

Scrutiny – 24 April 2008

PROGRESS REPORT ON SECTION 106 AGREEMENTS

Report of Stephen Munday, Head of Planning and Building Control

Statutory Powers: (S.106 of the Town and Country Planning Act 1990)

Financial Implications:

- Many Section 106 obligations involve financial contributions to services which will support new development and provide the infrastructure required, for example open space, affordable housing, education contributions and/or transportation requirements.

Purpose

- To present a progress report on Section 106 Agreements (S106) enabling members to monitor proposed community and other benefits from new development.
- At the request of Scrutiny to report how S106 agreements have been used to support children and young people.

Priorities

- **The planning process contributes to CP1 to CP5 and the cross cutting themes**

Recommendations

- **That Scrutiny considers this report and recommends to the Executive that it is satisfied that Section 106 Agreements are being monitored.**

Background

1. In January 2008 a Planning Agreements manager was appointed whose responsibilities include:
 - To develop, co-ordinate and monitor planning agreement policies, processes and outcomes to ensure that corporate objectives and the well-being of the community are achieved through planning decisions.
 - To identify, track and monitor all legal agreements relating to development proposals, including trigger points, and provide a robust audit trail.

This is the first report to be presented to Scrutiny by the new postholder.
2. S.106 of the 1990 Act provides that anyone with an interest in land may enter into a planning obligation, which is enforceable by a local planning authority. An obligation may be created by agreement or by the party with an interest in the land making a unilateral or bilateral undertaking. Obligations may:
 - Restrict the development or use of land
 - Require operations to be carried out in, on, under or over the land
 - Require the land to be used in any specified way; or require payments to be made to the local planning authority, either in a single sum or periodically.

3. The main principles governing the use of Obligations are that:
 - They should only be used when planning conditions are not appropriate
 - They are intended to make development acceptable which would otherwise be unacceptable in planning terms
 - They can be used to prescribe the nature of the development (e.g. a proportion of the housing must be affordable), to compensate for loss or damage caused by the development (e.g. loss of open space) or mitigate a development's impact (e.g. increase public transport provision).
4. Circular 05/2005 (Planning Obligations) also sets five tests for the validity of s106 Agreements. All S106 agreements should satisfy all five tests:
 - The obligation must be relevant to planning
 - It must be necessary to make the proposed development acceptable in planning terms
 - It is directly related to the proposed development
 - It is fairly and reasonably related in scale and kind to the proposed development; and
 - It is reasonable in all other respects

S106 agreements – how they have helped children and young people

5. The needs of children and young people are provided for in a number of ways through the use of S106 agreements;
 - Open Space, Sport and Recreation contributions facilitate the provision of equipment and play areas within the District.
 - Education contributions help to ensure that the necessary number of school places are available. Many education contributions are negotiated and paid to the Education Authority without the need for a S106 agreement. In the past 12 months no education contributions have been received through S106 agreements, but negotiations prior to planning permission being granted have ensured necessary contributions have been paid to the County Council.
 - Affordable Housing contributions provide additional housing to buy or rent at lower cost - priority is given to families when allocating such affordable units. Affordable housing contributions provide some single person supported schemes helping young people to access appropriate housing and support.

South Hams policies

Affordable Housing

6. In January 2008 the Supplementary Planning Document on Affordable Housing was subject to a 6 week consultation period. This is due to be adopted in January 2009. Once adopted the Council will be in a better position to deliver affordable housing through S106 agreements. We are seeking to provide high levels of affordable housing on private developments. However until the Affordable Housing Development Plan Document (AH-DPD) and the Affordable Housing Supplementary Planning Document (AH-SPD) are adopted, we can only seek 50% affordable housing on sites of 15 dwellings or more.

