



Member and Neighbourhood Board Involvement in Planning Obligations

RECOMMENDATION

1. The Commission is asked to consider the revised protocol for member and neighbourhood board involvement in planning obligation processes attached as Appendix 2 and to make any comments.

SUPPORTING INFORMATION

- 2.1 On 21 October 2009 the Commission considered issues relating to the use of monies secured through planning obligations, also known as Section 106 agreements. Commission members felt that the system should provide for better consultation with local neighbourhoods. It was also recommended that the information contained on the quarterly planning obligations monitoring sheet circulated to members and neighbourhood boards should be clarified and simplified.
- 2.2 Officers involved with planning obligations have undertaken a review of current arrangements in the light of the Commission's comments. In particular, the advice of the Neighbourhood Services team has been sought on how the neighbourhood boards can be better engaged. Through these discussions, a revised protocol for member and neighbourhood board engagement in planning obligations has been drafted. This attached as Appendix 2 and the views of the Commission are sought on its content.
- 2.3 The Commission also recommended that training on the planning obligation process be provided to councillors when they are inducted. This can be done as part of the broader planning training provided after each new member intake. In addition it is proposed to arrange a training session for members of neighbourhood boards later this year.

For more information contact: Rob Salmon 01332 255020 e-mail rob.salmon@derby.gov.uk

Background papers:

List of appendices:

Appendix 1 – Implications

Appendix 2 – Proposed Planning Obligation Protocol

IMPLICATIONS

Financial

1. The monies received through planning obligations mainly feed into the Council's capital programmes.

Legal

2. Planning obligations are governed by Section 106 of the Town and Country Planning Act 1990.

Personnel

3. Application of the revised protocol will require the support of neighbourhood managers and officers in Regeneration and other departments involved in the planning obligation process, but should not give rise to any additional staff requirements.

Equalities Impact

4. The revised protocol will assist a wider range of the community to become engaged in the planning obligation process.

Corporate Objectives

5. Planning obligations are broad in their scope and can support the full range of corporate objectives.

Draft Protocol Planning Obligations - Member and Neighbourhood Board Involvement

What are Planning Obligations?

Planning obligations, or Section 106 Agreements (S106s), are legal agreements attached to planning permissions. They are entered into between the Council and developers when a planning application requires mitigation measures and/or community benefits which cannot be secured through planning conditions. In particular they are used to secure financial contributions towards the provision of infrastructure from developers.

The type and scale of planning obligations that can be secured must be consistent with Government Guidance and the Local Plan. All contributions must be:

- Related to planning;
- Necessary to make the proposed development acceptable in planning terms;
- Directly related to the proposed development;
- Fairly and reasonably related in scale and kind to the proposed development; and
- Reasonable in all other respects.

There are adopted Local Plan policies related to planning obligations. These must be taken into account, as there must be a policy basis for any contribution that we seek.

The Council's Planning Obligations Supplementary Planning Document (SPD) gives more detailed guidance on the types and level of contributions the Council normally seek. This can be viewed at the link below:

<http://www.derby.gov.uk/Environment/Planning/LandUsePlanning/Planning+Obligations+Supplementary+Planning+Document.htm>

The SPD sets out the Council's approach, policies and procedures for securing Planning Obligations.

The SPD provides details of specific contributions in the following areas:

- Affordable housing
- Public open space
- Highways and Transportation
- Public Realm
- Public Art
- Community Facilities, which include:
 - Education
 - Community centres

- Libraries
- Sports facilities
- Health
- Lifetime homes
- Natural and built environment which includes measures to help mitigate climate change

Involvement of Members and Neighbourhood Boards – General Principles

Neighbourhood Management has been introduced in Derby to support and influence the:

- Identification of local priorities
- Delivery of services in a way which is sensitive to local needs
- Allocation of a (limited) budget on projects which are likely to benefit the area
- Development of a participative civic culture within the area

These objectives are directly associated with the Local Area Agreement indicators of Theme 2 – Improving and strengthening Derby’s communities

- NI 2 – Percentage of people who feel that they belong to their neighbourhood
- NI 4 – Percentage of people who feel they can influence decision in their locality

Neighbourhood Boards already identify the overall priorities for their areas. To provide a strategic basis for the use of S106 monies, Neighbourhood Boards should also be encouraged to identify their priorities for the use of S106 funding. To help them to do this, training will be provided annually to Neighbourhood Boards and Members. The training will include the planning obligation process, the legal and policy limits to the use of S106 and the relationships between S106 funding and capital programmes.

All relevant Neighbourhood Board priorities should be communicated annually to all Council Departments and partners such as the PCT so that the priorities can be taken into account when drawing up capital programmes.

Departments and partners should similarly be encouraged to consult annually with Neighbourhood Boards on their proposed Capital Programmes. The consultation arrangements currently adopted by Highways and Transportation are recommended as a best practice example. The Council’s Capital Programme will indicate which S106 pots are to be used to fund each capital project. Members are therefore able to influence how pots are allocated at this stage.

Involvement at Pre-application Stage

Planning Officers should be aware and take full account of neighbourhood priorities and current Capital Programmes in discussing S106 Heads of Terms with developers.

Developers wishing to undertake pre-application consultation exercises should be asked to engage with Neighbourhood Boards, who may then feed in their views on S106 Heads of Terms.

In negotiating planning obligations, officers will aim to mitigate development in the best way possible, taking into account the capacity of existing infrastructure and the distance to facilities reasonably capable of serving the application site. Members and Neighbourhood Boards need to be aware that the approach to contributions may vary depending on the issue. For example, developments usually create citywide traffic flows, so Highway contributions are generally secured on a transport corridor basis. This may mean that funds are eventually pooled and spent in a different ward to the initial development in order to best mitigate the impact of the development.

