

Section 106 Funding and Supplementary Planning Document

SUMMARY

- 1.1 At its meeting of 17 August, Members considered the Board's work programme and agreed to include a review of how Section 106 funding is allocated. Members' asked to receive a report detailing how and where the funding was spent, including reviewing the Supplementary Planning Document (SPD). This report is intended to start that process.
- 1.2 The report outlines the main stages in negotiating a Section 106 Agreement and where money is spent. The Members Guide and the SPD are attached.
- 1.3 It also considers the Community Infrastructure Levy which is intended to at least partially replace Section 106 Agreements. It notes that viability work undertaken for this suggests that now is not the right time to pursue a CIL as more can be gained through the 106 process. It concludes that whilst a review of the SPD will be needed at some point, especially if CIL is introduced, this should not take place until there is more certainty over adopting a CIL.

RECOMMENDATION

- 2.1 To note the report.

REASONS FOR RECOMMENDATION

- 3.1 To enable the report to help in the Review of Section 106 Agreements.

SUPPORTING INFORMATION

- 4.1 At its meeting of 17 August, Members considered the Board's work programme and agreed to include a review of how Section 106 funding is allocated. Members' asked to receive a report detailing how and where the funding was spent, including reviewing the Supplementary Planning Document.

- 4.2 This report is intended to provide a general overview of the process to enable the review to take place and be considered at the Board's meeting in March next year.
- 4.3 Section 106 of the Town and Country Planning Act 1990 enables local planning authorities to secure legally binding planning obligations, including financial contributions, from developers as part of the process of granting planning permission for development schemes. They are intended to offset the impact of development proposals. They are typically used to secure contributions to education infrastructure, including schools for larger schemes), highways and transportation improvements, leisure facilities, public open space, public realm and community facilities. They are also used to secure contributions towards affordable housing.
- 4.4 Planning obligations should only be sought where the tests set out in the National Planning Policy Framework (Paragraph 204) are met, namely; being necessary to make the development acceptable in planning terms; directly related to development; and fairly and reasonably related in scale and kind to the development.
- 4.5 As Section 106 Agreements are intended to mitigate the impact of development, they do not necessarily have to be spent on projects within the same Ward as the development. Proper mitigation may best be served by undertaking works elsewhere, although locations should be well related to the development.
- 4.6 Section 106 Agreements are time limited and if not spent by the specified date, the funds will return to the developer.
- 4.7 Agreements are negotiated by planning officers, with support from legal services and colleagues in other service areas, as part of the process of determining applications for planning permission. The final agreement is legally binding between the signatories and planning permissions are not issued until the agreement is signed. Negotiations with developers are based on the thresholds and standards set out in the Council's adopted Planning Obligations Supplementary Planning Document (SPD).
- 4.8 Members are alerted to the negotiation of a s106 Agreement by being emailed the Council's Weekly List of planning applications registered in the previous seven days. At the bottom of this list is a separate section listing the applications requiring S106 agreements. Members can make suggestions for what should be included in the Agreement throughout the process.
- 4.9 The first part of the process is known as drafting the 'Heads of Terms.' These set out the broad parameters of what contributions will be in the 106 Agreement and are usually negotiated in advance of an application being submitted to minimise the time taken to process the application. As drafts, they can be amended or added to as the process develops.

