Application of S106 financial contributions on Westminster Bridge Road viaduct refurbishment and infrastructure works.

Planning Permission/Development: 0700965 Full/ No 1 Westminster Bridge Road

Section 106 Agreement: 136/L/S106D signed 21 December 2007

Ward: Bishops

1 Summary:

1.1 This report sets out and explains the delegated officer decision following Cabinet Member consultation and approval to allocate £1.2 million of the £1.5 million financial contributions from the S106 planning obligation for the “upgrading Westminster Bridge Road viaduct” towards refurbishment and improvement of infrastructure to the Westminster Bridge Road viaduct. This is to be implemented in 2009/2010 and 2010/11. This matter is being reported to the Planning Applications Committee following a concern raised by the South Bank Employers Group (SBEG), and at the request of Councillor Truesdale.

1.2 The report also sets out the approach being taken to pooling S106 contributions to support the implementation of the wider programme for improvements to the Lower Marsh area. This approach has been agreed with Councillors Lib Peck, Cabinet Member for Housing and Regeneration and Sally Prentice, Cabinet Member for Environment and endorsed by the Divisional Leadership Team of Housing Regeneration and Environment (HRE).

1.3 The attached map at the end of this report shows the geographical context of the works at the Westminster Bridge Road viaduct in relation to the wider Lower Marsh Regeneration Project of which it is a part.

1.4 Officers also believe the overall consultation approach has been in line with “Protocol for wider community engagement in S 106 planning obligations” (Appendix 1), which was being developed at the time of the original consultation on allocations of s 106 resources from No1 Westminster Bridge Road.

Recommendation:

(1) To endorse the delegated decision to apply £1.2 million out of an available £1.5 million from the “upgrading Westminster Bridge Road viaduct” planning obligation for refurbishment and infrastructure works, subject to any further savings that may be identified.

(2) To note that officers are undertaking to further review the projected costs, including a dialogue between the client (Public Realm Division) and the contractors (FM Conways), with the aim of seeking further cost reductions without compromising the quality or scope of the refurbishment.

(3) To note that the sign off of final expenditure on the refurbishment and viaduct works and the allocation of remaining financial contributions for the wider Lower Marsh Regeneration Project will be subject to approval with relevant Cabinet members.
2 Background

The Section 106 Agreement

2.1 The Section 106 agreement relates to the Park Plaza hotel development at No1 Westminster Bridge Road. This was signed on 21 December 2007 (legal Ref 136/L/S106D). It contained an obligation for the payment of £1.5 million for “upgrading the Westminster Bridge Road viaduct together with associated paving and street furniture works and improvements to the Lambeth Palace Road and York Road junctions with the peninsular road layout and associated pedestrian circulation.”

2.2 The original obligation was for the developer to undertake the bridge works and if this had occurred there would have been no opportunity to review the scope of the works. The developer agreed, however, that the Council should lead on this project and this has given officers the opportunity to review costings and identify the potential for funding to be released for allocation towards public realm improvements for the wider Lower Marsh Regeneration Project.

Project identification and assessment

2.3 The Waterloo Area Supplementary Planning Document (SPD) approved by Cabinet in June 2009, contains a list with a number of public realm projects – including the Lower Marsh Regeneration Project (or area based scheme).

2.4 The Lower Marsh Regeneration Project (including Lower Marsh, Upper Marsh and that part of Westminster Bridge Road which includes the railway viaduct bridge and its environs) had originally been identified as an opportunity to bid for funding from TfL to undertake public realm improvements under the TfL Area Based Scheme (ABS) programme. Allocation of approximately £3 million of S106 money (including the S106 for the Westminster Bridge Road railway viaduct) for the Lower Marsh Regeneration Project was included as part of a bid to TfL in 2008 as match funding.

