

# **Report to Planning Services Scrutiny Panel**

**Date of meeting: 12 June 2012**

**Subject: Annual Planning Obligation/Section 106**

**Agreements Report - April 2011 to March 2012**

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**Committee Secretary: Mark Jenkins (01992 56 4607)**



## **Recommendations/Decisions Required:**

1. That the Panel note the Report which sets out the monies raised through Planning Obligations and where they have been spent

## **Report:**

1. At the meeting on 20 December 2011, the Panel requested an annual report on planning obligations showing where the money has been raised and spent. The Panel did in fact have such a report for 2010-11 in June last year. 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.

### **Affordable Housing**

10. 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.

11. There are circumstances where an affordable housing contribution is more appropriate. If dealing with a proposal for a residential development at a scale where affordable housing is a policy requirement, but where the applicant claims that it would not be appropriate to provide that housing on site (usually due to the site location being poorly sustainable, or the housing being unattractive to a Housing Association for another reason).

12. Basically, on the basis that it is agreed that the development is not suitable for the delivery of on-site affordable housing, a financial contribution that is commensurate to the subsidy that the developer would incur if the affordable housing were provided on-site should be sought.

## **Performance for the Year 2010/11**

13. The appendix to this commentary is divided into two parts:  
Part 1 lists all those agreements (or obligations) entered during the past year. There are 9 in total.

Part 2 provides a list of benefits actually realised through the year, including monies received where work has commenced on site.

14. Benefits negotiated through the year (from Parts 1 will provide:

- a total of £1,296,650 to be received into the public purse
- highway improvements at the developers' expense.

15. Benefits actually realised through the year (from Part 2) have provided:

- a total of £411,574 received into the public purse
- 35 affordable housing units

## **The Future**

16. The use of Section 106 agreements is being overshadowed by the emergence of the Community Infrastructure Levy (CIL), 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 under Section 106). As part of the current Local Plan process, much work will be required to resource and gather evidence data to set the Levy.

17. The adoption of the Community Infrastructure Levy (CIL) requires an up-to-date development plan and adoption after consultation and examination, before such a levy can be adopted and payment received. Monies raised under CIL can only be spent on infrastructure and therefore includes roads and other transport facilities, flood defences, schools and other education facilities, medical facilities and sporting and recreational facilities. From 6 April 2014, it will not be possible to use s.106 agreements for delivery of such infrastructure items.

18. As part of the Local Plan when setting out growth for the next 20 years, the Council must consider the infrastructure necessary to accompany the developments. In the Local Plan this assessment of infrastructure will form the Infrastructure Delivery Plan (IDP). Once all infrastructure needed is identified, all of the existing revenue streams must then be reviewed. Existing revenue streams will include existing utility and facility enhancement plans (such as those commitments made for highways, schools etc) in terms of capital expenditure, it also includes grants available and any other sources of funding. Once the assessment of infrastructure expenditure is carried out, the gap between the cost of future development infrastructure needs and what is already being provided can be identified. CIL will be one mechanism to try to bridge this gap in funding between what will be needed and what will be provided.

## **PART 1**

### **Section 106 Agreements concluded between April 2011 and March 2012**

1. **EPF/0454/11** agreement concluded 01/07/2011

**The Globe PH, 18 Lindsey Street, Epping**

Benefit – £2,000 towards the provision and enhancement of community facilities at

the Lindsey Street Community Association.

2. **EPF/2439/10** agreement concluded 16/08/2011  
**Loughton Sport Centre, Rectory Lane, Loughton**  
Benefit – Primary Care Trust contribution of £64,442 index linked.
3. **EPF/1153/09** agreement concluded 23/09/2011  
**R/O 103 High Street, Ongar**  
Benefit – £10,000 community contribution.
4. **EPF/0409/11** agreement concluded 14/10/2011  
**Bald Hind PH Hainault Road Chigwell**  
Benefits - Secondary School Education Contribution - £20,671, bus stop improvements, Affordable Housing contribution - £100,000
5. **EPF/1008/11** agreement concluded 15/11/2011  
**Millrite Engineering 151 -153 London Road, Stanford Rivers.**  
Benefit - £74,000 Affordable Housing Contribution
6. **EPF/1423/11** agreement concluded 24/11/2011  
**Darlington, Coppice Row, Theydon Bois**  
Benefit – £70,000 towards enhanced community facility in Theydon Bois
7. **EPF/0167/11 & EPF/1456/11** agreement concluded 31/10/11 and 09/02/12  
**Wintry Park Service Station, 37 Thornwood Rd, Epping**  
Benefit – Primary Education Contribution - £17,537 and off-site highway works.
8. **EPF/2664/10** agreement concluded 06/12/2011  
**Woolston Manor Golf Club, Abridge Road, Chigwell**  
Benefit - £813,000 off-site affordable housing contribution
9. **EPF/1732/11** agreement concluded 17/01/2012  
**Lingmere, Vicarage Lane, Chigwell**  
Benefit - £25,000 community benefit sum, £25,000 highway contribution
10. **EPF/0739/10** agreement concluded 29/09/2011  
**Threshers, Hastingwood Road, Hastingwood, North Weald**  
Benefit - £100,000 affordable housing contribution

## **PART 2**

### **Benefits Secured between April 2011 and March 2012**

1. **EPF/1740/05** agreement dated 05/03/2007  
**Land at Station Approach, Ongar Station, High Street, Ongar**  
**Benefit Secured** – 6 affordable housing units
2. **EPF/1680/09** agreement dated 18/10/2007  
**White Lodge/ The Limes, Sewardstone Road, Waltham Abbey**  
**Benefit Secured** – 29 affordable housing units
3. **EPF/900/08** agreement dated 14/07/2008  
**12-30 Church Hill, Loughton**  
Education Contribution of £36,574 received
4. **EPF/1370/10** agreement dated 21/10/2010  
**Brent House Farm, Harlow Common, North Weald**  
£50,000 received towards community benefit and transferred to Parish Council.

5. **EPF/0446/10 & 0006/11** agreement dated 01/10/2010  
**BPI POLY Site, Brook Rd, Buckhurst Hill**  
£100,000 Affordable Housing and £95,924 Education Contribution monies received
  
6. **EPF/0457/10** agreement dated 28/02/2011  
**Land at Ongar Station, High Rd, Ongar**  
Affordable Housing Contribution of £225,000 received

**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

Council Plan reference: KCO 2 & 5, Med Term Aims 4, and action requirement of Planning and Economic Development Business Plan (Development Control).

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

Background papers: None

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