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| Item No. 9. | Classification: Open | Date: 20 December 2011 | Meeting Name: Planning Committee |
| Report title: | | Release of S106 monies: Community and environmental improvements funded as part of the legal agreement for St. Christopher House. S106/2678 A/N 182 (01/AP/1701) | |
| Ward(s) or groups affected: | | Cathedrals | |
| From: | | Deputy Chief Executive | |

RECOMMENDATIONS

1. To note the comments from Borough and Bankside Community Council about the proposed expenditure.
2. To authorise release of £226,875.33 of section 106 funding from the legal agreement in respect of the development at St Christopher's House (Bankside 1,2,3), S106/2678 A/N 182 (01/AP/1701), towards The 56 Southwark Bridge Road Centre.

BACKGROUND INFORMATION

3. Planning obligations are used to mitigate against the negative impacts caused by a development and contribute towards providing infrastructure and facilities necessary to achieve sustainable communities. In order to achieve this, the Council enters into a legal agreement with a developer whereby the developer agrees to provide planning contributions and/or enters into various planning obligations.
4. The Section 106 agreement attached to the planning permission for St Christopher House, 80-112 Southwark Street and Tabard House, 116 Southwark Street, London SE1 was completed on 27 June 2003. The agreement makes provision for a range of projects aimed at securing the sensitive regeneration of the area, including community facilities, environmental enhancements, and community training in the area surrounding the site.
5. Schedule 2 Item D8 sets out support for local community/training facilities and says:

"a contribution of £1,300,000 is to be expended by the council on the development of community space within the area at 56 Southwark Bridge Road and at their new training facility proposed by the Blackfriars Settlement at Rushworth Street and/or for the support of environmental improvements in the vicinity of the Site and for the benefit of the local community."
6. The agreement also states that there is a two year period at the end of which the contributions must have been expended. The end of the two year period for the most recent payment falls at end of October 2011. In August 2005 the developer issued a letter confirming its intention to extend the period within which expenditure could take place. The last payment was received in 2009 for the contribution at Item D8 of the S106 agreement. As such the allocation for

expenditure of this contribution should be made as soon as possible.

7. There has previously been expenditure of over £2 million in total as detailed in the table below. At the bottom of the table under D8 it details the previous allocations for the community and environmental improvements contribution.

S106/2678

Account 182

St. Christopher's House Development

As at Nov. 2011

SCHEDULE OF PAYMENTS TO THE COUNCIL AND THE STATED PURPOSES UNDER SCHEDULE 2 OF THE AGREEMENT AND COMMITMENTS RECORDED.

| Ref | Purpose | Total | Committed | Notes |
|------------|---|-------------------|-------------------|--|
| A.1 | Bankside Open Spaces Trust consultation | 15,000.00 | 15,000.00 | Approved |
| A.2 | Tourist Information | 200,000.00 | 140,000.00 | SB14 & SO19 |
| A.4 | Design of improvements for new gateways | 50,000.00 | 50,000.00 | Approved £50,000.00 |
| | Art Project | | | |
| A.4 | Carrying out the bridge improvements | 400,000.00 | 60,000.00 | Approved - p/cttee (Fees £60,000.00) |
| | | | 340,000.00 | Works |
| A.5 | BOST for work for community open spaces | 50,000.00 | 5,000.00 | Approved |
| | | | 45,000.00 | Approved |
| | Sub-total payable on signing | 715,000.00 | 655,000.00 | Trigger 1 |
| B.2 | Workplace coordinator | 150,000.00 | 50,000.00 | Approved Phased payment |
| | | | 100,000.00 | Approved |
| B.3 | Off Site Lighting | 400,000.00 | 400,000.00 | Approved Planning/Cttee |
| B.4 | Monitoring officer costs | 60,000.00 | 60,000.00 | Approved Council employed |
| | Sub-total payable on demolition | 610,000.00 | 610,000.00 | Trigger 2 |
| C.1 | Community education | 100,000.00 | 99,210.00 | Approved |
| C.2 | Training for local employment opportunities | 50,000.00 | 50,000.00 | Approved |
| C.3 | Lifelong Training Waterloo Project Board | 30,000.00 | 30,000.00 | Approved |

