

Agenda Item 6

Development Control Committee

1 July 2008

KAL



SECTION 106 PLANNING OBLIGATIONS – 6 MONTH UPDATE

Summary

The purpose of this report is to bring Members up to date with the management of financial resources secured by Section 106 (s.106) planning obligations in the six months since the Section 106 Monitoring Officer came into post in January 2008. It also sets out other sources of infrastructure funding.

Recommendation

1. That the Committee acknowledge the £0.5M income received in the first six months of the Section 106 Officer post being created and notes the proposed monitoring system to be put in place to meet the requirements of any audit of the system.
2. That this Committee supports the principle of a standard fee of £100 to deal with Unilateral Undertakings and make the post self-supporting – fee to be agreed by the relevant Portfolio holder.

a) Reasons for Recommendation

This report identifies the progress that has been made since the new post was filled in January 2008. In addition, the report also provides Members with information on the procedures that have been put in place, in order to monitor and manage S.106 agreements and any resources secured.

b) Alternative Options

N/A

c) Risk Considerations

The risk associated with not monitoring legal agreements relating to planning applications is that the Council could be criticised for not operating a transparent and comprehensive framework for monitoring such financial and non-financial obligations.

Without adequate co-ordination Commuted Sums could be spent on inappropriate schemes and not on priorities identified within the Council's various plans and strategies.

Without an adequate and co-ordinated system for monitoring Section 106 Agreements and any subsequent Commuted Sums it is possible that should deadlines expire, Secured sums would have to be returned (plus interest) to the developers and required community facilities / affordable housing would not be provided.

d) Policy and Budgetary Considerations

The improvement of the Section 106 Agreement system forms part of the Development Control Improvement Plan adopted in September 2004 and agreed with the former Office of the Deputy Prime Minister. It also assists in delivering the Council's priorities such as the provision of affordable housing and other community infrastructure.

e) Date for Review of Decision

N/A

1.0 Introduction

- 1.1 Members will be aware that Development Control recently recruited a Section 106 Monitoring Officer and she has now been in post for six months. This new post was created in response to an identified corporate need to improve the Council's monitoring of Section 106 agreements. The post holder is working with all Council departments to set up a new system for the closer monitoring of legal agreements associated with planning permissions.

2.0 Background Information

- 2.1 Section 106 of the Town and Country Planning Act 1990, facilitates the making of agreements between developers and others owning land and the Council as a local planning authority. These agreements are now called 'planning obligations', and they are useful to local planning authorities in enabling them to restrict the development or use of land in ways not possible by the application of conditions to a planning permission.
- 2.2 Agreements (or obligations) under Section 106 of the Act may impose restrictions or requirements of an indefinite nature. They may (unlike conditions attached to a planning permission) require sums of money to be paid to the Council.
- 2.3 Section 106 Agreements serve as the main instrument for placing restrictions on the developers, often requiring them to minimise the impact on the local community and to carry out tasks, which will provide community benefits necessary as a result of the development.
- 2.4 The appointment of the S.106 Monitoring Officer has seen the closer monitoring of the Council's obligations and has resulted in an income of in excess of £500,000 in the first six months of the post.
- 2.5 It is expected that numerous benefits will result from the closer monitoring of Section 106 Agreements and these include:
 - Delivery of agreed community benefits on time (as timetabled in the agreement).
 - Improved service delivery planning and work programming in all departments (as every department will be given advanced notice of impending planning gain being triggered at various stages within the life of a development).
 - Improved financial control and budgeting across the Council (as expected incoming financial contributions can be built into budgets with enhanced likelihood of receipt).
 - Improved enforcement of Section 106 Agreements (close monitoring will result in early detection of missing gain and improved prospects for ensuring commitments are honoured – whether through reminders or Court action).
 - Limited chances for 'sunset' clauses to be triggered (a sunset clause requires developer contributions to be repaid, usually with any interest accrued, if not spent by the Council on the specified purpose within an agreed time scale).
 - Improved accountability to developers for the expenditure of contributions (this is important as it will underpin and demonstrate the Council's reputation for excellent probity).

- Improved public information on the delivery of 'gain' in their area and better communication of 'progress of delivery' with Ward Members and Parish/Town Councils.
- It will ensure that the Council delivers on its obligations within such agreements on time (clearly this is important as a Section 106 Agreement is a multilateral agreement that requires all parties to honour the commitments they have entered into if trust and understanding are to be developed and if the system and/or parties are not to be brought into disrepute).
- Enhanced reputation. All of the above will help to reinforce the image of the Council as a businesslike organisation that is working with the development industry and local communities to deliver the key objectives contained within its Local Development Framework and other policies and strategies.

2.5 Whilst researching how acknowledged high achieving Councils maximise the gain secured through the planning process, evidence was found of a number of interesting new approaches being adopted which is being explored for adoption here.

