

Planning Committee

25th July 2013

Section 106 Agreements Update

Introduction

- 1 This report informs Members of the process of the collection and distribution of financial contributions received via Section 106 agreements, and reports on current agreements and payments received since 1st April 2012.

Background

- 2 Section 106 of the Town and Country Planning Act 1990 allows a local planning authorities to enter into a legally-binding agreement or planning obligation with an applications site landowner in association with the granting of planning permission. 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. The signed document containing the obligation (s) is usually termed a Section 106 Agreement.

Monitoring and Collection

- 3 When a planning permission is issued which includes a s106 agreement, a monitoring case is opened. This requires an enforcement officer to monitor the development site with a view to checking if and when development may have commenced, or if a certain stage has been reached at which for example, a financial contribution is due. If the developer does not subsequently discharge the obligations contained within the agreement at the relevant time, officers will pursue the matter accordingly.

Distribution and Expenditure

- 4 Once a due payment is received it is recorded and then distributed by the Council's Finance team to the section of the Council to whom the

financial contribution in the s106 agreement refers. The use of most commonly sought contributions are as set out below:-

Leisure / Public Open Space.

- 5 On receipt of payment into the “leisure” holding account, it is logged and recorded. Depending on the location and amount a number of routes are followed. If it is a smaller sum in a Parish / Town Council area, the fund is released to the local council via a payment requisition within a few weeks of the payment being confirmed in the leisure account. Where the payment contains a significant amount towards formal sports provision this will element may go direct to a local sports club.
- 6 Where the payment is within a non parish area, the money might be allocated to a CYC project, with formal sports provision contributions being allocated to either CYC sports land or to a local sports club as appropriate.
- 7 When using the S106 payments and deciding where these should be allocated, officers look at what the money has been received for and what it should contribute towards as specified in the S106 agreement (e.g. Children’s Play). They then look at what under-provision exists as identified in the Open Space Sport and Recreation Study and how far the open space area is from the proposed new development to which the S106 agreement refers. If the new development is within the required distance criteria based on walking times from the area of open space, funds are allocated accordingly to that development. Once used the money is recorded on a spreadsheet and on the corporate system for audit purposes. Often S106 payments contribute to or leaver into other funds towards Open Space. These include Heritage Lottery funding, Sports Lottery funding or the Playbuilder Scheme.
- 8 This approach was approved at July 2011 Cabinet Member decision session for Leisure, Culture and Social Inclusion.

Education Provision.

- 9 Once received by CYC, education s106 funds are transferred into a central Adults and Children’s Education (ACE) cost centre for holding purposes, and marked as received in the ACE s106 database (which is maintained by the School Services team). A single education s106 contribution can comprise separate amounts for pre-school, primary and secondary school phase provision. These details are recorded in the database, along with details on any restrictions applicable (e.g. whether the amounts are tied to a specific school or local area, and any payback timescales applicable). The database can be queried by school, area,

and 'phase' to inform how much s106 might be available for specific capital projects.

- 10 Often, individual s106 amounts are paid on the basis of pupil place provision being needed for a relatively small number of pupils (e.g. four primary pupils). In these cases, schools are asked to run 'bulge classes' until the level in demand is high enough to require the additional classroom or facilities.
- 11 Depending on the size of the development to which the S106 relates, it can be some time after the completion of the development before new physical accommodation is required. Pupil number forecasts for each school (which take into account pupil yield from housing developments) enable the School Planning team to plan when new accommodation will be needed on specific schools sites. Capital projects are developed for provision of new places, in line with the ACE School Place Planning Framework. Early on in the development of these projects, the s106 database is queried to see if the capital budget for expansion projects can be supplemented by any available s106, respecting any conditions that might be attached for the usage of the s106 itself.
- 12 S106 money allocated in this way is transferred into the relevant capital cost code, enabling effective outturn reporting at year end, and is marked as spent (along with a date flag) in the ACE s106 database. Any partial spend of specific s106 amounts is also recorded in this way, again for audit purposes.

Affordable Housing Provision.

