

Briefing Note – Section 106 Agreements.

What is a S106 Agreement?

Section 106 (S106) of the Town and Country Planning Act 1990 allows a local planning authorities to enter into a legally-binding agreement or planning obligation with a landowner / developer in association with the granting of planning permission. The obligation is termed a Section 106 Agreement.

These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms and often refer to off-site infrastructure works such as highway improvements or new facilities such as play areas or local education improvements.

They can also be used to support the provision of services such as health improvements or the provision of affordable housing.

The S106 Monitoring Process.

When a planning permission is issued which includes a S106 agreement, an enforcement monitoring case is opened. This requires enforcement officers to monitor development sites with a view to ascertaining if and when development may have commenced and, if the developer does not subsequently discharge the obligations contained within the agreement, seek this accordingly.

Current cases.

We currently have 42 S106 agreements signed more than 12 months ago open as continuing monitoring cases. These vary in size from smaller schemes which require more modest contributions e.g. a development of 4 houses at Strensall which requires an education contribution of £5,297, to much larger developments requiring significant financial contributions, for example the large housing development at Derwenthorpe.

It is acknowledged that some of these cases have been open for several years; however, there are several reasons why this might be the case. Planning permissions are normally valid for up to 3 years so therefore development does not always commence straight away upon the granting of planning permission. S106 cases can therefore be open for

up to 3 years before any construction works even commences. Generally, the vast majority of S106 agreements do not require any contributions to be paid, at the earliest, until construction works commence. Furthermore, many agreements contain different 'trigger points'. These detail when a particular contribution is due to be provided within the lifespan of the development work.

For example, for a large housing development, it is normal that a particular obligation or financial contribution might be required to be met upon occupation of the first dwelling, and then a further obligation is required only upon occupation of the 50th. However officers would keep the enforcement monitoring investigation open until all the obligations of the S106 agreements have been complied with. This can sometimes take several years depending on the size of the development.

Using the Derwenthorpe development as an example, this S106 agreement is dated 4/10/2006 and at that point an enforcement monitoring case was opened. Development did not then commence on site until 2011, 5 years after the S106 agreement was signed. The contributions required and their respective trigger points are as follows:

- i) £160 per dwelling towards car club.
- ii) Affordable housing.
- iii) Education contribution £606,330
- iv) Off site recreational facilities £318, 000
- v) Sustainable Travel £242, 000

Trigger Points:

To pay 1st contribution prior to occupancy of 60 units (Education £206, 330 and recreation facilities £79,500).

2ND contribution prior to occupancy of 150 units (Education £150 000 and recreation £79,500).

3rd contribution prior to occupancy of 400 units (Education £150, 000 and recreation £79,500).

4th contribution prior to occupancy of 500 units (Education £100, 000 and recreation £79,500)

Sustainable travel plan pay £60,000 prior to occupancy and then every year after that until paid.

Therefore, even though it is now more than 5 years since the S106 agreement was signed and construction work has been continuing on site for approximately a year, it is still likely to be many months before the first financial obligation is required to be paid. However the enforcement monitoring case remains open all through that time and will continue to be so until all contributions and requirements of that agreement have been met. This can sometimes be several years. This can lead to the perception that the agreements are not being policed but this is not the case.

Another example is the Hungate development where the agreement was signed in 2006 requiring a series of contributions totalling £6, 453, 437. Due to the various trigger points throughout the construction process, much of that remains still to be paid but is not yet due. However the case has been open for nearly 6 years and remains open for further monitoring.

Monitoring of agreements.

It is acknowledged that due to resource issues within the enforcement section, the agreements have not always been checked and monitored on a constant basis. During this time, and pending the appointment of a temporary enforcement officer to backfill Union facility time, the team leader has largely dealt with monitoring these S106 cases. Visits often have to be paid to individual sites to ascertain where construction is up to and if trigger points have been reached. Officers do this as part of their existing workload when they are out on site together with periodic reviews of outstanding cases.

For Members' information, as well as actual signed S106 agreements, financial contributions have, for several years, also being required for smaller developments e.g. for one house or more. These smaller contributions are almost always dealt with by way of planning conditions imposed on planning permissions and these also require monitoring. There are approximately 170 of these cases.

Whilst the condition is worded to give the applicant/developer the option to enter into a formal S106 agreement if they so wish, most choose to simply pay the required contribution (generally towards Public Open Space provision) direct to the Council by way of a simple discharge of

condition. The trigger point for the payment is often upon occupation of the dwelling and therefore sites required monitoring to check if the house/houses are occupied. This can require multiple visits over several years. If the houses are occupied and the payment has not been received then it is down to officers to chase this in writing using enforcement procedures.

A recent internal audit review was carried out to look at the whole process of S106 agreements. This included the transparency and monitoring of the process from start to finish. The conclusion of this review from a Development Management perspective was that the process was found to be both transparent and working effectively in terms of receiving and distributing the money to the appropriate Directorates but it recognised the resource difficulties in constantly monitoring sites on top of other enforcement priorities. However, as a follow up to this regular meetings now take place with colleagues in the Finance section who hold and distribute any monies paid, to review outstanding cases and update accordingly.

As part of these meetings, Building Control records are being checked and developments are now being revisited to ascertain the up to date position with regard to trigger points on individual sites. It is also intended that letters will be going out to Parish Councils in the very near future seeking their future co-operation in identifying developments where construction work has commenced.

A combination of this and a proposed 'blitz' by officers to visit all older developments within the next 2 months will establish the up to date position on all these cases and where necessary, any enforcement of required contributions will follow.

As mentioned, it is anticipated that the full time enforcement officer post, currently vacant due to the previous post holders being seconded to work as GMB conveners, will be filled shortly. It is intended that this officer will then provide assistance in the checking and monitoring of outstanding S106 contributions.

The Future - The Community Infrastructure Levy.

It is expected that the use of Section 106 agreements will largely be replaced by the Community Infrastructure Levy. This is a new tariff based system depending on the scale of the development that local authorities in England and Wales will charge on new developments in

their area. The money can be used to support development by funding necessary local infrastructure, for example highway schemes, park or play area improvements or a new health centre or school. The system is supposed to simplify the whole process by providing certainty of the amounts to be paid and remove the need for negotiations.

Although it became legislation on the 6th April 2010 through the Community Infrastructure Levy Regulations 2010 it has not been introduced yet in York. The levy requires an evidence base of infrastructure needs to be formulated, and then from the costs are used to inform the tariff schedule. The Council is currently working on infrastructure requirements (in cooperation with adjoining authorities) and is putting the procedures in place to introduce the Levy through the Local Development Framework. It is expected that once established the S106 regime will be effectively phased out.

Officers will be attending the Committee meeting on the 27th March and will be available to answer any questions Members may have on the process and discuss further any points they wish to raise.

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