- Colchester Borough Council has kindly shared the S.106 database that it developed for the specific purpose of managing S.106 contributions. This has been recommended by the IDEA and the PAS (Planning Advisory Service) as a model of good practice.
- Plymouth City Council shared its documentation on a tariff system. This could form the basis of our work on the Community Infrastructure Levy in which Local Authorities will be requested to impose a levy on all development to cover sub regional infrastructure.
- Many districts have an Officer Liaison Group which provides a forum for discussing issues arising from the use of S.106 agreements and provides a clear process for financial spend that has been approved by audit. EDDC has already reinstated its Asset Management Forum which could undertake the same role.
- Several other Local Authorities levy a monitoring fee, calculated in a variety of different ways and which can help support the cost of the post.

2.6 During the initial six months of the post, the Development Control Team has been undergoing the Vanguard process. One of the recommendations of the process was that it would be better for East Devon District Council to move away from the traditional S.106 process of requiring a Section 106 Agreement following planning permission. It has instead been suggested that applicants submit a S.106 Unilateral Undertaking before planning permission is granted, where appropriate.

2.7 Not only will this ensure that all applicable applications undertake the Unilateral Agreement prior to receiving planning permission but also in devising a standard template we would save our Legal Team a tremendous amount of work.

2.8 At present each applicant that requires our Legal Team to draft a S.106 Agreement is charged £350. By charging a reduced rate for a template Unilateral Undertaking to be double checked, registered with Land Charges and monitored we could cover our additional costs (due to the increased numbers) and provide a more effective service to the community. It will also reduce the burden on the Legal Team.

2.9 This Council receives in excess of 5,000 planning applications per annum and a modest estimate would suggest that at least 500 would require a Unilateral Undertaking. On the basis of a standard £100 fee to register and monitor this we would expect to receive an income of £50,000. Of course those applicants not receiving planning permission would receive a refund.

2.10 Utilising this approach would ensure that the post is self-sustaining.

3. Long term objectives

3.1 To continue the monitoring of legal agreements using the Colchester database.

3.2 To prepare an Annual Monitoring Report detailing receipts and spend.

4. Other sources of infrastructure funding

South West Regional Infrastructure Fund

4.1 The South West Regional Infrastructure Fund (RIF) was initially proposed in The Way Ahead as an innovative method of removing barriers to development and to ensure the timely provision of the infrastructure needed to support high rates of housing and employment growth in the region. RIF works by forward-funding developer contributions, using the planning obligations framework to recoup its investments. In support of the RIF proposals the region has allocated £80 million of public sector funding through its Regional Funding Allocation (RFA) pot to the Fund.

4.2 The RIF recovers its investments as development occurs, and is working to attract private finance into the delivery of its projects. In this way, the RIF will be a continuously recycling resource, available to the region for decades

4.3 Priority is given to infrastructure that adds value to the delivery of sustainable growth within one of the Key Growth Areas identified in The Way Ahead or a New Growth Point. Table 1 shows what is included in the definition of infrastructure.

Table 1: Definition of Infrastructure

Transport	Airports, ports, road network, rail network, travel management systems, other public transport improvements
Housing	Affordable housing Gypsy and Traveller sites
Education	Further and higher education Secondary and primary education Nursery
Health	Acute care and general hospitals Mental hospitals Health centres/primary care trusts Ambulance services
Social Infrastructure	Supported accommodation Social and community facilities Sports centres Open spaces, parks and play space
Green Infrastructure	Outdoor recreation and sports facilities, parks, gardens and allotments, tracks and pathways, natural and historic sites, canals and water spaces, as well as accessible countryside. It is a network of multi-functional green spaces in urban areas, the countryside in and around towns, and the wider countryside
Public Services	Libraries Cemeteries Emergency services
Utilities and Waste	Water (including water supply and wastewater treatment) Energy (including renewable and non-renewable) Waste management (including waste disposal and recycling)
Flood Defences	Coastal and fluvial

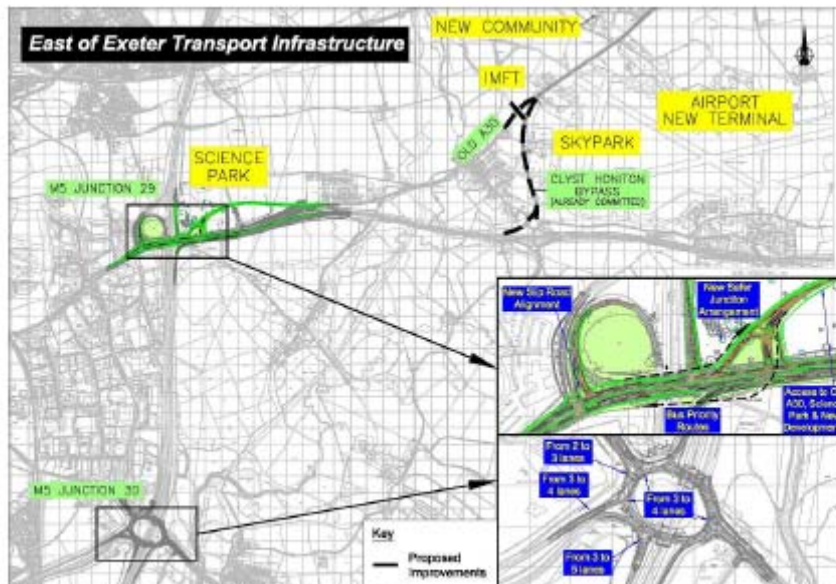
Source: Delivering the South East Plan (South East England Regional Assembly, October 2006)