- 13 All newly validated planning applications are reviewed by the Housing Strategy and Development Team in order to identify residential applications where an affordable housing contribution might be required and any commuted sum amount that may be required is agreed with the appropriate Development Management officer and this is then included in a S106 agreement which forms part of the Planning approval. The scheme is then entered into the affordable housing database, including details of the expected commuted sum.
- 14 Monitoring of schemes is undertaken on a regular basis, using reports showing schemes according to their planning and construction status. All commuted sums received are entered into the database, as is all spend against these sums. Reports on these are again reviewed regularly. These are monitored by officers so that the sums are spent in time within the terms of the S106 agreement.
- 15 A total of £1,232,120 is currently available, a large element of which was received in a single payment relating to the Hungate site. Cabinet

have approved the use of this sum to contribute as required to the first phase of the new council house building programme. Any outstanding and future sums will be used to maximise the provision of affordable housing. This may be spent through a variety of mechanisms with regard to value for money and strategic priorities. Any decisions on the spending of commuted sums will be made and approved through the appropriate reporting mechanisms.

Highway Works Provision.

- 16 S106 funding is secured for a wide range of mitigation measures, and initiatives linked to highways, transport and travel. These include the following:
- i) Full delivery of physical highway works/improvements, e.g. the upgrade to an existing roundabout or new traffic signals.
 - ii) Part contribution towards a future highway infrastructure scheme to be delivered by CYC, e.g. a strategic cycle route, P&R, Outer Ring Road .
 - iii) Public transport: which can be funding for new/enhanced bus services, bus stops (including upgrades) and passenger information.
 - iv) Car Club: to integrate/establish new CC locations or enhance existing provision, including membership incentives for new residents.
 - v) Travel Plans: securing the provision of these and travel plan co-coordinators (although TP's are regularly secured through planning condition).
 - vi) Traffic Management/Traffic Orders: this cover often immediate issues that can arise from a development focusing on things like on street parking and residents parking zones; it can also include for future monitoring/surveys and enforcement.
 - vii) CCTV: either for the provision of new public cameras within/adjacent to developments or part contribution to be pooled for new or enhanced CCTV in the area.
- 17 It is dependant on the nature of the s106 funding as to how and when it is utilised. In addition larger developments can often have several 'trigger' points. This can mean that the delivery of an improvement or implementation of measures has either to be phased, or the Council will need to await the full contribution before being in a position to implement it. Funding is allocated and in effect ring fenced for the specific purpose, and is drawn down via dialogue with colleagues in Finance. The s106 monies can as illustrated above either be utilised directly by the Council or used by a third party to deliver the obligation, for example improved bus services. Council officers would outline to the bus operators what

has been secured and then agree how this funding will be transferred to them and what services they will need to deliver, often for a set period of time. A similar process is also followed with the car club service, with the operator providing officers with a “proposal” as to how the funding will be utilised.

- 18 Officers in Highway Network Management are notified when funding is received and they then coordinate with a range of colleagues who are charged with the design and delivery of projects, such as new bus stops, and pedestrian crossings. The contribution is allocated and recorded, again for audit purposes.

Current Monitoring

- 19 There are currently 45 open signed S106 monitoring cases. These remain open because not all the obligations contained in the relevant s106 agreement have been met. Monitoring of these cases is on-going and can be a time consuming and long process. Planning permissions are normally valid for up to 3 years or in the case of large-scale schemes, a longer period can be agreed. Clearly development does not always commence straight away upon the granting of planning permission, and so no obligations are due. S106 cases can therefore be ‘open’ for up to 3 years or more before any construction works even commences. The majority of s106 agreements do not require any contributions to be paid until construction works commence.
- 20 Many agreements contain different 'trigger points' once the development has started. 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 dwelling. 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, and requires constant monitoring by officers. In the event of payments not being received despite officers’ requests, once all other reasonable approaches to remedying a failure by a developer to comply with an obligation to pay financial contributions have been exhausted, the Council could issue court proceedings against the party that is in breach of its obligations. The court proceedings would be for the recovery of the financial contribution payable as a civil debt under a contract (i.e. a s106 agreement) together with the Council’s costs of the proceedings.

