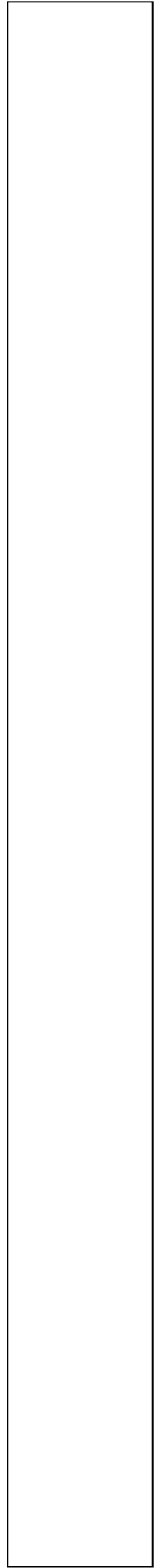


**Section 106 Legal
Agreements**

Annual Report

2013/14



Contents

Commentary

Part 1 – Section 106 Agreements concluded between April 2013 and March 2014

Part 2 – Benefits Secured between April 2013 and March 2014

Section 106 Agreements

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 planning obligation is often termed simply as a 'Section 106 Agreement' (other common terms used are developer contributions, planning contributions or planning agreements).
2. Section 106 agreements can act as a main instrument for placing restrictions on developers, often requiring them to mitigate on-site and site specific impacts. Recent changes to legislation will soon limit the pooling of contributions from a number of developments that have previously been used 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. Contributions may, for example, be secured by:
 - Work in-kind provided or constructed by the developer;
 - A financial payment (which may be decided using a formula - as in the case of an educational facility);
 - The transfer of land for a facility.
4. The eligibility criteria for Section 106 contributions secured through the planning system are defined by legislation and set out in the National Planning Policy Framework (NPPF). Paras 203-205 of the NPPF state that Section 106 planning obligations should meet the following three tests:
 - (a) Be necessary to make the development acceptable in planning terms;
 - (b) Be directly related to the proposed development;
 - (c) Be fairly and reasonably related in scale and kind to the proposed development.

Planning obligations should always be relevant to and proportionate to the scale and kind of the development in question. Unrelated or unnecessary planning obligations are not a means of securing planning permission for unacceptable development, as case law as established. A formal assessment of Section 106 contributions is made on a case-by-case basis, but having clear planning policies and evidence on what is required helps to reduce uncertainty.

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 2013/14

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 5 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 Part 1 will provide:
 - a total of £729,218 to be received into the public purse
16. Benefits actually realised through the year (from Part 2) have provided:
 - a total of £725,711 received into the public purse
 - Highway improvements at the developers' expense,
 - Funding of a fixed 1 year term Conservation Technical Officer post.

The Future

17. The use of Section 106 agreements attached to planning permissions granted after April 2015 are to be restricted. This is because the traditional section 106 benefits are being replaced by the Community Infrastructure Levy (CIL). A number of Councils across the country have already adopted a CIL. However, on-site requirements and provision of affordable housing will still be negotiable under Section 106.

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. So from 6 April 2015, it will not be possible to use s.106 agreement delivery of such infrastructure items, unless it is site specific and no more than 5 s.106 contributions can be pooled together for that one delivery requirement.
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 2013 and March 2014

1. **EPF/0339/13** agreement concluded 12/07/2013
Green Man PH, Farm Hill Road, Waltham Abbey
Benefit – £430,000 Affordable Housing contribution
2. **EPF/1785/12** agreement concluded 26/07/2013
Daneley Court, Queens Road, Buckhurst Hill
Benefit - £38,211 Education Contribution
3. **EPF/2665/13** agreement concluded 06/03/2014
Abbey Mills, Highbridge Street, Waltham Abbey
Benefit – £40,661 Education Contribution
4. **EPF/2696/13** agreement concluded 20/03/2014
Former Substation Site, Station Way, Buckhurst Hill
Benefits - £28,330 Education contribution
5. **EPF/2163/13** agreement concluded 28/03/2014
Winston Churchill PH, The Broadway, Loughton
Benefit - £192,016 Education contribution and £14,000 Healthcare contributions.

PART 2

Benefits Secured between April 2013 and March 2014

1. **EPF/0457/10** agreement concluded 28/02/2010
Land at Ongar Station, High Road, Ongar
Benefit Received - £225,000 Affordable Housing Contribution
2. **EPF/1730/00** agreement concluded 17/04/2002
Pan Brittanica Site, Sewardstone Rd, Waltham Abbey
Benefit - £10,000 of remaining £76,000 part funding 1 year fixed term
Conservation Technical Officer post to March 2015.
3. **EPF/1035/02** agreement dated 19/04/2004
Thatched House PH, High Street, Epping
Benefit – £7,500 part funding 1 year fixed term Conservation Technical
Officer post to March 2015
4. **EPF/1153/09** agreement dated 14/05/2013
Land R/O 103 High Street, Ongar
£10,000 community contribution received.
5. **EPF/1496/12** agreement concluded 27/09/2012
Darlingtons Garage, Coppice Row, Theydon Bois
Lump sum of £70,000 community contribution received .
6. **EPF/1732/11** agreement concluded 17/01/2012
Lingmere, Vicarage Lane, Chigwell
£25,000 highway contribution received.
7. **EPF/0297/13** agreement concluded 20/03/2013
Nine Ashes Farm, Rookery Road
£21,000 affordable housing contribution received, £4,000 highway works
carried to install pavement.
8. **EPF/1661/11** agreement concluded 08/05/2012
Spotted Dog PH, Ivy Chimneys Road, Epping
£40,000 upgrade local play area money received.
9. **EPF/1399/09** agreement concluded 21/01/2013
212 (Jennykins) Manor Road Chigwell
£40,000 post office contribution received to be used for affordable housing,
highway works to form pavement from layby carried out.
- 10 **EPF/1785/12** agreement concluded 26/07/2013
Daneley Court, Queens Road, Buckhurst Hill
£38,211 Education Contribution received.