Open Space, Sport and Recreation – S.106 and Unilateral Undertakings

7. At Council on 16 June 2006 the Supplementary Planning Document - Open Space, Sport and Recreation (OSSR SPD) was adopted. This document sets out the Council's requirements in relation to new development for open space, sport and recreation. The document details the process for assessing whether development should contribute to open space, sport and recreation, and if so the way in which either on-site facilities, or an off-site financial contribution, should be calculated.
8. At adoption of the OSSR SPD, the Head of Financial Services was delegated authority for the financial elements; the legal arrangements were delegated to the Head of Legal Services and authority to release funds for works on district council land and the delegation for decision making was granted to the Head of Landscape and Leisure.
9. Since June 2006 a significant number of new Section 106 Agreements and Unilateral Undertakings have been secured in relation to open space, sport and recreation (particularly given that the threshold for requirement is 2 residential units).
10. It should be noted that the signing of the 106 does not necessarily secure the funding. The S106 sets out when the funding will be paid and limits the areas in which it can be spent. Sometimes, if a site is not brought forward early for development, the payment may not be handed over for many years and, if development does not progress as agreed, may never be handed over. As such the use of S106 funding, to support open space, sport and recreation, is to some degree ad-hoc and led by development rather than an overall strategic approach.
11. To meet with the requirements of Section 106 agreements and the legislation, any spend has to be related to the development itself. The SPD, and the subsequent S106's and Unilateral Undertakings generally secure the funds to be spent within, or to the benefit of, the parish where the development takes place. For a play area, this would normally be in the parish itself, but for a higher level sport facility, such as sports pitches, this might be in the nearest town or area centre.
12. Most S106 agreements on OSSR allow for the pooling of funds and for expenditure over a long period of time.

Section 106 Agreements from April 2007 to March 2008

13. In summary the Open Space, Sport and Recreation financial contributions agreed between April 2007- (28) March 2008, amounts to £136,725.50. During this period the Council received £32,662.50.
14. In summary the Affordable Housing contributions agreed between April 2007 – March 2008, amounted to 70 units in total (22 units Chillington and 48 units Staddiscombe). The Council received a £25,000 committed sum from Rathvendon Bigbury. A sum of £448,383 was paid towards affordable schemes, comprising;
 - £1000 in respect of Bonfire Hill (Methodist Church Site, Salcombe) paid on 18.02.08
 - £220,000 in respect of Douro Court, Ivybridge (Grosvenor House site) paid on 19.03.08
 - £130,000 in respect of St Barnabas Church, Dartmouth (Dart Marina site) paid on 26.09.07

- £97,383.82 from Ferryman's table in respect of Old Mill on 26.04.07

15. Appendix 1 attached to this report is a table of S106 agreements signed and their obligations. Details of the planning application reference, the type of agreement, expected contribution/obligation, details of relevant payments received and spent and any related receiving projects. The table is grouped by obligation type (open space, affordable housing, public realm) financial and non-financial obligations. Obligations required by Devon County Council such as Education contributions or Highway works are not reported.

16. Members are asked to agree if the format in the appendix is what they would like to see in the future or if they would prefer to see obligations grouped by site address.

Risk Assessment

| Risk | Mitigation |
|--|---|
| 'Trigger' points on S106 agreements are missed and monies are not received in a timely manner or non financial obligations are not met | The Planning Agreements Manager to ensure trigger points are monitored and necessary action taken to ensure delivery of financial and non financial obligations |
| The risks associated with not monitoring legal agreements associated with planning applications is that the Council could be criticised for not operating a transparent and comprehensive framework for monitoring such financial and non-financial obligations. If the system of planning obligations is not dealt with properly, there is a risk that developers and/or the community could mount a legal challenge to the Council's actions. District Audit will also criticise the Council if it has not reacted positively to previously raised concerns over the process of monitoring of S106 obligations | The monitoring of information and the role of the Planning agreements manager ensures that the process is openly accountable and allows ready access to information by the public and Members. This also ensures that an audit trail of is available. |

Conclusion

This report provides a basis for scrutiny to consider the impact of S106 agreements on the community and other benefits from new development.

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Scrutiny
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Background Documents:

Local development framework documentation