

## Cabinet

26 March 2009



## Proposed Protocol for Section 106 Agreements

Key Decision ENV/LGR/22/08

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### Report of Ian Thompson, Corporate Director Regeneration & Economic Development

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#### Purpose of the Report

1. To recommend a protocol for the Council for dealing with Agreements entered into under Section 106 of the Town and Country Planning Act (as amended) with the specific aims of ensuring a common approach among the proposed locality Offices and to ensure proper financial processes are followed when dealing with such Agreements.
2. The report also provides a recommended approach for facilitating effective community consultation and interaction with 106 issues; and also provides a robust framework for ensuring Elected Members of the Authority are properly engaged in decisions as to how commuted sums received through such Agreements are recycled back into communities.

#### Background

3. Section 106 of the Town and Country Planning Act 1990 (as amended) provides the legislative power for Local Planning Authorities to enter into legal agreements with applicant's for planning permission as part of their determination of planning applications. The relevant Circular advice on the matter; which has been supported through decisions made on planning appeals and ultimately through the Courts, advises that Agreements should only be sought to make development proposals acceptable and which otherwise would ordinarily be refused. As such Authorities should restrict their negotiations with developers to matters which are relevant to land use planning interests and which are considered necessary to allow a development proposal to proceed.
4. Against this background all the present County Durham Authorities have for some time used 106 Agreements to mitigate the impacts of new development, either by securing on site provision (which falls outside the scope of what could be secured through a planning condition) or through the securing of a commuted sum to compensate for a lack of on site provision. Most commonly Agreements have been used to secure financial contributions towards new leisure facilities as part of proposals for new residential development on the grounds of the increased demand arising from a proposed development. Agreements have also been used to secure developer funding for affordable housing, highways schemes; landscaping works and public artwork provision.

#### Direct Service Delivery Issues

5. The Authorities Development Management Service will be the lead service team within the Council responsible for negotiations on 106 Agreements; this being an integral part of negotiations carried out by Planning Officers as part of consideration of applications for planning permission.
6. The relevant Circular advice says that negotiations on 106 Agreements should be undertaken having regard to the aims of the relevant development plan in force for the area. Members will recall from the paper presented to the meeting in November that until such a time as the new Local Development Framework (LDF) for County Durham is adopted (scheduled for June 2011) that the development plan will continue to comprise the adopted Local Plans of the old former District Authorities, together with the recently adopted Regional Spatial Strategy for the North East, published July 2008.
7. This state of affairs will invariably lead to some level of confusion for customers of the planning service post 1 April 2009 as it will not prove possible to ensure a completely unified approach is applied across the whole of the County in terms of 106 negotiations. This is on the grounds that the existing Local Plans contain a different suite of policies; including those relating to likely 106 requirements. However Officers are confident that the potential adverse impact of this disparate planning policy approach can be minimised by the provision of effective pre-application advice by Officers to explain to applicants, at an early stage in the development process, the likely requirements raised by a particular development proposal, based on the former District areas.

### **Publicity of Planning Applications**

8. The consultation process carried out in relation to planning applications received by the Council will ensure that any 'developer offer' in regard to potential 106 Agreements is fully advertised. This will include that where appropriate a copy of any draft 106 Agreement, or document pertaining to that, is included in the public register copy of the planning application, which will be held available at the locality office for the public to view. Similarly any draft 106 Agreement will be part of the application pack of documents published on the Council's web site.
9. This approach will not only ensure that best practice advice is complied with, but will also enable as wide a possible community engagement on the relevance of the 106 offer made. This will allow members of the public to consider the full implications of a development proposal prior to them making their views known to the Authority.

### **Consideration of Planning Applications**

10. Assuming, following due consideration of the application by Officers, it is considered appropriate to recommend the granting of planning permission for the development on the understanding that the proposed 106 Agreement will be provided, then the relevance of the 106 will be addressed in the relevant report (either Committee of Delegated) prepared by Officers. This will include the setting out of why the proposed 106 Agreement is considered necessary in order to allow the development to proceed.

