

Cherwell District Council
Budget Planning Committee

9 September 2014

Section 106 obligations

Report of Head of Development Management

This report is public

Purpose of report

To advise Members on the workings of legal undertakings provided under Section 106 of the Town and Country Planning Acts 1990

1.0 Recommendations

The meeting is recommended:

- 1.1 To note this report.

2.0 Introduction

- 2.1 Section 106 of the Town and Country Act 1990 is a mechanism by which applicants for planning permission can enter into a legally binding agreement with a planning authority, or give a unilateral undertaking, to provide for the provision of both on-site and off-site infrastructure to overcome short-comings in existing infrastructure provision, and thereby allowing the Council to grant planning permission which would otherwise have to be refused. This provision is therefore the way in which so-called "planning gain" is secured.
- 2.2 In most cases a Section 106 obligation needs to be secured as part of the processing of a 'major' application, and therefore is reported to the Planning Committee as part of the report on the planning application. The Committee is normally provided with a summary of the heads of terms of the agreement, which in most cases has a monetary value associated with it. Sometimes the negotiations are less advanced and in those circumstances the Committee is asked to delegate responsibility to the HDM to satisfactorily conclude those negotiations. In a small number of cases legal obligations can be required in response to non-major applications; in those cases the scheme of delegation provides all necessary authority to the HDM. Most legal agreements are drafted in-house by our legal officers
- 2.3 This report seeks to explain, in broad terms the workings of this system

3.0 Report Details

3.1 As noted in the Introduction, Section 106 obligations arise from the need to ensure that the Council secures the necessary funding for on-site and off-site infrastructure which is required as a function of the development. (Section 106 obligations are commonly referred to as 'agreements' – but they can also be unilateral undertakings offered by the applicant (often in appeal circumstances)) They cannot be used to fund existing deficiencies in infrastructure – only for funding what is genuinely required because of the extra burden placed upon a community as a result of the new development, be that for example school or library funding, new road improvements, play and open space provision or affordable housing.

3.2 The negotiations that lead up to the successful completion of a legal agreement can be contentious and long-drawn-out. The Council's negotiating stand point is provided by the National Planning Policy Framework and Government Circular 05/05. Local planning authorities must take this guidance into account in their decisions on planning applications and must have good reasons for departing from it. It specifies that planning obligations are used for three purposes:

- **Prescribe** the nature of development (for example, requiring a given portion of housing is affordable),
- **Compensate** for loss or damage created by a development (for example, loss of open space), or
- **Mitigate** a development's impact (for example, through increased public transport provision). Planning obligations must be directly relevant to the proposed development.

This national policy is supplemented by the recently published Planning Practice Guidance (a copy of which I attach as appendix 1), and our own Cherwell Local Plan and the Council's draft supplementary planning guidance (SPD) on planning obligations. Obligations are also required to comply with the Community Infrastructure Regulations which seek to ensure that requests for contributions are properly justified.

3.3 The SPD provides a fair and equitable basis upon which to commence discussions and also provides detailed advice and supporting evidence to assist officers in their negotiations. It has to be accepted that not all sites have the same ability to provide the full quantity of funding required, depending upon individual site characteristics and therefore it is not possible to require identical provision in all cases. Each case has to some extent to be considered on its own merits.

3.4 To give an example of the matters included in agreements, the following paragraphs describe the contents of a recently completed agreement, related to the construction of 60 houses on land at Tadmarton Road, Bloxham. This was granted consent after an appeal against a refusal of planning permission. In this case it will be seen that Oxfordshire County Council were also enjoined in the agreement (as they often need to be). It will be seen that in this case the agreement provided for the following to the District Council

- Off-site sports contribution £43,351 –but reduced to £21,660 at appeal
- Refuse bins contribution £4,050
- Sports pitch contribution £59,713

- Thames Valley Police contribution £10,100
- Village Hall contribution £10,066
- The provision of various ponds and drainage facilities
- Sums for the maintenance of the above ponds
- Existing woodland, mature woodland, maintenance contributions
- The provision of new woodland, and public open space
- Sums for the maintenance of the above spaces
- The provision of a local area of play and its future maintenance
- Affordable housing – 35% with arrangements to determine tenure mix and allocations

And the following for the County Council

- Public transport contribution £2,000
- Public service contribution £51,724
- Transport infrastructure contribution – formula payment
- And an infrastructure payment linked to future house sizes (this is somewhat more unusual as most agreements set out precise sums for use to improve primary, secondary and higher education facilities, libraries and a range of other County infrastructure)
- The provision of a car park for the adjacent primary school

3.5 In this case the offered agreement was carefully considered at the public inquiry into the refusal of planning permission. The inspector appointed to determine the appeal assessed whether the requirements of the obligation complied with the tests for obligations set by Regulation 122 of the Community Infrastructure Regulations. The Inspector concluded that a part of the maintenance payments for the open space (a 10% management fee supplement), the refuse bin contribution and the Police contribution were not compliant with the CIL Regs.. This judgement has been reached in some other appeals, but Inspectors are not consistent in their application of the Regs and therefore in some cases we continue to seek some of these specific contributions. Also in this decision the Inspector concluded that all other contributions sought by both the District Council and CDC were compliant with the CIL regs.

3.6 It will be noted that the financial contributions are targeted towards specific projects. There is a need therefore to ensure that spending departments are aware of the timetable for the receipt of the money and its availability. The contributions are rarely required to be provided all at the beginning of the development but are instead the subject of separate trigger points, so that it can arrive effectively in instalments.

3.7 It will be obvious from the above list that some contributions are paid direct to the County Council where again there needs to be awareness of the timing of the contributions and their availability for use. Furthermore, some of the contributions we collect will end up being dispersed to others, such as a Parish Council, for example, to fund the on-going maintenance of open space areas, if the PC is taking responsibility for that role.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The negotiation and drafting of obligations is a complex task undertaken by the Council's planning and legal officers which in the past has been conducted during the life of a planning application. Increasingly attempts are being made to front-load the application process by engaging in the early discussions on these matters with applicants at a pre-application stage, allowing a swifter processing of the planning application. Overall, this is a demanding role for officers, who remain focussed on achieving the best possible set of contributions etc. for the benefit of the Council and the community.

5.0 Consultation

No consultation has been undertaken in the preparation of this report

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following options have been identified and rejected for the reasons as set out below.

Option 1: To note the report.

7.0 Implications

Financial and Resource Implications

7.1 Financial Effects

There are no financial implications arising directly from this report.

Comments checked by Nicola Jackson, Corporate Finance Manager, 01295 221731, Nicola.jackson@cherwellandsouthnorthants.gov.uk

Legal Implications

- 7.2 There are no legal implications directly arising from this report. Section 106 planning obligations can only be taken into account as material planning considerations where they comply with regulation 122 of the CIL Regulations i.e. where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonable related in scale and kind to the development.

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- 7.3 There are no risk implications associated with the option of noting this report.

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8.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

- The successful completion of satisfactory obligations has implications for the cleaner, greener and district of opportunity strategic priorities.

Lead Councillor

Councillor Michael Gibbard
Lead Member for Planning

Document Information

Appendix No	Title
1	Planning Practice Guidance on Planning Obligation
Background Papers	
None	
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