

## **PLANNING OBLIGATIONS AGREEMENTS**

**Report by: Head of Planning and Transportation**

### **Wards Affected**

County wide.

### **Purpose**

1. To review arrangements for Planning Obligation Agreements.

### **Financial Implications**

2. Planning Obligations can generate significant capital sums to help the authority achieve key projects and deliver services. However, they are voluntary and dependent on the development industry carrying out building projects; consequently the income stream is variable and not within the direct control of the Council.

### **Recommendation**

**THAT the current arrangements for Planning Obligations be noted and a further report be made at the end of the current financial year.**

### **Reasons**

3. To enable further monitoring in the light of changing circumstances.

### **Considerations**

#### **Background**

4. The Audit and Corporate Governance Committee has requested that the Planning Committee inform them of the following:
  1. The rules that apply in Section 106 Agreements which when completed by a Developer prompt the payment of monies to the Council.
  2. The monitoring procedures adopted by the Planning Service to ensure that Developers complete the requirements of Section 106 Agreements.
  3. The protocols for determining how Section 106 contributions are utilised.
5. In order to respond to those points it is necessary to set out the background to Section 106 agreements generally, and the way in which Herefordshire Council has prepared and adopted its policies on such agreements.
6. Section 106 of the Town and Country Planning Act 1990 has four sub-sections: the first three are as follows (the fourth concerns Ministerial powers and is not relevant to this report):
  - 1) A local planning authority may enter into an agreement with any person interested in land in their area for the purpose of restricting or regulating the development or

- use of the land, either permanently or during such period as may be prescribed by the agreement.
- 2) Any such agreement may contain such incidental and consequential provisions (including financial ones) as appear to the local planning authority to be necessary or expedient for the purposes of the agreement.
  - 3) An agreement made under this section with any person interested in land may be enforced by the local planning authority against persons deriving title under that person in respect of that land as if the local planning authority were possessed of adjacent land and as if the agreement had been expressed to be made for the benefit of such land.
7. The government has also published Circular 5/2005 and a Good Practice Guide (in 2006) to give clear guidance as to how such agreements should be used. In summary: such agreements must only cover matters which are genuinely connected to the development in question, are appropriate in scale and kind and are reasonable in all respects. It is very important to appreciate that there should be a sound planning policy basis for any Section 106 agreements and clear definition as to the amount and purpose of any financial contribution.
  8. Against that background the Heads of Terms of any proposed agreement are routinely reported to the Planning Committee and/or the Area Planning Sub-Committee as appropriate in connection with planning applications. In this way there is full and proper public scrutiny and the opportunity for Members of the relevant Committee/Sub-Committee to be aware of the Heads of Terms before the meeting at which they are discussed.
  9. The policy basis for Planning Obligations was codified for Herefordshire in the Supplementary Planning Document, "Planning Obligations", which was adopted and came into effect for all planning applications received after 1<sup>st</sup> April 2008. The document is part of the Local Development Framework and is published on the Council's website. The document follows closely the guidance in the Circular and Good Practice Guide referred to above.
  10. Those Section 106 agreements which require financial contributions always include provisions as to when the payments should be made, the indexing of payments to allow for annual inflation, and provision for repayment back to the developer if the sums are paid but not used after a period of, typically, ten years. Since the Supplementary Planning Document came into effect agreements now include provision for a 2% additional contribution for monitoring purposes.
  11. The typical trigger for the payment of the contribution is the commencement of developments. Prior to that point it is always possible that the development will not go ahead anyway and the "impact" which the payment is intended to ameliorate will not occur.
  12. Planning Officers are normally aware of the dates when development commences due to the typical need for planning conditions to be discharged. Agreements also include requirements for the developer to notify the Council of commencement. At that point payment is normally made voluntarily but on some occasions a developer has had to be reminded. It is very rare that formal proceedings have to be threatened for two main reasons: firstly the developer actually wants the contribution to be effective (it is, after all, in the interests of the development in the first place), and secondly, if a new house, for example, is about to be sold and it is revealed on a search that payments are outstanding then the developer will find that the intended sale is jeopardised.

13. Notwithstanding the above it is true, however, that since the Supplementary Planning Obligations SPD came into effect the number of such agreements has increased significantly. In the quarter April to June 2008 six planning permissions were issued with Section 106 agreements attached, in the quarter July to September 2008 16 such permissions were issued. As the new policy takes effect it is likely that the number of agreements will increase and, whilst there is as yet no evidence of payments being missed, the need for formal monitoring procedures will increase.
14. Once the payments have been made they are passed to the relevant Directorate budget whereupon it is up to each Directorate to ensure that the correct use is made of the funds. The purposes of the contributions are clearly set out in the Heads of Terms and the Agreements themselves along with any flexibility as to what the payments are for.

### **Responses to the Questions put by the Committee**

15. Against the above background the specific responses to the Committee's questions (as reproduced in paragraph 4 above) are as follows:
  1. The "Rules" which apply to the due dates for payment are set out in the Heads of Terms and the agreements themselves and are typically that payment should be made upon commencement of development. In some larger schemes the payments are phased throughout the progress of the development, and this too is set out in the agreement.
  2. The monitoring procedures at present rely on the vigilance of planning officers to be aware of development commencements (which they usually are due to the contemporary need to discharge planning conditions). Only rarely has the threat of legal action been required to ensure payment. However, it is acknowledged that, as the numbers of agreements increases, it would be prudent to proceed with the appointment of a monitoring officer.
  3. The justification for any payments under Section 106 agreements is set out in the Council's adopted Supplementary Planning Document and, whilst each agreement is negotiated on a case-by-case basis, they are all done in accordance with the Council's adopted policy. Once the contributions have been passed to the relevant spending directorate it is up to the internal procedures of that Directorate to manage the use of the contributions.
16. The Section 106 agreements themselves are fully in the public domain. They are kept on the "working file" of the relevant planning applications, and these files are available for public inspection in the ordinary way at the Council's offices.
17. It is also worth noting the impact of the current economic slow-down. Due to the lack of commencements on significant new building projects this year no Section 106 payments were made to the Council in the period April 2008 to September 2008. (This compares with around £2 million in 2006/07 and £4 million in 2007/08). However, the 22 planning applications referred to in paragraph 13 above, i.e. permissions with Section 106 agreements issued in the period April 2008 to September 2008, will generate £1.9 million between them when they have all been commenced.

### **Risk Management**

18. There is a risk that not all contributions are being collected but that risk remains small whilst the number of agreements is relatively small and, during the current slow down in economic activity, there is a reduced number of active building sites anyway. However, it would be prudent to reconsider the need to appoint a Monitoring Officer

before building rates pick up again and as the number of agreements increases as the Supplementary Planning Guidance “beds in”.

### **Background Papers**

ODPM Circular 05/2005, Planning Obligations, July 2005

CLG Planning Obligations: Practice Guide, July 2006

Planning Obligations: Supplementary Planning Document, Herefordshire Council, April 2008