11. In relation to Agreements that are intended to secure commuted sums the report will clearly state for what purposes the funds should be used (for example leisure use) and also make reference to any geographical constraints on where the money should be spent. This will normally be the same electoral ward area in which the development is proposed to occur, on the grounds that this is the relevant geographical area likely to experience the increased demand for the relevant services/infrastructure the 106 Agreement is designed to address.
12. The Development Management service will maintain a register of 106 Agreements, containing a list of Agreements entered into by the pre Unitary Authorities, and also all Agreements entered into post 1 April 2009. This register will be an important document for the new Authority. The provision of such a Register, together with the ensuring of regular methodical updating of it, is critical to ensuring exemplary financial practices are followed in relation to 106 Agreements.
13. The Register should be used to provide a true copy of all Agreements together with a summary document, in Excel format, with details of the following important issues:-
  - The Planning Application Reference Number
  - Name and contact details of Case Officer
  - The address of the application site
  - The electoral Ward to which the Agreement relates
  - Description of Development
  - Description of the requirements of the 106
  - Amount of monies due
  - Date of commencement of development
  - Date monies received
  - Details of trigger points for payment
  - Details of phasing for payments
  - Date of any refund clause
  - Note of Member consultation and outcome
  - Date monies spent out; for what purpose and by whom
14. It is recommended that the Head of Planning be the responsible Officer for the proper monitoring of the Council's 106 Register. This will include ensuring development sites are monitored to ensure commencements are known and that relevant trigger points for 106 payments are observed. The Head of Planning will also be responsible for ensuring the prompt payment from developers of monies due; including through the issuing of instructions to the Council's Legal Services Team to initiate the appropriate legal action in instances of payment default and general non compliance from developers. Finally the Head of Planning will also be responsible for the monitoring of Agreements to ensure attention is paid to any refund dates.
15. Allied to the Head of Planning's role as monitoring Officer for 106 Agreements, will be the duty of ensuring that monies received from 106 Agreements are spent out in a timely manner and for a purpose commensurate to the planning justification for requiring the payment. To this end it is proposed that the Head of Planning and the Cabinet member will be responsible for establishing a multi disciplinary Officer/Member working group from within the Authority to meet on a regular basis, and no less

frequent than once a quarter, whose purpose will primarily be to generate and consider proposals for the allocation of commuted sums received through 106 Agreements.

### **Community Engagement**

16. In recognition of the importance that the new Authority attaches to community engagement in decision making, it is considered important to ensure that this approach is followed through in any decisions as to how 106 funds are to be spent. This is particularly so bearing in mind it is likely to be individual communities that have experienced the additional pressures to services and general additional environmental impacts resulting from the original development that generated the payment of the 106 funds.
17. As a result all schemes proposed for funding through 106 funds should be able to demonstrate conformity to the Community Strategy for the locality and be able to demonstrate clear community support. This may be through agreement at the relevant Area Action Partnership; Town or Parish Council support; direct citizens action (for example the submission of a petition to the Authority) or through addressing a clear community need which has been identified through an up to date Council strategy (e.g. a playing pitch strategy; housing needs survey; ward profile; community / parish plan).

### **Elected Members Role**

18. All decisions on the allocation of 106 funds are to be taken in conjunction with the relevant cabinet member.
19. In addition it is important that other Elected Members, as community leaders, have a full say in decisions as to how 106 monies should be allocated in their Wards. As such Ward Members should submit requests to the Head of Planning for consideration by the 106 Officer/Member Working Group.
20. In all cases, following the 106 Officer/Member Working Group resolving to promote the use of 106 monies to a particular scheme, the Head of Planning will ensure full consultation is carried out with relevant Ward Members. This consultation, which for proper Audit purposes should be carried out in writing, should provide Ward Members with all the relevant particulars of a proposal, including draft plans/specifications if appropriate, and should provide the Ward Members with 21 days to comment.
21. The Head of Planning will also ensure that regular reports are presented to the Authorities Planning Committees (the 3 area ones in addition to the central strategic committee) and the AAPs to ensure Members are kept fully abreast of the latest position in respect to 106 issues.

### **Conclusion and Recommendation**

22. In conclusion it is considered that the arrangements set out in this paper will provide for a protocol that will not only ensure integrated and seamless service provision within the Council post Vesting Day; but will also provide a framework for effective community and Elected Member engagement in matters associated with 106 Agreements.
23. It is therefore **recommended** that:

- i) The working arrangements for dealing with Section 106 Agreements, as outlined above are adopted by the Authority

**Background Papers:** None

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