

Business and Transformation Scrutiny Panel

Agenda
Item:
A.4

Meeting Date: 15th October 2020
 Portfolio: Economy, Enterprise and Housing
 Key Decision: No
 Within Policy and Budget Framework: Yes
 Public / Private: Public

Title: Allocation of S.106 Funds
 Report of: Corporate Director of Economic Development
 Report Number: ED 35/20

Purpose / Summary:

The purpose of this report sets out to provide the background on Section 106 Agreements.

Recommendations:

Members are asked to consider this report in order to have clarity around the allocation of S.106 money.

Tracking

Executive:	
Scrutiny:	
Council:	

1. BACKGROUND

1.1 Planning obligations, also known as Section 106 agreements (based on that section of the 1990 Town & Country Planning Act) are private agreements made between local authorities and developers and can be attached to a planning permission to make acceptable development which would otherwise be unacceptable in planning terms. The land itself, rather than the person or organisation that develops the land, is bound by a Section 106 Agreement, something any future owners will need to take into account.

1.2 National Legislative and Policy Context

1.2.1 Town and Country Planning Act 1990

In accordance with the Town and Country Planning Act 1990 (as amended by Section 12(1) of the Planning Compensation Act 1991) planning obligations may:

- (a) restrict the development or use of the land;
- (b) require specified operations or activities to be carried out in, on, under or over the land;
- (c) require the land to be used in any specified way; or
- (d) require a sum or sums to be paid to the authority either in a single sum or periodically.

Planning obligations are usually entered into in the context of planning applications to ensure that developers address the additional community and infrastructure needs and mitigate the social, environmental and economic impacts of new development. Unless it is agreed otherwise, planning obligations run with the land in perpetuity and may be enforced against the original party and anyone else that acquires an interest in the land, until such time as they are discharged or otherwise modified.

1.2.2 Planning Obligations are used for three purposes:

- Prescribe the nature of development (for example, requiring a given portion of housing as affordable);
- Compensate for the loss or damage created by the development (for example, loss of open space);
- Mitigate a developments impact (for example through increased education facilities).

1.3 The Planning Act (2008)

1.3.1 Section 206 of the Planning Act 2008 (The Act) came into force on 6 April 2010. From that date it has been unlawful for a planning obligation to be taken into account when determining a planning application for a development, if the obligation does not meet all of the following tests:

- Necessary to make the development acceptable in planning terms
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development

1.4 The Act also limited the ability to fund infrastructure through the pooling of S106 agreements by introducing a limit of 5 individual agreements that could contribute to the same infrastructure. This limit was removed in September 2019.

1.5 **National Planning Policy Framework**

1.5.1 The National Planning Policy Framework (NPPF) introduced in March 2012 changed the emphasis that planning obligations should only be sought where they meet all the tests above and where planning conditions cannot be used. The NPPF also reconfirmed the legal tests set out in the Planning Act.

2. **PROCESS**

2.1 Planning Applications are assessed against the policies with the Carlisle District Local Plan 2015 to 2030. Policy IP 8 – Planning Obligations sets out the Council’s approach to seeking contributions. During any negotiations the three legal tests must always be borne in mind for example, contributions towards education facilities can only be asked for where a development will result on an increase in child places being required so would not be relevant to say a development for older persons.

2.2 A Legal Agreement is signed by all the parties involved for example, the City Council, and the Developer/Landowner but can include other parties such as Cumbria County Council. Each agreement is individually written to reflect the requirements of that particular development and sets out the terms relating to the obligations for all parties.

2.3 For the developer it sets out what on site obligations they are expected to deliver, for example affordable housing, and any financial contributions they are expected to make in respect of offsite mitigation and when they are expected to be made.

2.4 The agreement also binds Carlisle City Council to use any financial for the purpose that they have been given and cannot be used for any other purpose. Therefore, funds are not available for any other purpose. Also, there is normally a timescale in which the obligation must be fulfilled. Failure to comply with those terms may result in the funds being returned to the developer.

2.5 The timing of the obligation has to legally reflect the point at which the impacts are identified which is usually during the course of the development rather than at the signing of planning permission. This means that contributions may only be forthcoming several years after permission has been granted. Contributions should not be made to projects which have already commenced and therefore short-term local projects may not be eligible for the funding. Commencing a project without the funding can suggest that the funding was not necessary and therefore does not fill the legal requirements. Essential major infrastructure contributions/obligations through CIL methods can continue to be recovered.

2.6 The process also allows for obligations to be challenged on viability grounds. The level of contributions cannot make a development unviable. Each application site has to be treated on its own merits and not the viability of the overall developer. In recent times more challenges have been raised resulting in reductions to the amount of money available for planning obligations.

3. CONTRIBUTION

3.1 As part of the statutory processes, Parish Councils are consulted on planning applications and it is at this point that any potential requirement for contributions should be identified. This initial 21-day consultation on the application is also the point at which Members can raise contribution questions. All members are sent the weekly list of planning applications.

3.2 For larger applications some developers carry out consultation with the local community and will often hold exhibitions or drop-in sessions (currently much of this may be on-line). Developers are advised to use this approach, and this is the opportunity that Members or Parish Councils can raise potential contributions directly with the developer prior to the application being made.

3.3 The Council changed its procedures so that draft head of terms for S106 agreements form part of the planning documentation and can be seen on the City Council Website indicating what the potential contributions should be. Parish Councils and Members should also consider this information as part of their response to the application.

3.4 As the agreements often relate to affordable housing or education contributions, these are for the city or county to administer in line with the agreement. Where open space contributions are involved, the City Council consult with their Health and Well-being team (formerly Green Spaces) in the first instance and they would indicate additional provision or local issues which need addressing even if the City Council did not manage all the open spaces around (the situation carries throughout the district).

4. MONITORING

4.1 For transparency an [Annual Planning Obligations Report](#) has been published on the City Council's web site with full details of all current agreements and the obligations within them (what has been received and how the Council is fulfilling their obligations).

4.2 From the financial year 2019/2020 The Community Infrastructure Levy (CIL) regulations and National Planning Policy Framework require all local planning authorities to publish their developer contribution data (known as the Infrastructure Funding Statement) on a regular basis and in an agreed format and will be published on the government's web site by the December following the year end.

5. RISKS

- 5.1 With any planning obligations the risk is that the obligation is not legally sound and may be challenged. The obligations must fulfil the legislative requirements and to minimise this risk the Council's legal team are involved in the drafting of the agreements to liaise between solicitors of all required parties.

6. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 6.1 The report sets out the process involved in establishing planning obligations to provide clarity for Members.

7. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

- 7.1 Planning obligations seek to deliver housing, recreation, education and transport infrastructure in line with the Carlisle Plan Priorities.

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**Appendices
attached to report:**

Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers:

- None

CORPORATE IMPLICATIONS: