

Meeting:	Decision Session – Executive Member for Housing, Planning and Safer Communities.
Meeting date:	18/07/2024
Report of:	James Gilchrist – Director of Environment, Transport and Planning
Portfolio of:	Cllr Michael Pavlovic

Decision Report: Osbaldwick Sports Club, Section 106 Funding (e-petition).

Subject of Report

1. The purpose of this report is to provide the Executive Member with information and response to an e-petition the Council received in respect of Section 106 Agreements, specifically in relation to Osbaldwick Sports Club and planning obligations.
2. The e-petition stated:

We the undersigned petition the council to release the £10,986 s106 funds allocated to Osbaldwick Sports Club. We the undersigned call upon the City of York Council to release the s106 funds that have been allocated to Osbaldwick Sports Club from local developments (Derwenthorpe and Burnholme) and are currently stuck within the log jam of planning gain funds that CYC currently hold from developments all over the city that now totals over £10million of accumulated funds. We would also lobby for a further allocation, for the Osbaldwick Sports Club, from the potentially available £45,000 from the Burnholme housing scheme from the Derwenthorpe Phase Five s106 agreement. To date after many years of discussions between the Sports Club facilitated by Councillor Warters and various officials at CYC no progress has been made in getting the funds passed over.

Osbaldwick Sports Club is a successful, volunteer run organisation that is attracting increasing numbers of children, recently formed

have been four new junior football teams and three junior cricket teams to add to the adult teams.

Storage space for equipment and additional changing facilities for the girls football team are urgently needed and this petition is a way of trying to get City of York Council moving with releasing funds to the club so essential improvements can take place. Please sign the petition if you value the work Osbaldwick Sports Club carries out.

3. The petition received a total of 125.no signatories.

Benefits and Challenges

4. The securing of planning obligations is vital to ensuring that development, which would otherwise be unacceptable in planning terms is made acceptable. The primary aim of planning obligations is to deliver the infrastructure required to support new development and offset the impact of new development. This can be either by via securing tangible physical infrastructure, such as on-site affordable housing, or primary school or via securing financial contributions toward the provision of infrastructure off site; this could include contributions to provide bus services or bus stops – or as is the example cited within the e-petition to provide additional or enhanced facilities at local sports clubs or other community facilities.
5. Any obligations secured will only ever come to fruition if the planning permission to which they relate is implemented and that the agreed trigger point is reached. The Local Planning Authority, once it has granted planning permission, cannot compel a developer to then undertake that development. There are a wide range of external factors which can contribute to whether or not a development is implemented.

Policy Basis for Decision

6. This report is prepared for information. However, the securing of planning obligations is a key component which contributes to the overall growth and prosperity of the city. Development across the city contributes to the wider objectives of the Council Plan. Many of the priority actions within the Council Plan ultimately promote growth; whether that be through promoting or enhancing skills, which require schools, colleges and training facilities. Addressing

housing affordability will require the provision of new housing stock. The economic opportunities provided by devolution will bring forward development opportunities. All of these will in some shape or form require development.

Financial Strategy Implications

7. The information contained within the report does present some minor financial strategy implications insofar as that the subject matter relates to monetary planning obligations. These monies will be available to the Council or their appointed third parties to spend assuming that the specified trigger point to which the obligation relates is met and that the intended spending of that monetary obligation is in accordance with the provisions of the Section 106 Agreement which secures the obligation. Monies secured via Section 106 Agreement will only be spent when the monies have been received by the Council and will either cover the full cost of delivering a particular piece of infrastructure or part fund a larger project; obligations are not spent speculatively with the assumption that obligations will be received at future date to offset the use of Council resource.

Recommendation and Reasons

8. The Executive Member is asked to:
Note the contents of the report within the context of responding to the queries that have been raised within the e-petition that has been received.

Reason: To ensure that executive is aware of the current position in respect of the queries raised within the received e-petition and the wider context to planning obligations.

Background

9. The e-petition received by the Council requests that a series of monies, which the signatories believe to be held by the Council, are released to Osbaldwick Sports Club. Specifically, it requests that £10,986 of Section 106 funds allocated to Osbaldwick Sports Club are released. The petition then goes on to request further allocations are made to Osbaldwick Sports Club, from the potentially £45,000 from the Burnholme housing scheme and Derwenthorpe Phase Five Section 106 Agreement.

