

# **Report to Planning Services Scrutiny Panel**

**Date of meeting: 18 June 2013**



**Subject: Annual Planning Obligation/Section 106 Agreements Report - April 2012 to March 2013**

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**Committee Secretary:**

**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

## **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.

### **Affordable Housing and other requirements relevant to EFDC**

10. Under the current adopted Local Plan, 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. 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, such as the replacement of a community facility. 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 in the case of redevelopment of commercial sites to residential, external advice has been sought.

12. 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.
13. 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 2012/13**

14. 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 10 in total.  
Part 2 provides a list of benefits actually realised through the year, including monies received where work has commenced on site.
15. Benefits negotiated through the year (from Parts 1 will provide:
  - a total of £731,659 to be received into the public purse
  - highway improvements at the developers' expense
  - 69 affordable housing units
16. Benefits actually realised through the year (from Part 2) have provided:
  - a total of £428,208 received into the public purse
  - 67 affordable housing units
  - Highway and public transport improvements at the developers' expense.

### **The Future**

17. 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.
18. 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 2015, it will not be possible to use s.106 agreements for delivery of such infrastructure items.
19. 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 2012 and March 2013

1. **EPF/1661/11** agreement concluded 08/05/2012  
**Spotted Dog, 2 Ivy Chimneys Road, Epping**  
Benefit – £40,000 to upgrade local play area and Raised kerb to 2 bus stops
2. **EPF/2580/10** agreement concluded 27 July 2012  
**Council Depot-T11 Site, Langston Rd, Loughton**  
Benefit –
  - 1 Major Highway works to Chigwell Lane area
  - 2 traffic regulations order - £25,000 for advertising
  - 3 Net retail space not exceed 12915 sqm
  - 4 Total internal food retail not exceed 1,000 sqm sales area
  - 5 Total A3 not exceed 1000 sqm gross internal floor area
  - 6 Travel Plan Framework + monitoring fee
  - 7 Broadway parking review contribution of £40,000
3. **EPF/0708/12** agreement concluded 25/07/2012  
**165 High Road Loughton IG10 4LF**  
Benefit – £3,995 for primary and early years education
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/2361/09** agreement concluded 14/08/2012  
**212 Manor Road (front site), Chigwell**  
Benefit - £40,000 off-site post office contribution, £1,000 highway contribution upgrading lighting columns in Manor Road, Affordable housing - 17 units.
6. **EPF/1339/09** agreement concluded 21/01/2013  
**212 Manor Road (large site), Chigwell**  
Benefit – Affordable Housing – 52 units, £5000 highway contribution, and provision of public open space in the site.
7. **EPF/1907/10** agreement concluded 02/01/2013  
**Oakley Hall, Hoe Lane, Nazeing**  
Benefit –
  - 1 Lump sum £40,000 NHS payment
  - 2 £25,000 NHS payment in 5 equal Installment
  - 3 £25,000 to Nazeing PC - community project
  - 4 £1,500 Ecological Sum - Nazeing Triangle nature Reserve
  - 5 Highway Contribution - £140.00 for 4 SLOW road markings
  - 6 Travel Monitoring Fee - £3,000
  - 7 10% discount (1st 5 years) & priority to EFDC & Nazeing Parish Council residents

8. **EPF/2126/11** agreement concluded 10/01/2013  
**Billie Jeans, 26 High Street, Epping**  
Benefit - Education contribution - £11,944
9. **EPF/2256/12** agreement concluded 20/03/2013  
**Railway Arms Theydon Bois**  
Benefit - £42,838 community benefit sum, £2,106 secondary transport contribution and £9,799 primary education contribution
10. **EPF/0297/13** agreement concluded 20/03/2013  
**Nine Ashes Farm, Rookery Road**  
Benefit - £21,000 affordable housing contribution and £4,000 highway contribution (footway at site).

## **PART 2**

### **Benefits Secured between April 2012 and March 2013**

1. **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
2. **EPF/1680/09** agreement dated 18/10/2007  
**White Lodge/ The Limes, Sewardstone Road, Waltham Abbey**  
**Benefit Secured – 67 affordable housing units**
3. **EPF/1456/11** agreement dated 11/08/2011  
**Wintry Park Service Station, 37 Thornwood Rd, Epping**  
Education Contribution of £17,537 received
4. **EPF/1732/11** agreement dated 17/01/2012  
**Lingmere, Vicarage Lane, Chigwell**  
£25,000 received towards community benefit and transferred to Parish Council.
5. **EPF/1907/10** agreement concluded 02/01/2013  
**Oakley Hall, Hoe Lane, Nazeing Oakley Hall, Hoe Lane, Nazeing**  
Lump sum of £40,000 NHS payment received.
6. **EPF/1400/04** agreement concluded 29/09/2006  
**St Johns School, Epping**  
£225,000 for sports improvement payment received.
7. **EPF/1752/03** agreement concluded 27/09/2004  
**Woolston Manor Golf Club, Abridge Road, Chigwell**  
Footpath improvements carried out.
8. **EPF/1657/06** agreement concluded 2006  
**Theydon Towers, Theydon Road, Theydon Bois**  
2 Bus stops installed

### **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