| Ref | Purpose | Total | Committed | Notes |
|-----|--|----------------------------|---------------------|--|
| C.4 | Conference link for local schools | 10,000.00 | 10,000.00 | Approved |
| C.5 | Signage | 55,000.00 | 55,000.00 | Approved |
| C.6 | BOST for community open spaces | 50,000.00 | 50,000.00 | Report Aug 2010 Mint St Pk. From 2nd Tranche |
| | Sub-total payable on implementation | 295,000.00 | 294,210.00 | Trigger 3 |
| D.6 | Pedestrian environment improvements | 370,000.00 | 370,000.00 | Planning 27/10/08 |
| D.8 | Community Space & Training Facilities | | | |
| | Building 1* | 715,000.00 | | Paid 31/07/2006 |
| | Building 2 - Swrk St Gateway | 247,000.00 | | Paid 31/11/2005 |
| | | | | Paid 17/09/2009 |
| | Southwark Street Gateways Improvements | | 40,000.00 | Approved Planning/Cttee |
| | Building 2 - Swrk St Gateway Art Project | | 280,000.00 | Approved Planning/Cttee |
| | Bankside Community Space Project | | 65,000.00 | Delegated Approval |
| | Blackfriars Settlement Relocation Project | | 250,000.00 | Approved Planning/Cttee |
| | Sumner Street pedestrian area | | 175,000.00 | Planning 27/10/08 |
| | Building 3 | 338,000.00 | | |
| | | | 300,800.00 | Blackfriars Settlement |
| | | | 72,000.00 | Great Guildford Street Tunnel |
| | | | 50,000.00 | Cathedral Square |
| | Sub-total payable on Occupation | 1,300,000.00 | 1,232,800.00 | Trigger 4 see note |
| | Interest on balances | 158,875.33 | | To 31/03/2008 |
| | All totals | 3,290,000.00 | 3,162,010.00 | |
| | Balances remaining Nov 2011 | Community Space & Training | 68,000.00 | |
| | | Tourism | 60,000.00 | |
| | | Interest (remaining) | 158,875.33 | |
| | | Total | 286,875.33 | |

8. The planning committee of 1 November 2011 approved the commitment of three allocations of from the original £1.3 million secured under Schedule 2, Item D8.
 - £300,800 towards Blackfriars Settlement
 - £72,000 towards the Great Guildford Street Tunnel
 - £50,000 towards Cathedral Square.
9. Of the £1.3 million for community and environmental improvements there remains a balance of £68,000 plus £158,875.33 interest.
10. The 56 Southwark Bridge Road Centre was envisaged as a potential beneficiary of the agreement at the time of the application, therefore it was been directly named as a potential recipient of some of the £1.3 million. Blackfriars Settlements was also named as a potential beneficiary and has been allocated £250,000 and £300,800.

KEY ISSUES FOR CONSIDERATION

The 56 Southwark Bridge Road Centre

11. The 56 Southwark Bridge Road Centre opened in September 2009 following full redevelopment as a combination of a training centre specialising in broadcast media business and employment and a community facility for use by local organisations. The centre, operated by Leonard Cheshire Disability, offers a range of accredited courses in television and film, radio and animation for a range of disabled and able-bodied users. Since the opening in 2009, the centre has engaged with more than 600 disabled people, delivering accredited media skills qualifications. The building contains a large, purpose-built community space, with a servery kitchen and projection facilities, managed, maintained and promoted by the tenant as a free resource to local community organisations as defined in the lease. This facility is overseen by a steering group comprising the council, the tenant and community representatives to ensure use in accordance with the intended purpose as a community facility.
12. The principal sum for development of a media centre was provided through Elephant Links SRB grant as approved by the LDA. The total cost to the council of the 56 Southwark Bridge Road redevelopment is £5.5 million, with a contribution £3.5 million of Elephant Links Single Regeneration Budget grant funded by the London Development Agency.
13. The council has been expecting to support the centre with some of this allocation for some time, as it is named in the agreement. As the main contract costs of the development had previously been allocated, this report proposes an allocation of additional funds from item D8 to meet the retention payments subsequent to completion of the development and settlement of the final account.
14. The outstanding retention costs subsequent to settling of the final account amounted to £59,065 in 2009 and £167,810.33 in 2011 totalling £226,875.33. This report recommends the allocation of these sums towards the additional costs of providing community facilities in the redevelopment of 56 Southwark Bridge Road.

Community Project Bank Prioritisation

15. At its meeting on 22 July 2009, the then Executive approved a priority list of community project banks. These priorities should be carefully considered in the case of releasing monies from any S106 agreement.
16. In terms of the community facilities projects these have both been specifically referred to within the S106 legal agreement. Where legal agreements state specific projects or beneficiaries these supersede the priorities set by local councillors.
17. Other allocations from this development such as Great Guildford Street project sits as the fourth priority project for environmental/public realm improvements for Bankside. The other priority project which this agreement could fund is Flat Iron Square which has recently been completed with funding from the LDA.