- 21 As a result of policy changes in 2005, financial contributions are also required for smaller developments e.g. an open space contribution for one new dwelling or more. These smaller sums are the subject of a planning condition attached to the relevant application requiring either on or off-site open space provision or if not possible, a section 106 to secure the financial contribution. On the granting of permission with the relevant condition a monitoring case is raised and these are also monitored by the Enforcement Team. In recent months, following further clarification from the Planning Inspectorate regarding the use of such conditions, a system whereby the applicant enters into a Unilateral Undertaking (also under s106 of the Planning Act but signed only by the owner/developer) has recently been introduced.

Analysis

- 22 From the start of the 2012/13 financial year (i.e. 01/04/2012) to 31/05/2012, a total of £18, 218,139 has been received in s106 payments. This includes a payment of £17,442,000 in connection with the new Community Stadium and £776, 139 in other payments. Over the last 12 months, officers have prioritised monitoring and pursued payment where necessary upon the top 40 highest contributing schemes (see Annex A). 33 of these schemes had no overdue payments, and for those identified as owing payments, officers are in correspondence with the developers to ensure receipt. Work is continuing on the process of monitoring all development sites and enforcing payments where necessary.
- 23 The monitoring and securing of payments can be time consuming, as due payments are often only made following (sometimes necessarily persistent) contact from the enforcement team, and in cases where ownership has changed or the developer is no longer operating, this can be additionally complicated. However through the analysis of the current agreements it is considered that the required payments are being appropriately monitored and secured.
- 24 Below is a table which shows the yearly number of S106 agreements signed since 2008 to date. This includes the total financial contributions required in those agreements and the total amount of S106 funds received that year (all cases).

Financial year.	New S106 Agreements signed	Total Contributions agreed (£) in those cases	Total S106 funds received (£) in year
2008-2009	6	320,730	720,403
2009-2010	11	760,701	316,460
2010-2011	2	22,971	515,897
2011-2012	8	349,647	490,628
2012-2013	10	18,655,711	742,848
2013-current	11	159,948	17,713,344

- 25 There are three cases over the last 10 years where the developers have gone into liquidation prior to paying the S106 contributions. In 2 of these cases at Birch Park, Huntington and Pope's Head Alley off Peter Lane, a reduced final payment taken from any remaining assets has been received or agreed with the receivers/liquidators in order to ensure that the Council received at least some of the contributions due.
- 26 In the case of the Birch Park development the developer went into liquidation owing £371 930 in S106 contributions. It has subsequently been agreed with the liquidator that the Council will receive 75% of the money raised from the upcoming sale of outstanding Ground rents at the site and the Section 106 agreement is in the process of being amended to reflect this. In the Pope's Head Alley case, the Council have received £16,748.24 out of the original contribution of £66,308 due in an agreement dating back to 2003 and in the circumstances the Council are unlikely to be in a position to pursue this any further.
- 27 The £5,297 amount owed from a 2003 planning permission for a residential development at The Cattle Breeding Centre at Stockton on the Forest has been written off when it was discovered that the developers had gone into liquidation a number of years ago and there was no prospect of this amount being recovered.

Consultation

- 28 This is essentially an information report for Members and no consultation has taken place regarding its content.

Council Plan

- 29 In light of the purpose of financial obligations i.e. to address a range of infrastructure and community needs resulting from new developments, the report is relevant to the “Create Jobs and Grow the Economy” , “Get York Moving”, “Building Stronger Communities” and “Protecting the Environment” priorities of the Council Plan.

Implications

- 30 Financial – There are no financial implications directly arising from the report.
- 31 Human Resources – There are no Human Resources implications directly involved within this report and the recommendations within it other than the need to allocate officer time towards the provision of the information.
- 32 Legal – There are no known legal implications associated with this report or the recommendations within it.
- 33 There are no known Equalities, Property, Crime & Disorder or other implications associated with the recommendations within this report.

Risk Management

- 34 In compliance with the Council’s risk management strategy, there are no known risks associated with the recommendations of this report.

Recommendation

- 35 That Members note the content of this report.

Reason

- 36 To inform Members of the current position in relation to the monitoring, collection and use of financial contributions secured through Section 106 Agreements.

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**Report
Approved**



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2013

Specialist Implications Officer(s) None.

Wards Affected:

All Y

For further information please contact the author of the report.

Annexes

Annex A – 40 Developments with Section 106 highest contributions.