- 4.4 Two of the bids in the first round of bids being considered by the Investment Panel are for the Exeter and East Devon Growth Point for the new railway station at Cranbrook (3.5m likely to be required between 2008/09 (£250,000) and 2009/10 (£3.25 million)). and for highway Improvements to relieve capacity constraints, primarily at M5 Junction 29/A30 and M5 Junction 30. The package will also include the provision of bus priority measures along the old A30 between Cranbrook and Skypark Business Park (£8 million likely to be required in 2009/10 (£500,000), 2010/11 (£4.5 million) and 2011/12 (£3 million))

Cranbrook railway station.



Source: East Devon Council (2008)



Source: East Devon District Council (2008)

The Community Infrastructure Fund

- 4.5 The Community Infrastructure Fund (CIF) is designed to complement mainstream transport funding, uniquely linking the provision of funding for transport infrastructure to the delivery of housing. CIF will fund the type of schemes that are vital locally to unlocking large housing development sites, enabling the acceleration of housing development and improving the sustainability of major locations of housing growth. Only local transport authorities are eligible to apply for CIF funding.
- 4.6 Devon County Council has made a bid for £4.5 million to provide a new bridge spanning the M5 to the north of Junction 29. It would facilitate walking, cycling and bus movements across the motorway, providing linkage to development, east and west of it. The proposed link across the M5 would also have the potential to function as a green corridor linking elements of the area's green infrastructure – including the Clyst Valley – into the city and maximising the opportunity for providing an effective 'gateway' to the city. This is a proposal being put forward in the Green Infrastructure study of the wider eastern Exeter / East Devon area which is currently being progressed.

Community Infrastructure Levy and EDAW Community Infrastructure Model

- 4.7 As reported to development Control Committee on 11 March 2008 the Planning Bill currently going through Parliament makes provision for a Community Infrastructure Levy (CIL). The overall purpose of the CIL is to ensure that development contributes fairly to the mitigation of the impact it creates: to ensure that development is delivered, and in a more sustainable way. CIL will be a standard charge decided by designated charging authorities and levied by them on new development. CIL cannot be expected to pay for all of the infrastructure required, but it is expected to make a significant contribution.
- 4.8 Authorities seeking to charge CIL will need to undertake two main steps: identifying what infrastructure is needed and how much it will cost; and working out what contribution each development should make to that cost. Robust arrangements are needed for independent testing of CIL proposals with developers, infrastructure

providers and the public in order to ensure that they satisfactorily support growth and are deliverable.

- 4.9 Planning consultants EDAW have developed a computer based infrastructure planning model which will generate details of infrastructure required over time for any given level of growth and the developer contribution required to deliver this. Discussions have been held with EDAW and the South West Regional Development Agency about the possibility of using the model to identify the infrastructure requirements in particular for the major developments proposed in the RSS for the west end of the district but also for the rest of the district as well. EDAW are scoping the project and will prepare a costed proposal for consideration. This could be a pilot study to test this approach which could then be rolled out across the south west and may therefore attract SWERDA funding. A report will be taken to the Executive Board on this proposal when the costs and level of funding that would be required from the Council are known.

Legal Implications

The use of s106 Unilateral Undertakings in relation to routine planning applications will be a resource saving in time and expense for Legal Services (and for individual applicants' advisers). However, negotiated s106 Agreements will still have a place in the planning regime as part of a more streamlined means of delivery: importantly, from the point of view of direct impact mitigation, site-specific circumstances and affordable housing. The Council's Legal Service clearly has a role here, and will work closely with planning officers to ensure that best practice is being followed (DCLG Practice Guidance on Planning Obligations; use of standard clauses, eg. DCLG/Law Society Model s106 Agreement).

The following advice is relevant to the objectives behind the recommendation: paragraph B50 of the Government's Circular on Planning Obligations (2005) states "Once a planning obligation has been agreed, it is important that they are implemented or enforced in an efficient and transparent way, in order to ensure that contributions are spent on their intended purpose and that the associated development contributes to the sustainability of the area. This will require monitoring by Local Planning Authorities, which in turn may involve joint working by different parts of the authority. The use of standardised systems is recommended, for example, IT databases, in order to ensure that information on the implementation of planning obligations is readily available to the local authority, developer and members of the public."

Financial Implications

The financial implications are as indicated in the report.

Consultation on Reports to the Executive

Background Papers

- Circular 05/2005: Planning Obligations (ODPM, 2005)
- Planning Obligations: Practice Guidance (Department of Communities and Local Government, 2006)

Kate Little
Head of Planning & Countryside

Corporate Overview Committee
26 June 2008

