

Report to Planning Services Scrutiny Standing Panel



Date of meeting: 14 June 2011

Subject: Section 106 Agreements, including annual report for 2010-11 and affordable housing.

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Committee Secretary: Mark Jenkins - 019922 56 4607

Recommendations/Decisions Required:

1. That the annual report of section 106 agreements be noted.
2. That how section 106 agreements are negotiated, particularly in respect of affordable housing contributions, be noted.

Report:

Background

1. Section 106 of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a land owner/developer over a related issue. The obligation is often termed simply as a 'Section 106 Agreement'.
2. Section 106 agreements can act as a main instrument for placing restrictions on developers, often requiring them to minimise the impact of their development on the local community and to carry out tasks providing community benefits.
3. Such agreements may be sought when planning conditions are inappropriate to ensure and enhance the quality of development and to enable proposals that might otherwise have been refused to go ahead in a sustainable manner. They are not to be used simply to take a share of the developers' profits into the public purse for that can result in the accusation that the Council is 'selling' planning permissions, nor are they to be used to gain a benefit that is unrelated to the development.
4. The Government Circular – Circular 05/05 – states that section 106 agreements need to meet the following tests:
 - (a) Be necessary to make it acceptable in planning terms;
 - (b) Be relevant to planning;
 - (c) Be directly related to the proposed development;
 - (d) Be fairly and reasonably related in scale and kind to the proposed development; and
 - (e) Be reasonable in all other respects.

The courts have, however, stated that to be lawful, agreements only have to show that they are relevant to planning and that in all respects are reasonable.

What are Planning Obligations?

5. Section 106 Agreements contain obligations relating to a person's land which bind the land and whoever owns it. They may:
 - restrict the development or use of the land in a specified way,
 - require specified operations or activities to be carried out,
 - require the land to be used in any specified way, or
 - require a sum or sums to be paid to the authority on a specified date or dates or periodically.
6. They provide a means for ensuring that developers offset directly any disadvantage from a development and contribute towards the infrastructure and services that this Council and Essex County Council believe to be necessary to accommodate the proposed development. Policy I1A of the Local Plan Alterations 2006 sets out the policy in relation to Planning Obligations.
7. They are used to deliver, for example, the following:
 - affordable housing,
 - requiring highway works to be carried out
 - requiring land to be dedicated and equipped as public open space
 - the restoring of a listed building
 - sums of money to be paid for the provision of off-site infrastructure or for the long-term maintenance of open space.
8. Section 106 Agreements are deeds drawn up by legal professionals and have traditionally taken some months to bring to a conclusion. There is no substitute for such a legal document when the benefit being sought is of a complex nature such as affordable housing, or when it is anticipated that the enforcing of the provisions need might be especially robust. However, since applications are not finally dealt with until the associated agreement is completed, this approach meant that many major applications were exceeding the Government's targets for determination.
9. Therefore, in common with other planning authorities, the Council is encouraging the submission of Unilateral Undertakings with the application. These are still obligations under section 106 but do not require the Council to sign and seal the document. The wording of these undertakings are still checked to ensure that they are enforceable if it proved necessary.
10. Alternatively, again in common with other authorities, if the benefit is straightforward, permissions are granted with conditions that require measures to be undertaken to meet various requirements. In this way, applications are determined in accordance with targets while at the same time achieving the objective of the community benefit.

Affordable Housing

11. Affordable Housing is required where a certain threshold (15 dwellings or more or where the site is 0.5 of a hectare or above) is reached in a single development proposal where the population of the settlement is greater than 3,000 people. The requirement in this case would be 40% of all houses would be affordable and the only way to secure this is through a legal agreement. In smaller settlements outside the Green Belt, up to 50% would be sought. There are policies in the Council's Local Plan that state this (H5A - H8A) and therefore make it clear to developers what is the Council's requirement.
12. Where negotiation becomes more complex and delays the determination of planning applications, is where community or off-site affordable housing contribution is sought. The Council has no formulae or standard charges worked up and requests made at planning committee meetings are sometimes interpreted as a take of the developers profit and therefore not necessary or reasonable in

planning terms. However, there are circumstances where an affordable housing contribution is more appropriate. This comes down to whether the development is viable. For instance, affordable housing provision on site might make the development non-viable to the applicant who will after all, be looking to make a profit. This rarely happens in the case of the larger schemes over 15 units, but, particularly redevelopment of commercial sites to residential, external advice has been sought.

