

Scrutiny – 20 September 2007

SECTION 106 AGREEMENTS – VALUE FOR MONEY

Report of Strategic Director (Community)

Statutory Powers:

Planning and Compensation Act 2004.

Financial Implications:

None directly related to this report.

Purpose

Scrutiny has questioned whether South Hams residents are getting sufficient value for money from Section 106 Agreements and concluded that the matter required investigation. This report provides background to Scrutiny's assessment.

S106 agreements can contribute to achieving all of the Council's corporate priorities.

RECOMMENDATION

That Scrutiny considers this report and makes recommendations to the Executive.

National Guidance on Planning Obligations

1. Planning obligations (S106 agreements) are intended to make development appropriate which would otherwise be unacceptable in planning terms. They are therefore a mechanism for resolving planning issues arising from development proposals, and can be used to bring development in line with the objectives of sustainable development, as set out in planning policies. ODPM issued revised guidance on planning obligations in July 2005 (Circular 5/05). The circular has been further supported by a Practice Guide issued in July 2006 by DCLG, and an accompanying model S106 agreement.
2. Government guidance requires that planning obligations are only sought where they meet all of the following tests. The obligation sought must be;
 - a) Relevant to planning
 - b) Necessary to make the proposed development acceptable in planning terms
 - c) Directly related to the proposed development
 - d) Fairly and reasonably related in scheme and kind to the proposed development, and
 - e) Reasonable in all other respects.
3. The Guidance makes it clear that planning obligations cannot be used as a means of securing for the local community a share in the profits of development. Examples of the acceptable use of planning obligations include:
 - a) Defining the nature of development to achieve planning objectives;
 - E.g. establishing the amount of affordable housing required as part of a residential development;

- b) Mitigating the impact of development;
 - E.g. resolving off-site access or transportation problems, and/or meeting the need for additional community infrastructure (e.g. a school, play or sports facility), but not to 'fill' existing gaps in provision which existed prior to the development;
 - c) Compensating for loss or damage caused by development;
 - E.g. replacement open space or habitats lost as a result of the development.
4. Contributions can either be in kind or in the form of a financial contribution. Generic policies on obligations and payments need to be set out in Local Development Frameworks with the details set out in Supplementary Planning Documents. Planning obligations are by definition agreements. In the absence of an agreement a developer may make a unilateral undertaking, i.e. a proposed commitment without the Council necessarily agreeing to it.
 5. Government guidance requires planning obligations to be predictable for all stakeholders including the public, and as far as possible use standard approaches and be effectively monitored. If a planning condition would achieve the same as a clause in an obligation, a condition should be used, rather than an agreement.

Potential changes in the national system

6. The Government is considering the introduction of a Planning Gain Supplement (PGS). PGS is designed to capture a portion of the land value uplift that results from the granting of planning permission. If introduced, planning obligations would be scaled back to cover only those matters relating to the physical environment of the development site and affordable housing provision. With the change of Prime Minister the PGS proposal is likely to be deferred, and the approach may be reconsidered. Some commentators suggest that rather than a 'development tax' a fixed tariff for certain types of development should be considered. Pending any change, planning obligations remain a valid planning tool.

Planning Obligations in the South Hams

7. The planning framework for negotiating obligations in South Hams is developing under the new planning system. We have an adopted Core Strategy and Sherford Area Action Plan. The Council also has an adopted Supplementary Planning Document on Open Space, Sport and Recreation which identifies the level of contributions required from new development. Also in the process of production are documents which will further develop the policy framework for affordable housing.
8. The Council in the recent past has determined approximately 22 applications a year with a planning obligation attached. However this number will rapidly increase in line with the new LDF, for example we have had this number of agreements in the first 5 months of this financial year. Obligations can range from hugely complex (e.g. Sherford and Lantage) to relatively simple agreements based on a formula contribution, for example educational infrastructure or open space contributions. Education and Transportation contributions tend to be negotiated by the County Council. The District Council negotiations usually relate to the provision of affordable housing and open space. Members will be aware of the current policy vacuum in relation to affordable housing, which was set out in a briefing note in the Members Bulletin on 19 January 2007. At the CPDG on 27 September 2007, a report will consider how to resolve the current policy vacuum.
9. Appendix 1 is a table of recent planning obligations.
10. The Council has recognised that it needs to improve the effectiveness of planning obligation monitoring. As part of the budget process Members agreed to establish a new post to develop, coordinate and monitor planning agreement policies, processes and outcomes.

Members have determined that the post must be self-financing by top-slicing a proportion of the funding from future agreements. On that basis officers have needed to be sure sufficient funding will be available through a supply of new agreements to fund the post on an on-going basis. The risks associated with a self financing post are helped as Members have identified a £30,000 one off sum to enable potential dips in S106 funding to be 'smoothed' over to ensure the salary can be covered.

11. To mitigate the funding risk, coupled with a difficult employment market, opportunities for sharing a post with an adjoining Local Authority have been discussed. However adjoining authorities are not in a position to progress such an initiative, and it has been concluded that the Council should modify the original proposal to now create a planning agreements and office manager post (effectively adding to the existing Development Control administrative officer's role) supported by a planning agreements administrative support officer. It is anticipated that this proposal will be progressed shortly, and will be less costly than the initial proposal considered through the budget process.
12. Members should also be aware that planning policy and its relationship to S106 agreements are reviewed on a regular basis. Indeed this area of activity is subject to an internal audit review as part of the approved audit plan for 2007/08.

Risk Assessment

Risk	Mitigation
Planning obligations requested are challenged because they are not embedded within the plan led system. This risk has most significantly occurred in relation to the provision of affordable housing on sites proposing less than 15 units.	Progress the LDF and supporting documents expeditiously.
Inadequate range and type of planning obligations being sought by the Council	Scrutiny to consider the range of planning obligation opportunities available, and assess whether the Council is using the powers effectively.
Loss of agreed planning obligations because of inadequate monitoring and the expiry of 'sunset' clauses which enable the applicant to either 'recall' unspent funds, or the timescale for making payment expires.	Improving S106 processes and making resources available to ensure planning obligations are monitored more effectively.

Conclusion

13. This report provides a basis for Scrutiny to consider whether South Hams residents are getting sufficient value for money from s106 Agreements.

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Strategic Director (Community)

Scrutiny
 20 September 2007

Background Documents:

Local Development Framework documentation.