Community impact statement

18. The programme of projects is designed to enhance the attractiveness of Bankside as a place in which people choose to live and work. By implementing these environmental and community facility projects in the area, the council is improving the environment and social sustainability of the community council area, providing high quality public places whether indoor (community centre) or outdoor (public realm) which local residents and workers can use, and which promotes the potential for interaction. Improving interaction between different social groups enhances trust and creates the conditions to foster stronger networked communities.

Resource implications

19. The use of section 106 funds to meet the retention payment on the Southwark Bridge Road project ensures that corporate resources intended for other projects within the council's capital programme are protected and prevents the possible delay or cancellation of other high priority capital schemes within the programme. The council has a legal obligation to meet the final costs of this project, therefore must use its corporate resources (including section 106 funds where the use is compliant with the legal agreement) to do so, or risk legal action which could cost the council more than those sums outstanding.
20. Occasionally section 106 funds need to be used to fund projects where expenditure has already been incurred. Where the original intention was for those funds to be used for that purpose then this is the best use of those funds. The discrepancy in receipt of section 106 funds and their application can arise as a result of a number of factors: developments which give rise to a section 106 contribution can be delayed, resulting in the payment of funds being delayed; capital projects due to be funded from section 106 contributions can be delayed, due to a wide range of causes such as planning issues, bad weather, or procurement issues; some payments on capital projects are subject to faults liability period where the payment is retained until the end of that period of liability, causing final payments to be up to 12 months after the completion of the project.
21. Section 106 funds are used to mitigate the impact of development in an area. Often the council needs to plan projects in advance to meet the additional requirements of a development. For example additional school places may need to be planned for several years in advance, to ensure that the necessary capital works have been completed to ensure those new places are available as soon as

the need arises. Therefore it is not possible to tie all section 106 funds to specific projects prior to projects being approved within the council's capital programme. For this reason the Capital Programme 2011-21 report, agreed by Council Assembly on 6 July 2011, supported the use of section 106 funds for projects already within the approved capital programme. The capital programme includes those projects considered to be high priority by the cabinet. There will still be instances where section 106 agreements specify specific local projects for which funds must be used, and community project banks will be reviewed when considering the application of S106 funds, so that local priorities are not overlooked.

Consultation

22. This report has been consulted upon internally with the relevant delivery teams with local councillors, the cabinet member for resources, Financial Director, S106 managers and Land Securities.
23. The report was taken to the Borough and Bankside Community Council on 6 October 2011. The community council and Blackfriars Residents Forum objected to the allocation to The 56 Southwark Bridge Road Centre but supported other aspect of the combined report.
24. When planning committee members considered the combined report on 1 November 2011, they approved the three other allocations but deferred the allocation to The 56 Southwark Bridge Road Centre and sought a separate report highlighting previous expenditure and further information.
25. The reasons given by the community council opposing the allocation of funding to The 56 Southwark Bridge Road Centre were that:
 - it should not use S106 to repay monies already expended;
 - it should not use S106 for a project that has overspent;
 - no further public money should be expended on this project;
 - the community council did not support the council's approach of supporting projects in the capital programme before local priorities.
26. Regarding the points raised by the Bankside Residents Forum (BRF) relating to the 56 Southwark Bridge Road centre, officers note that:
 - Schedule 2 Item D8 is quoted in paragraph 5 of this report and clearly states that the S106 funding is for community facilities at 56 Southwark Bridge Road and Blackfriars Settlement and for the *“support of environmental improvements in the vicinity of the Site and for the benefit of the local community”*.
 - The proposal for Marlborough Playground has been investigated by officers previously. BOST were not able to take it forward at the time so the S106 contribution was allocated to Mint Street Park (planning committee on 12 October 2010). Also currently Marlborough Playground is not a local priority. The funding cannot be used for revenue funding.
 - Initially £65,000 S106 funding was allocated from this agreement to set up community space. The centre is managed by Better Bankside who lease it and who host BRF. As part of the terms of the lease they are obliged to keep the centre in good repair. The funding requested is for new carpets (which is considered to be a maintenance issue) and for IT (which it is considered should be supplied by BB as a Business Improvement District).

Equal opportunities

27. All projects will be or have been already designed to be fully accessible to all, without prejudice or discrimination.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

S106 Manager

28. The total value of the St Christopher's House agreement for amounts to £3,290,000 of which all has been received by the council to date pursuant to the Agreement terms. This excludes other works and facilities to be provided directly by the Developer with a value of £4,018,000 and rent subsidies for community use of premises estimated at £600,000.
29. The agreement provides for a total of £1,300,000 payable under Schedule 2 item D8 for support for Local Community and Training Facilities. All of this contribution has been received and £68,000 is remaining from this agreement account number 182.
30. Subject to the legal concurrence with respect of the purpose of the expenditure being covered within the planning agreement, the amount of £68,000 plus £158,875 associated interest is available from the funding available under the agreement and is recommended for approval as capital expenditure.