13. Basically, an affordable housing contribution should cover the difference between the value of a residential unit on the open market and the amount a housing association could pay for it to charge affordable rents. We therefore need a valuation for each unit and, in order to understand what a housing association would pay, a development appraisal based on a cash flow of a housing association managing the units over 30 years netted back to the present value.
14. Once received we will assess the information. If there is a need to verify any of the information, we would need to employ an expert to assess what has been submitted.

Performance for the Year 2010/11

15. The appendix to this commentary is divided into four parts:
 - Part 1 lists all those agreements (or obligations) entered during the past year. There are 7 in total.
 - Part 2 lists those applications that have been granted permission subject to conditions that require community benefits in accordance with paragraph 10 above. There are 3 developments in this category.
 - Part 3 provides a list of benefits actually realised through the year, some relating to obligations concluded in previous years and some relating to recent obligations listed in Parts 1 and 2.
16. Benefits negotiated through the year (from Parts 1 & 2) will provide:
 - a total of £729,000 to be received into the public purse
 - a total in the region of 165 affordable housing units
 - various highway improvements at the developers' expense
 - parish council facilities.
17. Benefits actually realised through the year (from Part 3) have provided:
 - a total of £535,712 received into the public purse
 - 6 affordable housing units
 - improvements to public transport facilities at the developers' expense
 - various highway works at the developers' expense
 - town centre improvements.

The Future

18. Essex County Council has been working on proposing a 'standard charge' for development within the County. This means, for example, that for every new dwelling granted permission, they may require a standard sum of money to be paid into the public purse to cater for increased use of libraries, roads, education facilities, etc. They have recently produced a "Developers' Guide to Infrastructure Contributions" and within this, there are formulae and standard charges/tariffs relevant to County Services. It may be sensible for this Council to adopt a similar approach – that on qualifying developments a standard sum be required to cover the increased use of leisure facilities, waste collection, affordable housing, town centre enhancement, public car parking, etc. Such a policy would need to be adopted within the emerging Local Development Framework.

19. However, the use of Section 106 agreements is being overshadowed by the emergence of the Community Infrastructure Levy, which is in effect a tax on developers' profit and this will replace much of the traditional section 106 benefits (though on-site requirements and provision of affordable housing might still be able to be negotiated). As part of the Local Development Plan process, much work will be required to gather evidence data to set the Levy and Members will need to take a decision on how this work is to be resourced and funded.
20. A separate report has been prepared on Community Infrastructure Levy, but briefly it requires an up-to-date development plan and adoption after consultation and examination, before such a levy can be adopted and payment received.

PART 1

Section 106 Agreements concluded between April 2010 and March 2011

1. **EPF/0149/10** agreement concluded 25/05/2010
208-212 High St, Epping
Benefit – £15,000 conservation area contribution
2. **EPF/1370/10** agreement concluded 21/10/2010
Brent House Farm, Harlow Common, North Weald
Benefit - £100,000 contribution to be passed to North Weald Parish Council for community use in the local area.
3. **EPF/0446/10** agreement concluded 01/10/2010
BPI Poly Site, Brook Rd, Buckhurst Hill
Benefit – £100,000 off-site affordable housing contribution and £96,000 education contribution.
4. **EPF/0320/10** agreement concluded 11/01/2011
113-115 Grange Crescent, Chigwell
Benefits - £24,000 education contribution and highway works.
5. **EPF/1209/10** agreement concluded 03/02/2011
Land at Weald Hall Care Home, Weald Hall Lane, Thornwood, Epping.
Benefit - £5,000 towards health-care provision.
6. **EPF/0457/10** agreement concluded 28/02/2011
Land at Ongar Station, High Rd, Ongar
Benefit – £450,000 Affordable Housing Contribution.
7. **EPF/1529/09** agreement concluded 25/10/2010
Land at School Lane, Abbess Roding
Benefit – 6 affordable housing units on site