Involvement at Planning Application Stage

The Council's weekly list gives details of all planning applications that have been registered in the previous 7 days. At the bottom of the list is a separate section that lists all applications registered in the last 7 days that are to have S106 agreements attached to them. Members and Neighbourhood Boards can therefore identify relevant applications. Neighbourhood Managers should report on these to each Board. Neighbourhood Managers and Councillors should send their views on the community impact of planning applications and their priorities for the S106 negotiations to the Plans and Policies Implementation Team. These views can then be taken into account in finalising the S106.

In most cases, draft Heads of Terms for each S106 agreement will have been negotiated before the application is registered. These Heads of Terms include details on the type and amounts of each contribution proposed to be required. They are only in draft form, therefore there is opportunity to alter or add requirements at this stage. The draft Heads of Terms can be seen on the e-planning pages of our website, where all details of applications can be viewed. The link to the relevant page is below:

<http://eplanning.derby.gov.uk/acolnet/planningpages02/acolnetcgi.gov>

If Members and Neighbourhood Boards have any comments or queries about any of the Heads of Terms, then they should contact Andy Moger, Planning Officer, Implementation Team, Plans and Policies on 01332 256025 or andrew.moger@derby.gov.uk

Soon after the application has been registered is the best time to influence what is included in a planning obligation.

Some planning applications involving S106 agreements will be determined through delegated powers, but others will go to Planning Control Committee. Reports are published 5 days before Committee and include details of all S106 contributions being sought.

Involvement after Completion of Planning Obligations

The Implementation Team will provide Neighbourhood Managers with summary details of each newly completed S106 agreement. Neighbourhood Managers will report these to their Neighbourhood Board. The details include an indication of the S106 funding which may be forthcoming from specific developments. However it must be borne in mind that the Section 106 payments will normally only be received if the developments are actually built. Larger developments will often have designated 'trigger points' to allow for phased payments.

The Implementation Team will prepare a Quarterly Monitoring Report on planning obligations which will be sent to all Members and Neighbourhood Managers. This will contain information in an easy to understand format on all S106 contributions which have been received by the Council and are available to spend. It will include information on the amount of each contribution, how it can be spent and any existing Officer recommendations for how the money is intended to be spent.

The Quarterly Monitoring Report will clearly distinguish between the following:

- S106 pots which are already part of the Cabinet approved capital programme. As these sums are already committed this sheet is for information only.
- S106 pots which have not yet been committed. These can still be influenced by Members and Neighbourhood Boards. Any views that Members and Neighbourhood Boards express will feed into the development of capital programmes. However it must be borne in mind that it may not be possible to add new capital schemes until the following year's programme is drawn up.

Neighbourhood Managers will regularly report to their Boards on the information in the Monitoring Report. Members and Neighbourhood Boards should submit any comments to the Implementation Team, including any proposals for using uncommitted funds.

Comments should be made to either the Lead Officer in the relevant Department named on the spreadsheet, or to Andy Moger and must be made within two weeks of the spreadsheet being received.

Officer recommendations for use of S106 monies will take into account:

- Any parameters in each individual S106 that constrain its use;
- Council priorities at the time the money is available;
- Opportunities to increase the value of contributions through pooling and match funding;
- Links to the Capital Programme; and
- Neighbourhood priorities and the views of local members and neighbourhood boards

Flowchart summarising Member and Neighbourhood Board involvement in the S106 process

Pre-application stage

Developers approach the Council to talk through their proposal, find out whether it's consistent with planning policy, what the S106 contributions might be and whether there are any other site specific issues.

Member and Neighbourhood Board involvement

Planning Officers will take account of Neighbourhood priorities when discussing possible S106 Heads of Terms with developers, particularly any S106 priorities identified by Neighbourhood Boards. Developers wishing to undertake pre-application consultation exercises will be asked to engage with Neighbourhood Boards to gauge views on local issues which could be addressed through S106.

Planning application stage

When the Council registers a planning application it appears on the Council's "weekly list". This identifies applications where S106 agreements are to be negotiated. At this stage S106 Heads of Terms will often be agreed in draft form, but there is still the opportunity to alter or add provisions.

Member and Neighbourhood Board involvement

Members and Neighbourhood Managers can identify relevant applications from the weekly lists, and report them to Neighbourhood Boards. Neighbourhood Managers and Members should send their views on the community impact of planning applications and their priorities for the S106 negotiations to the Plans and Policies Implementation Team so that these can be taken into account in finalising the S106.

Some planning applications with S106 agreements are determined through delegated powers, but others go to Planning Control Committee. Reports are published 5 days before Committee and include details of all S106 contributions being sought.

Planning approval and completion of S106 agreement stage

Once planning approval has been granted and the S106 agreement completed, the Implementation Team monitor the agreement to ensure that the developer meets the obligations contained within it. The expenditure of S106 contributions received by the Council is also monitored.

Member and Neighbourhood Board involvement

The Implementation Team will provide Neighbourhood managers with details of each newly completed S106 agreement which Neighbourhood Managers can report to their Board.

The Implementation Team will prepare a Quarterly Monitoring Report which is sent to all Members and Neighbourhood Managers. This contains information on the amount of each contribution, how it can be spent and any existing Officer recommendations for intended expenditure. The report distinguishes between S106 pots which are already part of the Cabinet approved Capital Programme, which cannot be changed, and those which have not yet been allocated. Views can be expressed on the use of unallocated funds which will feed into the development of the next Capital Programme.

Neighbourhood Managers should regularly report to their Boards on the information in the Quarterly Report. Members and Neighbourhood Boards can submit comments and proposals for using uncommitted funds to the Implementation Team.