10. The monies that are referred to within the received e-petition are monies which have been secured, subject to triggers being hit via planning obligation from developments which are taking place within the city.
11. Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal. The primary mechanism by which these obligations are secured are via an agreement entered into under Section 106 of the Town and Country Planning Act 1990 by a person with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land without the local planning authority. Planning obligations run with the land, are legally binding and enforceable. A Unilateral Undertaking cannot bind the Local Planning Authority because they are not party to it.
12. The purpose of a planning obligation is to assist with mitigating the impacts of unacceptable development to make it acceptable in planning terms. However, Planning Obligations may only constitute a reason for granting planning permission if they meet the necessary legal tests. They must be 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. Planning obligations are negotiated between the LPA and the applicant/developer. The LPA would typically resolve to grant Planning Permission subject to the completion of an associated Section 106 Agreement. This means that in practice the LPA withholds the granting of planning permission until such time a negotiated and agreeable Section 106 Agreement is secured.
13. Section 106 Agreements would typically secure two types of obligation. Monetary and Non-monetary obligations. A monetary obligation is where a developer pays an agreed sum of monies to the Council at an agreed trigger point which the Council must then use to fund infrastructure elsewhere. A non-monetary planning obligation is one whereby the developer provides the required infrastructure 'in kind'; this is often on the site of the development. Within the context of the e-petition that has been received the obligations that are referenced are monetary obligations.

14. When negotiating and securing planning obligations the accompanying Section 106 Agreement will specify the obligation that is to be provided and where necessary specify the mechanism and timing of when and how that obligation will be delivered.
15. Focusing on monetary obligations it is common practice for an obligation to be a specified sum of monies. These monies will often be index linked so as to provide a degree of protection against inflation. The obligation will be subject to a specific trigger point within the lifetime of the development; this could be upon commencement of development, or at the point where a specified point such as number of housing units are completed. The completed agreement will also specify what the secured monies will be used towards; the specificity of the spending can vary from agreement to agreement. In some cases, monetary obligations can also be time limited. Meaning that the Council has a specified time period within which to spend the monies for their intended use or they may need to be repaid to the developer.
16. Moving specifically to the developments that have been cited within the received e-petition. Derwenthorpe is a large multi-phase development situated to the East of the city within the Osbaldwick and Derwent Ward. The Burnholme development relates to land to the South of Burnholme Sports Centre which forms one of the Councils Housing Delivery Programme sites situated within the Heworth Ward.

Derwenthorpe Development (Phase 3A)

17. The grant of Planning Permission for the Derwenthorpe Development was subject to the completion of a Section 106 Agreement. This Section 106 has then been subject to a series of Deeds of Variation as the development has evolved over time. A Deed of Variation is a modification to the Section 106 Agreement which the signatories of the agreement can enter. These are not uncommon particularly on large scale or multi-phase developments. Variations tend to occur in tandem with revisions to the grant of planning permission this is to ensure that the association legal agreement and obligations secured keep pace with the approved development.

18. The obligation referred to in the e-petition in relation to the Derwenthorpe development was secured via a supplemental deed on 20th February 2020 via Section 106 Agreement between the Council and The Jospeh Rowntree Housing Trust who are the landowner and promoter of the scheme. The agreement was in respect of planning application 18/01778/FULM which relates to the erection of 40.no dwellings with associated roads, landscaping and public open space. Within the agreement the development is referred to as Phase 3A due to its location adjacent to Phase 3 of the Derwenthorpe Development; Phase 3 is the element accessed via Fifth Avenue.
19. The agreement secured a 'Phase 3A Off Site Recreational Facilities Contribution'. Within the agreement this is subsequently defined as a sum of £25,986 (index linked). Paragraph 5 of the First Schedule requires the developer to pay this contribution to the Council 'prior to the first occupation of the first residential unit within the Phase 3A development.
20. Paragraph 1.5.2 of the Second Schedule sets out the Councils covenants in respect of how the Phase 3a Off-Site recreational Facilities Contribution are to be spent. Paragraph 1.5.1.1 allocates £15,000 towards the provision of pitches, outdoor sport and ancillary facilities at Burnholme Sports Centre. Paragraph 1.5.1.2 allocates £10,986 towards improvements in at Osbaldwick Sports Club; it is this obligation that is specifically referenced within the e-petition that this report is the subject of.
21. At the time of writing this report the trigger point as set out within Paragraph 5 of the Frist Schedule, namely, 'prior to the first occupation of the first residential unit within Phase 3A'; has yet to be reached. Discussions with the developer indicate that the first occupation of the first residential unit within Phase 3A could be imminent. The developer is aware of their obligations in respect of the secured Section 106 Agreement and the Local Planning Authority will ensure that once the relevant trigger is reached the obligation be paid to the Council.
22. The secured obligation of £25,986 will be subject to indexation. Therefore, when the monies are paid to the Council the actual amount will vary from that which is stated within the agreement.

