

District Executive – 7th April 2011

6. Section 106 Planning Obligations – Applications to vary or discharge the requirements of a planning obligation

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Purpose of the Report

To allow members to consider the proposed process for dealing with applications that seek to vary the requirements contained within a completed Section 106 Agreement. Also to provide members with a copy of the Section 106 monitoring report that will be used to provide members with information on a 6 monthly basis and to provide members with information on the process of monitoring Section 106 agreements.

Recommendations

That District Executive:

- 1) confirm the recommended process for considering applications to vary Section 106 Agreements.
- 2) note the report and endorse the proposed format of the monitoring pro-forma for Section 106 Planning Obligations (Appendix 1) together with the proposed monitoring process for financial contributions (Appendix 2).

Background

Section 106 agreements are a legal contract within which a developer signs an obligation in connection with the grant of a planning permission. Section 106 agreements are also referred to as planning contributions, legal agreements or planning obligations. Most Section 106's obligate the developer to provide either a financial contribution towards facilities and infrastructure or to provide the infrastructure themselves e.g. construct a new roundabout. The requirement to enter into legal agreement is justified on the basis that without the contribution/infrastructure then the development would be unacceptable.

Section 106A of the Town and Country Planning Act allows a developer to submit an application to vary or delete the requirements of the legal agreement. The applications are known as 'Discharges of Planning Obligations' and are referred to as DPO's. The Local Planning Authority is not obliged to entertain applications to vary Section 106 agreements within the first 5 years after signing however recent case law makes it clear that it would be unreasonable to adopt this approach.

Another significant factor that supports the need for entertaining applications before the five year period is the external environment that can result in a fundamental change in the economics of the development between the time of signing the agreement and the commencement of works on site. Members will be aware of the issue of 'development viability' and the discussions that have taken place as to whether or not a development can meet all of the planning obligations that have been sought. This issue is usually

resolved prior to the formal determination of the planning application and all developers are encouraged to go through the 'open book' process prior to signing a Section 106 agreement. There will however be instances when this will not be possible or appropriate and the change to the grant funding that is available to developers is one such example.

Below is described the suggested process by which applications to vary the requirements of Section 106 Agreements (financial contributions)

It is important for members to be aware that the recommended process relates only to financial contributions that are secured through a Section 106 agreement that has already been signed.

It is considered essential to provide a transparent decision making framework that will allow members to consider applications to vary or delete the requirements contained within a Section 106 Agreement. It is suggested that:

- Applicants/developers be entitled to submit applications to vary planning obligations within the 5 year period.
- SSDC require all applications to vary Section 106 agreements to be accompanied by a detailed financial assessment produced by the District Valuer, and paid for by the developer.
- Before making any recommendation, officers fully explore other options for payment of planning contributions e.g. deferred payments, potential selling of affordable units, overage agreements etc.
- All applications to materially vary the amount or nature of financial contribution that is secured through a Section 106 agreements be considered by the relevant area committee and that the relevant portfolio holder be invited to provide comments.

The second element of this report relates to the way in which Section 106 agreements are monitored and managed.

Members will also be aware that internal and external audits have highlighted the need to improve the S106 management process and ensure that a robust monitoring process is in place. Additionally the Audit Committee raised concerns about the process. As a result resources for a S106 Monitoring Officer has been found through the 'Lean' process in Development Management.

The appointment of the Section 106 Officer is enabling us to make significant improvements in the way in which planning obligations are managed. It has been necessary to devise a clear and transparent process that provides a robust framework for the management of all future S106 agreements. As part of this new and transparent process the Section 106 Officer also attended all of the Area Committees earlier this year to introduce himself and the purpose of his role and to ascertain the particular issues that were of interest to members.

Proposed Pro- Forma For Future Section 106 Monitoring Reports and Illustrative Process For Managing Financial Contributions.

Members will find attached at [Appendix 1](#), an example of the pro-forma/report that will be used to update members on the progress/status of Section 106 Agreements. The format of the report takes into account the comments that were received from the Area Committees in response to the initial presentation given by the Section 106 Officer. It was also clear from the Area Committees that they wished to receive this report on a 6

monthly basis whilst having the ability to speak to the Section 106 Officer directly at any time about individual Section 106's.

Members will find attached at Appendix 2, the process by which the management of financial elements of Section 106 agreements are completed. It is considered that this process incorporates all of the necessary controls to ensure that contributions are received and spent in a timely manner in the areas that were identified in the legal agreement.

A further report on existing S106 agreements will be brought forward in due course.

Financial Implications

Failure to properly monitor the collection and spending of planning contributions would have a significant cost implication for the District Council. SSDC will look to recover costs for the processing of the DPO's through fees and charges, and implementing the fee charging schedule that will be introduced in 2012.

Corporate Priority Implications

Impacts on Theme 1 - Increase Economic Vitality and Prosperity and Theme 3 - Improving the Housing Health and Well-being of our citizens.

Carbon Emissions & Adapting to Climate Change Implications (NI188)

No direct new impacts from this consultation.

Equality and Diversity Implications

No obvious impact upon equality and diversity.

Background Papers: *Audit Committee reports for January and July 2009 and February and July 2010*