2.5 Since the submission of the bid by the Council, no firm commitment to date has been forthcoming from TfL for additional funding. In the absence of additional funding from TfL officers have continued to work up expenditure proposals in relation to the Lower Marsh Regeneration Project just using the available S106 financial contributions. At present the available S106 financial contributions amount to £3 million, which after allocating £1.2 million for the Westminster Bridge Road viaduct bridge works would leave £1.8 million unallocated financial contributions available with further funding expected. Whilst the scope of the proposed regeneration package of the Lower Marsh Regeneration Project is broad, the intention is that the project can be phased over a number of years as and when available money becomes available.

2.6 A clear objective is to provide for a holistic redesign of urban environment. Procurement of urban designers is being progressed to address a range of issues including de-cluttering footway works; market infrastructure; level shared
services; new street furniture; better lighting; introduction of seating; tree planting; road narrowing; road closures; parking review and bay allocation; improving access; service and waste management; and public art.

2.7 The preparatory works to refurbish and improve the infrastructure of the Westminster Bridge Road viaduct as a sub project within the overall Lower Marsh Project have been progressed. These works are not considered to compromise the overall urban design approach for the wider area. They are directly related to the impact of the development from which the financial contribution arises and clearly in accordance with the tests of lawfulness in Government guidance as set out in Circular 05/05 on planning obligations. It is believed that this project is capable of stand alone implementation.

2.8 The Westminster Bridge Road forms an important gateway to the Borough; already the development at No1 Westminster Bridge Road is helping to transform the perception of visitors entering south London from the north and Westminster. It is considered that will be real and important environmental benefits from implementing the works to the Westminster Bridge Road viaduct as a result of its current appearance and that of its environs.

2.9 The following photograph’s give a visual impression of the new development and the physical state of Westminster Bridge Road viaduct.

Photo 1 – No 1 Westminster Bridge Road – the development linked to the planning obligation.
Photo 2 – Westminster Bridge Road viaduct – view south to north,

Photo 3 – Westminster Bridge Road viaduct – western footway
Westminster Bridge Road viaduct works

2.10 Following a detailed review of an original cost estimate produced in 2008, to identify any works that could be removed, the costs of refurbishment and infrastructure have been reduced to between £1.1 and £1.2 million. This consists of:

- Planning, design, CDM-C and project management - £100k
- Preliminaries, access and traffic management - £300k
- Refurbishment works* - £400k
- Pigeon proofing - £200k (based on Glide system)
- Functional lighting - £100k (to include new cabling)

* Refurbishment works include cleaning of brickwork/glazed tiles, application of anti-graffiti, cleaning and painting metalwork, cleaning of existing footways, cleaning and painting existing drainage- replacing only where damaged.

2.11 The Council’s Public Realm Division which, will be responsible for managing this scheme, has a successful record of undertaking similar works. For example the “Light at the End of the Tunnel Project” in Waterloo and Vauxhall, which has significantly improved the public realm and connectivity under a number of rail
bridges. The Council’s term contractor will be contracted to undertake the work, employing specialised contractors as necessary.

2.12 A further review of the cost estimate and bill of quantities is currently being undertaken by officers involving South Bank Employers Group on an advisory basis. Initial collaboration has identified that some limited savings may be possible regarding type of pigeon proofing, however the cheapest form of pigeon netting will not necessarily provide high quality finishing, and a quality threshold will need to be balanced against price.

The consultation and decision making process

2.13 A consultation exercise took place at the end of 2007 in line with the approach now adopted in the protocol on widening community engagement on S106 planning obligations (see Appendix 1). At that time it was agreed in principle, in response to representations from SBEG, to allocate available appropriate S106 financial contributions to the then TfL Area Based Scheme bid. This was confirmed by Councillor Paul McGlone, who was at that time Cabinet Member for Regeneration. However, this did not change the intent of the wording of the planning obligation, nor the ability to implement this particular project independently as a first phase of the wider Lower Marsh Regeneration Project.

2.14 A Steering Group, chaired by Public Realm officers has been established to manage the Lower Marsh Regeneration Project and engage with local stakeholders. Local stakeholders involved include SBEG, Waterloo Community Development Group (WCDG) and the Waterloo Quarter Business Alliance (WQBA)

2.15 Works to the Westminster Bridge Road viaduct have been the subject of presentation and discussion at the Steering Group. Following a meeting on 20 May 2008, it was agreed that in scoping the core infrastructure works, these would be minimised where possible, in order to enable the allocation of further financial contributions towards the wider urban design objectives from the available £1.5 million Westminster Bridge Road Rail viaduct planning obligation.