Given the position with inflation the expectation would be that the actual amount due to the Council will be higher than the stated figure. At the point in time where the obligation becomes due to the Council the indexation will be calculated by the Council's finance section.

23. When the monies due are received by the Council and as part of the wider development monitoring process the 'spending' service; that is the service area within the Council who originally sought to secure the obligation will be notified the monies have been received. It will then be incumbent on the spending service to determine when those monies would be drawn down and spent. Any spending must be in accordance with the provisions of the agreed Section 106.
24. Taking the example cited within this case of the £10,986 obligation towards improvements at Osbaldwick Sports Club. The Community Sports Development Team would be the spending service within the Council and would be notified of the monies having been received. The Community Sports Development Team would then liaise with representatives of Osbaldwick Sports Club to understand what scope exists for spending the obligation and whether that would be in accordance with the provisions of the Section 106 agreement.
25. As part of the internal monitoring process the Community Sports Development Team would then submit a release form to Planning and Development Services requesting the monies be released to them and outlining what the monies are to be spent on. The intended spend will then be reviewed by Planning and Development Services to ensure that the spend would be in accordance with the provisions of the Section 106 agreement. Assuming that the spend would comply with the Section 106 agreement then the monies are released to the Community Sports Development team to spend on behalf of or release the funds to the Sports Club for spending on the agreed works or project. Once the monies are spent this will be reported back to Planning and Development Services by the Community Sports Development Team.

Burnholme Green Development

26. Planning permission was granted under application 20/01916/OUTM for the erection of 83.no dwellings with associated parking, landscaping, access and ancillary works with no matters reserved expect for the appearance, scale and internal layout of 5.no self-build plots in terrace 5. This meant in practice that 78.no of the dwellings received full planning permission with the 5.no self-build plots requiring a further Reserved Matters application at a later date.
27. The Burnholme Green Development forms part of the wider CYC Housing Delivery Programme a project to deliver 600 homes on Council owned sites.
28. The obligations secured as part of the development at the Burnholme site differ slightly. As the developer of the site was the Council, albeit under their Housing Delivery function. It was not possible to enter into a Section 106 Agreement. This is because the Local Planning Authority cannot covenant with itself, which would be the case here albeit they are two distinct and separate functions of the Council. In the event of a breach the LPA cannot enforce against itself. Therefore, in these cases negatively worded conditions have been used. These conditions prevent any development from taking place until such time details for offsite sports facilities or alternative arrangements have been agreed in writing with the LPA.
29. Condition No.12 of the permission granted under reference 20/01916/OUTM states:

Amenity Space - Sport

No development shall commence unless and until details of provision for off-site sports facilities or alternative arrangements have been submitted to and approved in writing by the Local Planning Authority. The facilities shall thereafter be provided in accordance with the approved scheme or the alternatives arrangements agreed in writing by the Local Planning Authority and thereafter implemented, prior to first occupation of the development.

Reason: In order to comply with the provisions of Policy GI6 of the Publication Draft Local Plan which requires that all new

housing sites make adequate provision for the open space needs of future occupiers.

INFORMATIVE:

The requirements of the above condition could be satisfied by the completion of a planning obligation made under Section 106 of the Town and Country Planning Act 1990 by those having a legal interest in the application site, requiring a financial contribution towards off site provision of sport. The obligation should provide for a financial contribution calculated at £45,795.

