
SECTION 106 AGREEMENTS : POSITION STATEMENT APRIL 2017

Purpose of the Report

1. The purpose of this report is to update Planning Applications Committee on the position with respect to Section 106 Agreements for its information and monitoring on a six monthly basis.

Summary

2. Members asked for a report with respect to Section 106 Agreements for its information and monitoring on a six monthly basis
3. Members will note the information in the attached table that sets out the current position in relation to the information requested.
4. The table shows a total of 36 Section 106 Planning Agreements. The total value of the live permissions or agreements is currently £11.9m (up from £8.7m) The total value of agreements associated with development that is not proceeding is currently £0.4m
5. For the 36 live permissions and agreements, the Council has received £3.27m of which the Council is obligated to carry out necessary works or services in relation to the relevant development. In that respect £1.4m has been spent on obligations.
6. Since November 2016 the council has received a total of £542k in S106 agreements.

Recommendations

7. It is recommended that Members receive the report and, in particular note :-
 - (a) that updates of the position with respect to Section 106 Agreements will be reported to the Planning Applications Committee for its information and monitoring on a six monthly basis.
 - (b) That the Director of Economic Growth is the designated senior responsible officer for S106 matters.
 - (c) That the Section 106 position statement will be made available on the Council's web site.

Ian Williams, Director of Economic Growth

Background Papers

There were no background papers used in the preparation of this report.

S17 Crime and Disorder	This report has no implications for Crime and Disorder
Health and Well Being	There are no direct implications from this report.
Carbon Impact	There are no issues which this report needs to address.
Diversity	There are no issues relating to diversity which this report needs to address
Wards Affected	Relevant to all and the particular wards in which developments referred to are undertaken.
Groups Affected	The impact of the report on any individual Group is considered to be minimal.
Budget and Policy Framework	This report does not represent a change to the budget and policy framework.
Key Decision	This is not a key decision.
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	Section 106 agreements are an essential tool for ensuring the appropriateness of development within the context of the ODPP.
Efficiency	No direct impacts.

MAIN REPORT

Background

Section 106 Agreements

8. 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.
9. The Government's policy on the use of planning obligations is set out on the [Planning Practice Guidance website](#). Local planning authorities must take this guidance into account in their decisions on planning applications and must have

good reasons for departing from it.

10. Planning Obligations are used for three purposes:-
 - (a) **Prescribe** the nature of development (for example, requiring a given portion of housing is affordable).
 - (b) **Compensate** for loss or damage created by a development (for example, loss of open space).
 - (c) **Mitigate** a development's impact (for example, through increased public transport provision).
11. S106 Agreements set out obligations between the Developer and the Local Authority which are binding on both sides if they are bilateral agreements. Developers can also make Unilateral Agreements. All of the agreements listed on the attached table are bilateral agreements. These will normally be in the form of positive and negative obligations. A positive obligation is a commitment to do something. Examples of this might be for the developer to provide a play area, or to provide land for a school and these would normally be related to triggers in the permission for such commitments to be completed. These are reflected in the table under non-financial commitments (to the Council). Equally the agreement might commit the Local Planning Authority to do something usually in response to the developer providing the necessary funding. This is more likely to relate to off-site works such as improvements to local play, recreational facilities and education.
12. Negative obligations are a commitment not to do something. For example a developer may agree to not start building the 50th house until the local school has been extended. These negative obligations are not represented on the attached table unless they are a specific trigger to a positive obligation to make a payment to the Council.
13. Planning obligations must be directly relevant to the proposed development. They cannot be used to correct existing deficiencies in infrastructure or services and they cannot generally be used for revenue projects but there are some exceptions.

Members Request

14. Members asked for a report that updates of the position with respect to Section 106 Agreements for its information and monitoring on a six monthly basis
15. The table shows a total of 36 Section 106 Planning Agreements. The total value of the live permissions or agreements is currently £11,919,692 The total value of agreements associated with development that is not proceeding is currently £404,140
16. For the 36 live permissions and agreements the Council has received £3,272,782 in payments and of which the Council is obligated to carry out necessary works or services in relation to the relevant development. In that respect £1,406,130 has been spent on obligations

17. Since November 2016 the council has received a total of £542,125 in S106 agreements.

Reflections on the position statement

18. Monitoring and the collection of the information has been improved with more liaison between the Planning Service and Finance departments. The upgrade to the Uniform Planning Management System was completed in February and the Exacom S106 monitoring software will be introduced in Q2 2017.
19. In order to create a single point of responsibility for S106 obligations the Director of Economic Growth has been designated as the Senior Responsible Officer. The Director will through his teams manage the monitoring and commissioning of projects to other departments as appropriate. In that context it suggested that the Director presents the S106 Position Statement to the Capital Asset Group as a “shadow capital budget” in order to align spending either with the Council’s other priorities or with matched funding opportunities.
20. To ensure that the Section 106 position statement has more transparency than it currently does a 6 monthly report will be presented to the Planning Applications Committee for its information and monitoring. It is also important that the development industry and the public have confidence that appropriate mitigation or compensation is being delivered. The position statement will also be available for public inspection on the Council’s web site.