2.16 A technical presentation was made to the steering group on 8 April 2009 which identified the overall cost of the core refurbishment and infrastructure works as £1.2 million.

2.17 However, concerns have been expressed by stakeholders to officers regarding this level of budgeted expenditure despite officers confirming the necessity of the costs involved for the core work and requirements of the S106 Agreement.

2.18 At the Waterloo summit meeting held on 6 July 2009, chaired by Councillor Lib Peck as Cabinet Member for Housing and Regeneration, the Chief Executive of SBEG and Director of WCDG raised and discussed issues in relation to the proposed works to the Westminster Bridge Road viaduct, including their concerns regarding value for money and the opportunity cost involved,
2.19 Subsequently, on 10 July 2009 Councillor Peck and on 16 July 2009 Councillor Sally Prentice (Cabinet Member for Environment) considered and approved the recommendation to apply the £1.2 million, as recommended by the Housing, Regeneration and Environment Departmental Leadership Team meeting on 8 July 2009.

S106 pooling context

2.20 The Council has committed in principle to pooling of S106 resources in the Waterloo Area towards public projects as set out in the Waterloo Area SPD. However, it is important to ensure that the purpose of the S 106 planning obligation is not undermined by any pooling approach.

2.21 Development mitigation, and re-opening difficult negotiations with developers, has shaped Planning’s general approach not to re-open negotiations on planning obligations unless a substantial materially different planning application is made. Practice has been to ensure flexibility in the wording in the obligations, and where appropriate to enable a cascade mechanism to be used to create a pooled S106 approach.

3 Conclusion

3.1 Officers consider that the purposes of the project fully meets the requirements of the planning obligation, which is considered to be wholly justified in terms of mitigating the Apart Hotel development at No1 Westminster Bridge Road, currently under construction

3.2 Officers are also content that the balances of the £1.5 million obligation, plus interest, can reasonably be allocated towards the Lower marsh Regeneration scheme, provided that the project meets the terms of the obligation.
Figure 1    Westminster Bridge Road viaduct in relation to No1 WBR /Island Site, and Lower Marsh Regeneration Scheme.
Appendix 1

Lambeth Council’s protocol
for
wider community engagement
in
Section 106 planning obligations

August 2009
The Council’s commitment to wider community engagement

1. Lambeth Council is committed to ensuring that full and appropriate community engagement takes place in the determination and implementation of S106 planning obligations at all stages of the planning application process. This is because the Council considers that local communities are well placed to be able to assess the direct impact of development on their areas and that they should have an important role in determining priorities for mitigation measures.

2. This document sets out the Council’s approach to community engagement in the S106 process including the setting up of and the operation of project banks. This applies to significant major and other applications of significance to their areas.

3. The Government Circular 05/05 on planning obligations sets out the parameters for the lawfulness of planning obligations and together with the Council’s Supplementary Planning Document (SPD) on S106 planning obligations as well as any site/area specific (SPDs) provides the context for the planning obligations to be sought.

4. In many instances there is a range of choices to be made in respect of mitigating the direct impact of development, for example environmental improvements such as pavements, landscaping, pedestrian access, open space, the application of financial contributions for employment and training provision, or provision of facilities serving the local community.

5. In addition the Council is supporting the development of local project banks in conjunction with local community groups and stakeholder organisations. These are projects which are not part of the Council’s general programmes but schemes that can be related to the direct impact of development proposals. They can be drawn upon when development proposals relevant to the schemes within project banks come forward.

6. The Council’s commitment to community engagement in the planning application process includes the:

   - pre application stage;
   - planning application stage; and
   - post planning permission stage when Section 106 planning obligations become “live”.


7. The process of community engagement including the operation of project banks will be assessed and reviewed as necessary in the light of experience and effectiveness.

