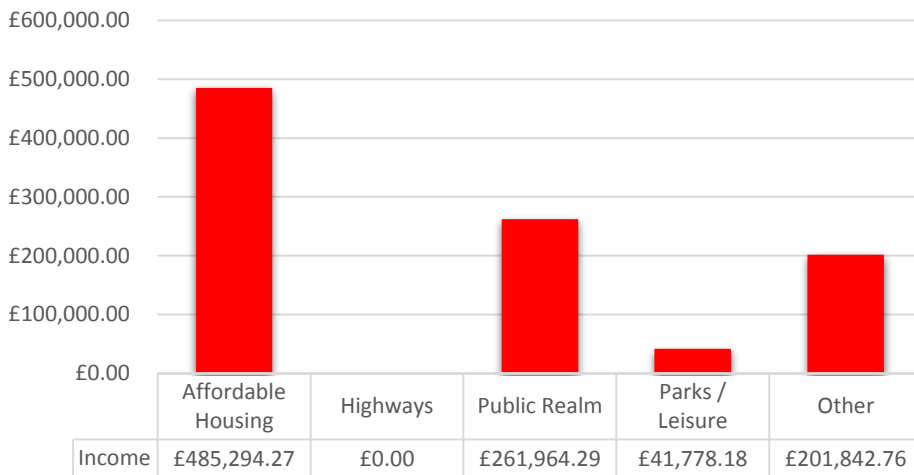
- 5.4 No refunds have been made during this period in relation to any financial obligation; however, there are two cases where the financial obligation is now required and these are being pursued.
- 5.5 These relate to a permission at Elisabeth Street, Cheetham (£19k for public realm/highways) and Silverwood House, Barlow Moor Road (£34k for affordable housing).
- 5.6 The following provides an insight into income received against principle areas of spend since 2015/16.



s106 Income 2016/2017



s106 Income 2017/2018



s106 Income 2015/2018



*Other will include mixed obligations including where a proportion relates to for example affordable housing.

5.7 There is currently £6 m held through received S106 contributions. Of this around 550,000k is awaiting to be reserved to projects (a large proportion of this is under discussions and also relates to the balance on schemes where spend has commenced)

5.8 No refunds have been made.

6.0 Viability and the Planning Process

6.1 National Guidance

6.2 Economic Viability is a key consideration in the planning process; this was introduced following the financial crisis of 2008 which saw significant downturns in residential house sales and development.

6.3 The resultant change in planning policy 2012 came via the issuing of the National Planning Policy Framework (NPPF). This introduced a more pro-development agenda and placed a priority on housing provision. A major tenet of the NPPF is that development should be 'economically viable' and developers and landowners should achieve 'competitive returns'. The aim being to create a step change in the delivery of new housing and to prevent 'stalled schemes' where developers argued they could not meet their planning obligations.

6.4 Over recent years this is an area that has generated significant interest with many commentators arguing that not only has this prevented the delivery of policy compliant development, but that a lack of transparency has exacerbated the problem.

6.5 Following a consultation earlier this year changes to the National Planning Policy Framework (NPPF) were brought forward early summer. These changes cover a range of planning policy/guidance including viability.

6.6 The previous NPPF had set out the need for local plan policies to ensure that the cost of any requirements, after taking account of normal development costs and mitigation, provide competitive returns to a land owner and developer, in order to enable development to be deliverable. The revised NPPF is more succinct and states that policy requirements on development contributions '.....should not make development unviable and should be supported by evidence to demonstrate this.'

6.7 It also states much more clearly that it is primarily at the plan making stage that viability should be assessed, requiring that local policies '.....should set out any circumstances where further viability assessment may be required in determining individual applications.'

- 6.8 Guidance (Planning Policy Guidance) sits alongside the NPPF and provides in more detail how some of the national policies should be applied. Key in relation to viability is that it is more forthright about the need for viability assessments being at the plan making stage, stating that ‘the use of viability assessment at the decision-making stage should not be necessary.’
- 6.9 What is also significant is the guidance on the methodology for assessing viability in relation to land value. The revised guidance changes the approach, with land price based on the existing use value plus a premium for the landowner. The latter to ‘...reflect the minimum price at which it is considered a rational landowner would be willing to sell their land.’ Further it states that an ‘...appropriate premium to the landowner can be established by looking at data from comparable sites of the same site type that have recently been granted planning consent in accordance with relevant policies.’ It goes on to say ‘Where a viability assessment does accompany a planning application the price paid for land is not relevant justification for failing to accord with relevant policies in the plan.’
- 6.10 Manchester had already adopted such a stance in its approach to testing viability but the support from the NPPF is welcome.
- 6.11 With regards to the information in 6.8 and local policy it was already necessary for policies to not render development unviable, but this has been put into much sharper focus in the revised guidance. The message being that assessing viability at the plan making stage is to ensure that policies and requirements do not present a barrier to the delivery of good quality sustainable development and this will have to be tested through robust evidence at plan making stage.