30. Condition 12 required the submission of details relating to the provision of off-site sports provision. It also provided an indication as to the extent of the financial obligation that would be required. The calculation of which will have been informed by the established frameworks and calculation methods used by the Community Sports Team. Within their comments submitted at consultation stage on the planning application an amount of £45,795 had been calculated with the provision of/ or improving to sport and active leisure facilities at Burnholme Sports Centre, Osbaldwick Sports Club or Hull Road Park and/ or another project within the Ward or connecting Wards, the need for which directly arises from the Development. The comments went on to state that following conversations with England Hockey that City of York Hockey could also be a potential beneficiary for these funds.
31. At the time of writing the monies secured via Condition 12 were received in May 2022 and are presently held within the ring-fenced Planning Obligations account. These monies are available for the Community Sports Team to allocate towards projects which fall within the scope of uses that were identified within the comments that were made at application stage.
32. The £45,795 secured from the Burnholme Green development is a single contribution which has the potential to be used in full or in part at any of the identified recipient sports facilities or clubs. In this case, unlike the earlier example at Derwenthorpe, the obligation is not then apportioned to a specific facility or club as part of the agreement or condition. As such there can be no, absolute, guarantee as to the exact proportion of this obligation that would be available to Osbaldwick Sports Club. It could be the case that the other intended recipients of the obligation may justify

being the beneficiaries of a larger proportion of the obligation spend. Ultimately the proportion of spend will be determined by the Community Sports Team in their capacity as the spending service. Planning and Development Services would seek to ensure that any spend is in accordance with the originally stated objectives.

Accumulated Funds held by the Council & securing further funds.

33. Finally, within the submitted petition reference is made to '*planning gain funds that CYC currently hold from developments all over the city that now totals over £10million of accumulated funds. We would also lobby for a further allocation, for the Osbaldwick Sports Club, from the potentially available £45,000 from the Burnholme housing scheme from the Derwenthorpe Phase Five s106 agreement.*'

The Council is obliged to publish and [Annual Infrastructure Funding Statement \(IFS\)](#) the IFS for the financial year 2022-23 does outline that as at 31st March 2023 planning obligations totalling £10,345.590.48 were held by the Council. It is important to note however this cumulative amount is across the organisation and includes areas such as Transport, Highways and Sustainable Travel; Housing; Education and Sport, Recreation and Open Space.

34. As has been outlined by the earlier sections of this report each planning obligation that is secured must have a degree of specificity insofar as the amount secured and where that is intended to be spent. As such the accumulated funds held by the Council cannot be regarded as an open fund. All of the monies held within the planning obligations holding account are, by virtue of their associated Section 106 agreement or in the case of the conditions securing that obligation, already, to some degree, earmarked for spending.
35. With regard to the specific reference within the petition for Osbaldwick Sports Club to secure a higher proportion of the monies secured from the Burnholme Green development. This could be possible as the obligation secured from this development is earmarked for a series of potential recipients and does not have the same level of specificity as the obligation secured from Derwenthorpe Phase 3A. However, the proportion of spend attributed to a specific facility or sports club would be at the

discretion of the spending service, namely the Community Sports Team, as they are the service which has the existing relationships with sports clubs and the understanding of potential projects which could benefit from receiving funding secured by Planning Obligations.

Consultation Analysis

36. This report is provided to Executive for information and in response to the abovementioned e-petition that has been received. As a result there is no consultation required within the Council or with external partners or third parties. With regard to the securing of Planning Obligations these are ultimately arrived at as a result of the statutory consultation process undertaken as part of the consideration and assessment of a planning application by the Local Planning Authority (LPA).

Options Analysis and Evidential Basis

37. The Executive is asked to note the contents of this report in response to the e-petition that has been received and the background within which planning obligations are secured, administered and spent by the Council.

Organisational Impact and Implications

38. The various implications of this report are summarised below:

Financial

39. This report presents some financial implications insofar as it relates to monetary planning obligations. However, there are no direct financial implications arising from this report.

Human Resources (HR)

40. There are no HR implications.

Legal

41. Section 106 of the Town and Country Planning Act 1990 provides for 'Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation enforceable to the extent mentioned in subsection (3) which restricts the development in or use of the land in a specified way; requires specified operations or activities to be carried out in, on,

under or over the land; and if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period.

42. Such obligations are enforceable by the authority identified against the person entering into the obligation and against any person deriving title from that person. The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.

Procurement

43. There are no specific procurement implications arising from this report. There will be instances where the spending of monetary planning obligations may require the future procurement of specialist goods or services to deliver a particular obligation or piece of infrastructure. Such procurement will be subject to the relevant procurement guidelines/regulations and will include liaison with CYC Procurement and Legal teams as necessary.