**Process of pre-application advice and identification of requirements**

8. The process of community engagement throughout the planning application process is set out in Appendix 1.

9. The Planning Division encourages developers to enter into an early dialogue with the Council and the GLA (in schemes referable to the London Mayor) in order to identify the full range of relevant planning issues as well as advice on S106 planning obligations that may be appropriate to the type of development being proposed.

10. Guidance on planning obligations is contained in the Council’s SPD on planning obligations, approved in July 2008. A S106 tool calculator can be used to identify a number of tariff based planning obligations linked to development proposals. Specific and more detailed planning advice on planning obligations may also be provided in development briefs and area guidance. These will have already been the subject of public consultation. For example the Waterloo and Vauxhall area Supplementary Planning Documents identify a whole range of specific requirements for planning obligations including public realm and transport improvements.

11. In addition the Council will develop project banks with local community groups and other partners. These could also be drawn up as part of site development briefs or area guidance, or from other community initiatives.

12. Depending on the nature of the proposed development and the likely impact that needs to be mitigated, appropriate/relevant schemes from project banks would be identified for inclusion as part of the overall package of S106 planning obligations.

13. **For major applications where the confidentiality is not an issue, Planning officers will notify ward councillors about emerging development proposals.** As part of pre-application advice the Planning Division will advise that where confidentiality is not an issue, developers are expected to consult with local community groups/organisations and ward councillors on proposals for development and specifically on what planning obligations were being proposed to mitigate the likely impact of development.

14. At the planning application stage the developer is expected to submit a report explaining the S106 planning obligations being proposed and to include who was consulted at the pre-application stage; what responses
were received; and how these influenced the nature and extent of S106 planning obligations being proposed.

15. Public consultation carried out by the Planning Division on the planning application will draw attention to S106 planning obligations being proposed and inviting comments on this aspect of the planning application as well.

16. In the report to Planning Applications Committee there will be a summary of community engagement on the S106 proposed in the section dealing with planning obligations.

Project Banks

17. Project banks could be set up in different ways but an essential part would be that they have gone through a process of community engagement and reflect local community priorities.

18. These can come about in a variety of ways through:

- proposals by local community groups and organisations;
- proposals identified by Council Departments or other statutory bodies;
- development brief or area based SPDs;
- masterplans or other area based initiatives dealing with physical or community impacts.

19. Ideally schemes proposed for project banks should be worked up, costed and prioritised through public consultation. Depending on their nature and the impact of proposed development schemes from project banks could form an important part of S106 Agreements.

20. The process of setting up project banks will be co-ordinated by the Planning Division and published as separate documents.

21. They will be kept up-to-date as schemes are included in S106 Agreements and implemented.

22. It is important to note that the implementation of a project bank scheme that has been included in a S106 Agreement is dependent on the planning permission being implemented and the Council does not have any powers in compelling the implementation of a planning permission. Once a scheme is included in a S106 Agreement, including it in another S106 Agreement to be delivered by a developer,
may lead to issues of double counting, and/or conflict between developers and/or Council on who has responsibility to implement it. It may therefore be more appropriate to rely on a pooling approach for financial contributions for the implementation of project bank schemes rather than specifying individual schemes in S106 Agreements.

23. Also priorities of the schemes within project banks may be affected by changing circumstances as new issues arise and/or as circumstances within an area change.

24. The geographic spread of project bank areas should be flexible reflecting variability of areas and neighbourhoods in the Borough. At present it is likely that in addition to the initial project bank relating to the area covered by the Waterloo area SPD, project banks would be based around the Vauxhall area SPD area; the masterplan areas of Brixton; Streatham and Norwood. In addition community led initiatives for the Herne Hill and Stockwell areas provide the opportunity for setting up Project Banks in these areas.

25. In general the ability of project bank schemes to progress will be dependent on development proposals generating S106 financial contributions for their implementation. This is very much dependent on the distribution of development demand. It may therefore be appropriate to consider whether project banks could also include a range of other projects reflecting local community priorities but being delivered through other means as well.

26. The example of the initial project bank in Waterloo is set out below.

**Example of Project Bank – Open Space Projects in Waterloo**

A range of public realm parks and open space projects were identified by the Waterloo Open Space Partnership (WOSP), a partnership of local community organisations and stakeholders interested in improving public open space in Waterloo. A number of these projects have worked up designs, costs, and have been publicly consulted upon and prioritised. This enables S106 requirements to be readily identified and ready to be progressed when considering development schemes in the Waterloo area. These project bank schemes will provide benefits from improvements to parks and public open space to existing and new residents, visitors, and people working in the area.

S106 funded schemes or those where planning obligations are currently being pursued in Waterloo, include:

- Jubilee Gardens
Archbishops Park
Emma Cons Gardens.
Further projects are being worked up, and may receive S106 funding in the future.

Involved in WOSP are: Waterloo Green Trust; Waterloo Community Development Group; Lambeth Parks; Groundwork Lambeth/Southwark; Roots & Shoots; Putting Down Roots; Bankside Open Spaces Trust; and the South Bank Employers Group

Post planning permission process

27. The step by step process is set out in Appendix 2.

28. When the Planning Division becomes aware that a planning obligation which is non-specific (that there is flexibility/choices in the application of financial contributions or choices of project as could be the case with planning obligations which just refer to the carrying out of environmental improvements) comes live, it will notify the relevant Council service department(s) responsible for implementation; local community groups; and elected members (Cabinet member and ward members).

29. It will then be up to service departments to consider options and consult with local groups; Cabinet and ward councillors. The same process will apply in the case of specific planning obligations where there is some scope and flexibility for different alternative ways of implementing the planning obligation. Options will include schemes within a local project bank where one has been established and where projects can be clearly linked and justified in the legal sense to be in accordance with the planning obligation.

30. Following consultation, the service department will prepare a report setting out the consultation carried out and summarising its results together with recommendations on how the planning obligation should be applied including the implementation/lead delivery agency, for example - Council department, other statutory body, local regeneration partnership, community organisation.

32. In the case of employment and training planning obligations, Lambeth First (Lambeth Local Strategic Partnership) will have a key role in determining the application of financial contributions and implementation of employment training programmes.

32. The Planning Division will need to confirm that the recommended proposal is legally in accordance with the purpose of the planning obligation and seek legal advice if necessary and then the report will go to the Cabinet member with responsibility for Planning (Housing Regeneration and Enterprise as at October 2008) and/or other Cabinet members as appropriate for signing off.
33. The scheme design or other necessary process of implementation takes place with further local consultation and stakeholder project group involvement as appropriate.

34. Regardless of how the planning obligation is implemented it is essential that there is transparency and full accountability for all financial and other aspects of the implementation of planning obligations in accordance with the Council’s corporate procedures and value for money objectives.
Appendix 1

WIDER COMMUNITY ENGAGEMENT IN SECTION 106 PLANNING OBLIGATIONS – PLANNING APPLICATION PROCESS

| 1. PRE-APPLICATION STAGE | Initial identification of planning obligations based on:  
|                          | • Unitary Development Plan (UDP) policies  
|                          | • S106 Supplementary Planning Document (SPD) – including tariff based contributions derived from S106 SPD toolkit calculator  
|                          | • Site specific (development brief)/area based SPDs – if applicable  
|                          | • Project bank where established & relevant to mitigating potential impact of development  
|                          | • Other public infrastructure providers identified requirements e.g. TfL public transport requirements  
|                          | • Cabinet member confirmation of identified priorities  

Pre-application advice  
(see notes 1, 2, & 3)

Pre-application engagement  
• For major applications where the confidentiality is not an issue, Planning officers will notify ward councillors about emerging development proposals.

(see note 4)

| 2. PLANNING APPLICATION STAGE & PUBLIC CONSULTATION | At the planning application stage the applicant would be expected to submit a report explaining the S106 being proposed which would include who was consulted at the pre-application stage; what responses were received; and how these influenced the nature and extent of S106 proposed.  
| | Public consultation carried out by the Planning Division. This would include groups; ward councillors; general community (individuals); and statutory type consultees and attention would be drawn/comments invited on the planning obligations proposed/required to mitigate the impact of the proposed development.
### 3. PLANNING APPLICATION ASSESSMENT

Planning obligations assessment and finalisation taking into account:
- UDP policies
- S106 SPD
- Development Brief (SPD) if appropriate
- Project bank
- Response from public consultation, including the Mayor of London and any infrastructure providers
- planning obligations proposed/required to mitigate the impact of the proposed development.

### 4. PLANNING APPLICATIONS COMMITTEE (PAC) DECISION

<table>
<thead>
<tr>
<th>Decision on the planning application including S106 heads of terms (note 5)</th>
<th>PAC report includes a summary of community engagement on S106 proposed within the section dealing with planning obligations</th>
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### NOTES

1. UDP, S106 SPD and site specific development briefs and area based SPDs will have gone through their own consultation process.

2. The arrangements for the setting up of the project banks will be informed by the identification of proposals from area based SPDs, Masterplans or local community area strategies that can be related to the direct impact of development, which in accordance with Circular 05/05, would not normally be met from general Council budget funding. This would also be informed by service departments’ confirmation that projects would be appropriate.

3. Identification of other public infrastructure providers requirements will need to be forthcoming in a timely and justified manner for inclusion at this stage.

4. Process for wider engagement would apply to larger major developments: the developer would advise the Planning Division when his or her proposal can be regarded as not confidential.

5. Once Heads of Terms have been agreed by the Council’s Planning Applications Committee (PAC) – these can only be changed in substance by referral back and agreement by PAC.
<p>| <strong>STEP 1</strong> | Planning Division identifies that S106 planning obligation has become live as a result of the implementation of planning permission progression of relevant trigger points in S106 Agreement. |
| <strong>STEP 2</strong> | Notification as relevant to the S106 planning obligation to: |
| | • Relevant Council Department or other statutory body with responsibility for service delivery |
| | • Local community groups/organisations |
| | • Regeneration and Enterprise Division |
| | • Elected Members – (relevant Cabinet Member/local ward Councillors) |
| <strong>STEP 3 (A)</strong> | Non-specific planning obligations |
| | The relevant service department identifies and co-ordinates the proposed application of financial contributions/projects following consultation with local community groups/organisations; and local ward councillors, having regard to: |
| | • Purpose of planning obligation |
| | • Existing Project Bank |
| | • Submissions from interested parties |
| | • Any criteria to be adopted for prioritisation |
| <strong>STEP 3 (B)</strong> | Specific planning obligations |
| | The relevant service department will confirm with the Planning Division that the proposed implementation of the planning obligation is in accordance with the S106 Agreement as approved by the Planning Application Committee. If there is scope for options within the terms of the obligation the service department will carry out the same consultation as in (A) above. |
| | In the case of employment and training planning obligations, Lambeth First (Lambeth Local Strategic Partnership) will be consulted and help determine the application of financial contributions and implementation of employment training programmes. |
| <strong>STEP 4</strong> | The relevant service department drafts a report (with Planning Division sign off), setting out the consultation carried out and its results with a recommendation on the application of financial contributions/project, its implementation/lead delivery agency, for example - Council department, other statutory body, local regeneration partnership, community organisation. |</p>
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<tr>
<th>STEP 5</th>
<th>Allocation report signed off by Cabinet Member Housing and Regeneration (and other relevant Cabinet Member if appropriate).</th>
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<tr>
<td>STEP 6</td>
<td>Scheme design takes place – including any further local consultation and stakeholder project group involvement.</td>
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<td>STEP 7</td>
<td>Sign off by the Planning Division of S106 Expenditure Approval (EA) report prepared by the service department through Delegated Officer Report or S106 EA form, and Service Delivery Plan.</td>
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<tr>
<td>STEP 8</td>
<td>Implementation/delivery of scheme takes place.</td>
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