- 4.10 Details of the s106 package are reported to Planning Control Committee for consideration as part of determining the application. Reports are published seven days before Committee. Payments will only be made if a planning permission is implemented and sometimes payment is phased, such as upon completion of a certain number of dwellings. Once an Agreement is completed, Ward Members are emailed a summary of its contents and Neighbourhood Boards informed through their regular bulletins. However, there may be a long time gap between an Agreement being completed and the development starting on site.
- 4.11 Planning Officers email a Quarterly Report to all Members and Neighbourhood Managers setting out what contributions are currently available to spend. Contributions are classed as either having a “proposed” use for its expenditure or being “unallocated”.
- 4.12 Proposed uses are those which are specified or indicated in the legal agreement itself or are based on known Council or Board priorities for spend. They will often be based on specific mitigation measures which have been identified through the determination of the application for planning permission. They are not set in stone and Members can disagree with them or put forward alternatives, although the need for specific mitigation measures may limit what alternatives are feasible. Where disagreements cannot be resolved, the issue will be put to Cabinet for resolution.
- 4.13 “Unallocated funds” are those funds which have not yet been proposed for spending. Councillors and Neighbourhood Boards as well as Officers can put forward ideas for the use of these funds, although these need to accord with the terms of the legal agreement.
- 4.14 Members may be aware that Government is encouraging Local Authorities to replace individually negotiated Section 106 Agreements with a Community Infrastructure Levy (CIL). These are set charges on development based on floorspace or the number of dwellings. It is open to local authorities to direct CIL money towards a single large project or towards a number of smaller ones. It is possible to use a CIL together with Section 106 Agreements, although this will not increase the overall amount of contribution.
- 4.15 Crucially, the charges set in the CIL need to be based on clear evidence of viability. This will identify an overall value to which the CIL can charge to. But this needs to take account of what might be sought through Section 106 Agreements. The higher the charging set in the CIL, the less there is for negotiation through Section 106 Agreements. As affordable housing can only be negotiated through Section 106, the CIL would need to be carefully designed to ensure it does not undermine delivery of this.
- 4.16 Viability studies undertaken to date indicates only very limited funds being available for CIL, especially once an allowance for affordable homes is made. This is because the viability work tends to be a bit theoretical and tends towards lower values. In practice, the flexibility of the Section 106 process allows more to be secured. For the time being, therefore, a CIL has not been brought into place and individual negotiations under Section 106 remain.

- 4.17 This said, one of the advantages of CIL is that money from a number of developments can be pooled and directed to single, large schemes which are likely to be too expensive to be covered by any one development. This could be towards a major new road or a secondary school. Pooling Section 106 Agreements to this end has now been limited to 5 developments.
- 4.18 It is intended to revisit this and undertake further viability work next year. However, until the CIL issue is resolved there seems to be little point in reviewing the SPD just now, even though it dates back to 2008. The Team that would undertake this work is now much smaller than in the past and is having to focus its efforts on negotiating Section 106 Agreements. It would not be an effective use of staff time to undertake a review now only for this to have to be repeated in a year or so.

OTHER OPTIONS CONSIDERED

- 5.1 None.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Stephen Teasdale, Planning and Highway Solicitor Amanda Fletcher, Head of Finance – Communities and Place Tim Clegg,
For more information contact: Background papers: List of appendices:	Andrew Waterhouse 01332 642124 andrew.waterhouse@derby.gov.uk None Appendix 1 – Implications Appendix 2 – A Guide to Planning Obligations and Section 106 Agreements for Councillors and Neighbourhood Boards

	Appendix 3 – Supplementary Planning Document – Planning Obligations
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IMPLICATIONS

Financial and Value for Money

- 1.1 There are no financial implications as a direct result of this report.

Legal

- 2.1 Section 106 of the Town and Country Planning Act 1990 enables local planning authorities to secure legally binding planning obligations, including financial contributions, from developers as part of the process of granting planning permission for development schemes. They are intended to offset the impact of development proposals.
- 2.2 Planning obligations should only be sought where the tests set out in the National Planning Policy Framework (Paragraph 204) are met, namely; being necessary to make the development acceptable in planning terms; directly related to development; and fairly and reasonably related in scale and kind to the development.

Personnel

- 3.1 None.

IT

- 4.1 None.

Equalities Impact

- 5.1 Section 106 Agreements can ensure greater inclusivity within new developments, for example by ensuring new schools are fully accessible for disabled people and by providing funding for much needed affordable housing.

Health and Safety

- 6.1 None.

Environmental Sustainability

- 7.1 None.

Property and Asset Management

8.1 None.

Risk Management

9.1 None.

Corporate objectives and priorities for change

10.1 Section 106 contributions can be used to meet many of the priorities set out in the Derby Plan and the Council Plan.