Health and Wellbeing

44. There are no specific Health and Wellbeing implications arising from this report. The successful securing and spending of planning obligations for areas such as Sport and Recreation, Public Open Space and Health provision can contribute to the wider Health and Wellbeing Priorities of the Council.

Environment and Climate Action

45. There are no specific Environment and Climate Action implications arising from this report. Planning obligations can more generally, where considered necessary and relevant to offsetting the impacts of a development, secure measures in areas such as sustainable transport. Such measures can be utilised to effect change in people's attitudes and behaviours which can assist in contributing the wider Environmental and Climate related priorities of the Council.

Affordability

46. Monetary planning obligations are secured following negotiation with the developer or group promoting or seeking to secure planning permission for a particular development. The amount of

obligations sought by the Council are informed by frameworks from specific spending service areas who have the operational knowledge of their particular sector. In some instances such as in Education a single monetary planning obligation will not normally cover the entire costs of a particular piece of infrastructure and this will ultimately be supplemented by other funding from capital budgets or grants from external bodies or partners. Typically financial obligations secured via Section 106 Agreement are indexed linked. Indexation can assist with offsetting inflationary changes between the time at which the obligation is secured and the time at which it becomes due for payment. Once paid monetary obligations are held in an interest-bearing account. Both these measures can assist with maximising the resource of monetary obligations.

Equalities and Human Rights

47. The Council recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).

48. At the time of writing there are no equalities implications identified in respect of the matters discussed in this report, which is brought to Executive for information only. The Public Sector Equality Duty and the obligations it places upon the authority are considered as part of the assessment of a planning application.

Data Protection and Privacy

49. This report is brought to Executive for information purposes. As there is no personal data, special categories of personal data or criminal offence data being processed, there is no requirement to complete a Data Protection Impact Assessment (DPIA). This is evidenced by completion of DPIA screening questions AD-07499.

Communications

50. Planning Obligations are secured as part of the planning process. A process which is open to public scrutiny. When assessing planning applications, the requests for planning obligations received from technical consultees are published and are then

subsequently fed into the decision making process all of which is outlined within the relevant planning case report. Post planning decision copies of Section 106 Agreements are publicly available via the online planning register. Allowing interested parties to review them and understand the obligations that have been secured to offset the impacts of a particular development.

Economy

51. The economic development and achieving the economic aspirations of the city are inextricably linked to physical development itself. Planning obligations can assist with offsetting the impacts of development making development acceptable in planning terms. Cumulatively contributing to the economic objectives of the city.

Risks and Mitigations

52. The purpose of planning obligations is to offset and mitigate the impacts of a particular development and make a development acceptable in planning terms. Failure to do this could place an additional burden upon the public bodies who it would then fall to provide such infrastructure, such as the Council. Such impacts could be felt in multiple areas such as within the Council's roles of Local Highway Authority, Local Education Authority and as a provider of public spaces and community sports and recreation facilities.

Wards Impacted

53. Heworth Ward and Osbaldwick and Derwent Wards in respect of the e-petition that has been received. However, the securing, monitoring and delivery of infrastructure secured via planning obligations impacts all wards.

Contact details

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Background papers

- City of York Council Annual Infrastructure Funding Statement 2022-2023:
<https://www.york.gov.uk/downloads/file/9380/infrastructure-funding-statement-2022-to-2023>
- Osbaldwick Sports Club s106 funding e-petition:
<https://modgov.york.gov.uk/mgEPetitionDisplay.aspx?ID=350&RPID=86788550&HPID=86788550>

Annexes

All annexes to the Decision Report must be listed.

- Annex A: City of York Council Annual Infrastructure Funding Statement 2022-2023
<https://www.york.gov.uk/downloads/file/9380/infrastructure-funding-statement-2022-to-2023>
- Annex B: Osbaldwick Sports Club s106 funding e-petition:
<https://modgov.york.gov.uk/mgEPetitionDisplay.aspx?ID=350&RPID=86788550&HPID=86788550>

List of Abbreviations Used in this Report:

CYC: City of York Council.

IFS: Infrastructure Funding Statement.

LPA: Local Planning Authority.

DPIA: Data Protection Impact Assessment