7.0 Manchester’s approach to Viability

- 7.1 In May 2018 as noted above a report to Executive reiterated that Manchester has clear priorities for delivering policy outcomes and the planning system has a key supporting and enabling role in this regard.
- 7.2 Core principles and priorities are set out in the development plan (the Core Strategy) and a range of endorsed frameworks that cover areas of strategic importance. These provide a clear platform and focus on the outcomes required to deliver growth and sustainable neighbourhoods and are at the heart of negotiations on all planning applications. Place making and design quality are key components of this.
- 7.3 There are instances where a schemes deliverability could be compromised by the scale of obligation being sought or through other costs associated with the development; where this is the case viability is tested through a viability assessment, as it has to be, in line with the NPPF.
- 7.4 These assessments are sought upfront when an application is being validated although could be required at any time during consideration of a proposal where and if the issue arises. Such assessments are scrutinised and

- challenged to ensure any contribution on a planning application is maximised.
- 7.5 Viability assessments have, however, been submitted in confidence and have not been published with applicants stating they contain commercially sensitive information.
- 7.6 In itself this has not prevented the planning service negotiating obligations that involve a financial contribution towards infrastructure and affordable housing through the S106 agreement process, but this has led to criticism and concern that the process is not robust and in the absence of evidence failing to deliver key outcomes.
- 7.7 The Service had already adopted an approach that all major planning applications that do not provide for key policy requirements such as environmental infrastructure, contributing to place making or affordable housing on site or off site should be accompanied by a viability assessment. Following a recent consultation we have now introduced a revised validation list which is clear that this is now a formal requirement.
- 7.8 In addition the vast majority of Information relevant to a planning application process is usually publicly available. The benefits of transparency in the system allows increased public access to environmental information and more effective participation and confidence in decision making. The revised list informs that a viability assessment should be submitted on the basis that it will be publically available. It is though noted that any applicant could still request that the Council does not disclose information on the basis that disclosure would adversely affect the confidentiality of commercial information which protects a legitimate economic interest. This should be the exception and not the norm.
- 7.9 The other change recently introduced relates to how the Council captures any uplift from development. Where viability supports a contribution through the S106 process, agreements will now include a reconciliation clause requiring a further viability test. This will allow the Council to share in any uplift and for this to increase the contributions from the original obligation.
- 7.10 The Council is looking to undertake a review of its local plan (the Core Strategy). The current indicative timeline for the Manchester local plan is adoption in 2021.
- 7.11 However, given the importance of viability, in addition to the recently completed review of the validation list, officers have commenced scoping out the work relating to the introduction of a new Supplementary Planning Document (SPD). A SPD would not constitute a formal change in policy but would enable the Council to set out a new approach to the assessment of viability and the procedures to follow. This is the approach adopted by other authorities. It is estimated this would take 12-18 months.
- 7.12 The intention would then link align this process with a full policy review of the local plan as viability is core to all Council key priorities including affordable housing and the provision of community/environmental infrastructure.

8.0 Contributing to the Manchester Strategy

(a) A thriving and sustainable city

The planning system plays a significant role in the delivery of key outcomes to support economic growth and sustainable neighbourhoods.

(b) A highly skilled city

See above

(c) A progressive and equitable city

Through supporting growth and enabling the supply of good quality affordable homes for sale and rent through the planning process will provide the opportunity for Manchester residents to raise individual and collective aspirations.

(d) A liveable and low carbon city

Improving transparency will support a robust planning process to deliver quality new developments that are designed to be inclusive, energy efficient and contribute to place making.

(e) A connected city

A transparent and robust planning system will improve confidence in decision making that recognises the importance of a well-connected city and the part it plays in driving growth.

9.0 Conclusion

- 9.1 This report provides members with an update on S106 activity over the last financial year. It also summarises the legal framework for negotiating such agreements and the current position regarding CIL.
- 9.2 With the increasing focus on viability which is a fundamental part of the planning process and particularly its implications on our ability to negotiate financial contributions, an update on Manchester's approach has also been included.
- 9.3 As in previous years, information has been provided (see attached) on a Ward basis. More detailed information about agreements and their obligations can be provided as this is all held on individual files in the planning service. As noted in 1.3 officers are close to completing work on an improved mechanism for sharing information and members will be updated shortly in this regard.
- 9.4 Finally, a recommendation from this Committee at the previous meeting was to arrange for training on S106 agreements. The original intention was for this to be part of a planning training session last November. However, this has now being arranged for 28 November this year.