Strategic Director of Communities, Law & Governance (16112011NS)

31. Members of the Planning Committee are requested to note the Borough and Bankside Community Council's comments on the allocation of funds in the amount of £226,875.33 from the St Christopher's House S106 legal agreement and to approve the release of these funds (which include interest accrued) to meet the retention payments subsequent to completion of the development and settlement of the final account at 56 Southwark Bridge Road.
32. The S106 monies must be expended in accordance with:
 - (a) the terms of the specific S106s; and
 - (b) the relevant policy tests set out in Circular 2005/05 and the first three being legal tests below which are now enshrined in Regulation 122(a) of the Community Infrastructure Levy Regulations in that they must be:
 - (i) relevant to planning purposes;
 - (ii) necessary to make the developments on the respective sites acceptable in planning terms by mitigating adverse impacts;
 - (iii) directly related to the respective developments;
 - (iv) fairly and reasonably related in scale and kind to the respective developments; and
 - (v) reasonable in all other respects.
33. Schedule 2 item D8 of the S106 agreement dated 27 June 2003 specifically allocates £1,300,000 towards support for local community/training facilities. Paragraph 8.1 of item D8 states that the contribution must be expended by the Council on the development of community space within the area at 56 Southwark Bridge Road and also on the new training facility proposed by the Blackfriars

Settlement at Rushworth Street and/or on the support of environmental improvements in the vicinity of the site and which are for the benefit of the local community. In order to comply with the legal agreement the contribution must therefore be spent in accordance with this paragraph 8.1.

34. The 56 Southwark Bridge Road Project is explicitly identified by paragraph 8.1 of the S106 legal agreement, and therefore allocation of the funds identified on these projects would be legally compliant.
35. The decision to consider and approve S106 expenditure exceeding £100,000 is reserved to members of Planning Committee in accordance with Part 3F, paragraph 2 under the heading 'Matters Reserved for a Decision'. Subject to taking account of the above considerations, members are advised to approve the expenditure which would be consistent with the terms of the S106 and the legal and policy tests relating to validity and expenditure of S106 contributions.

Finance Director

36. This report recommends that the planning committee authorise the release of £226,875.33 of section 106 funding from the legal agreement in respect of the development at St Christopher's House (Bankside 1,2,3) towards the 56 Southwark Bridge Road Centre.
37. Paragraphs 27 and 29 note that the S106 monies have been received by the council, are available for allocation with the recommendation for utilisation on capital expenditure.
38. Paragraph 17 explains the importance of the use of section 106 funds for this project to prevent the delay or cancellation of other capital projects within the Borough. Paragraph 14 explains that where projects are specifically named within a section 106 legal agreement that this supersedes the priorities set by local councillors. Paragraph 8 confirms that 56 Southwark Bridge Road is a named recipient of these funds.
39. Paragraph 18 provides the rationale for the application of section 106 funds to a project where expenditure has already been incurred. Paragraph 19 explains that funding cannot be withheld in the case of project overspends, though the Council employs robust procurement and contract management procedures to limit the risk of project overspends within its control.
40. Paragraph 19 explains why section 106 funds are used to support existing projects within the current approved capital programme, and that this use is set out within the Capital Programme 2011-21 report which was approved by Council Assembly in July 2011.

BACKGROUND DOCUMENTS

| Background Papers | Held At | Contact |
|--------------------------|--|---------------------------------|
| S106 files | 5 th floor, 160 Tooley Street, London SE1 2QH | Zayd Al Jawad, 020 7525 7309 |
| Bankside S016 projects | 5 th floor, 160 Tooley Street, London SE1 2QH | Alistair Huggett, 020 7525 5576 |

AUDIT TRAIL

| | | |
|---|---|--------------------------|
| Lead Officer | Eleanor Kelly, Deputy Chief Executive | |
| Report Author | Alistair Huggett, Frameworks & Implementation Manager | |
| Version | Final | |
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| Key Decision? | No | |
| CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER | | |
| Officer Title | Comments Sought | Comments included |
| Strategic Director of Communities, Law & Governance | Yes | Yes |
| Finance Director / Departmental Finance Manager | Yes | Yes |
| S106 Manager | Yes | Yes |
| Cabinet Member | No | No |
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