PART 2

Benefits Required by Conditions between April 2010 and March 2011

1. **EPF/0504/10** permission dated 03/08/2010
Matthews Yard, Harlow Road, Moreton
Benefit - £2,400 highways contribution.
2. **EPF/0635/10** permission dated 16/06/2010

1 Orchard Way, Chigwell
Benefits - £5,000 for street lighting.

3. **EPF/0015/10** permission dated 24/03/2010
Ongar Memorial Hospital, Fyfield Road, Ongar
Benefits - £6000 traffic regulation order to restrict on-street parking

PART 3

Benefits Secured between April 2010 and March 2011

1. **EPF/0146/07**. Agreement dated 26/03/2007
1 Church Hill, Loughton - residential development
Benefits secured –£40,000 highway contribution and £10,000 town centre enhancement.
2. **EPF/2190/05**. Agreement dated 20/12/2006
Grange Farm, High Road, Chigwell - residential development
Benefits secured – £15,200 towards signage and public right of way status across the M11 footbridge; community project sum of £22,112.
3. **EPF/0468/07**. Agreement dated 22/10/2007
19-23 High Street, Epping – Sheltered Housing
Benefits secured - £435,000 off- site affordable housing contribution.
4. **EPF/0504/10** permission dated 03/08/2010
Matthews Yard, Harlow Road, Moreton – residential development
Benefit – receipt by Essex County Council of £2,400 - highways contribution.
5. **EPF/0635/10** permission dated 16/06/2010
1 Orchard Way, Chigwell
Benefits – receipt by Essex County Council of £5,000 for street lighting.
6. **EPF/0015/10** permission dated 24/03/2010
Ongar Memorial Hospital, Fyfield Road, Ongar
Benefits – receipt by Essex County Council of £6,000 traffic regulation order to restrict on-street parking
7. **EPF/1035/02**. Agreement dated 19/04/2004
Land rear of The Thatched House, Epping
Benefits secured – management of trees and new benches aside war memorial in Epping High Street.
8. **EPF/1810/04**. Agreement dated 14/04/2004
Former Lorry Park, Langston Road, Loughton – Office Development and Car Showroom/workshop
Benefits secured – Highway and footway improvements carried out to Chigwell Lane by Essex County Council.
9. **EPF/0333/03**. Agreement dated 26/03/2003
Former GEC site, Langston road, Loughton – new office development
Benefits secured – Upgraded bus stops, extend cycle path and improvements to station link carried out by Essex County Council.
10. **EPF/1090/05**. Agreement dated 17/07/2006
Land at Langston Road, Loughton – Car showroom/workshop and 9 x B1, B2 and B8 units.
Benefits secured – Improvements to transport infrastructure and passenger transport

services carried out by Essex County Council.

11. **EPF/0791/07.** Permission dated 10/01/2008
Land r/o The Forge, Lambourne Road, Chigwell.
Benefits secured - £10,000 highway contribution received and passed on to Essex County Council.
12. **EPF/1529/09** agreement dated 25/10/2010
Land at School Lane, Abbess Roding
Benefit Secured – 6 affordable housing units built on site.
- 13 **EPF/1244/05** agreement dated 20/11/2006
Former Epping Forest College Site (upper Site), Borders Lane
Benefit Secured – 56 affordable housing units built on site.
14. **EPF/2297/04** agreement dated 06/07/2006
St Margarets Hospital Site, The Plains, Epping
Benefits Secured – 40 affordable housing units built on site.
15. **EPF/0089/09** agreement dated 05/10/2009
Former Parade Ground , Merlin Way , North Weald
Benefits Secured – 50 affordable housing units built on site.
16. **EPF/1740/05** agreement dated 05/03/2007
Land at Station Approach, Ongar Station, High Street, Ongar
Benefit Secured – 13 affordable housing units built on site.

Reason for decision:

The Panel are requested to note this performance. The list of section 106 agreements are regularly monitored and updated.

Options considered and rejected:

Nil

Consultation undertaken:

Nil

Resource implications:

Budget provision: Nil, other than provide revenue for the Council and Essex County Council.

Personnel: Nil

Land: Nil

Community Plan/BVPP reference: Nil

Relevant statutory powers: Town and Country Planning Act 1990 (as amended)

Background papers: None

Environmental/Human Rights Act/Crime and Disorder Act Implications: Nil

Key Decision reference: (if required)