

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Improving Places Select Commission
2.	Date:	Wednesday 28th November 2012
3.	Title:	Planning Obligations – Section 106 Procedures
4.	Directorate:	Environment and Development Services

5. Summary

Section 106 agreements are a means of securing community benefits through the planning system. This report reviews the way Rotherham implements s106, the benefits accrued and the proposed changes to be made in the way the obligations are dealt with.

6. Recommendations

- **The contents of the report be noted**
 - **Further annual reports be produced for this Commission.**
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7. Proposals and Details

A Section 106 Agreement is a legal agreement between the Local Planning Authority (LPA) and the applicant/developer and any others that may have an interest in the land.

They are Planning Obligations authorised by Section 106 of the Town and Country Planning Act 1990 as amended by Planning and Compensation Act 1991 Section 12. The Community Infrastructure Levy Regulations 2010 also sets out restrictions on the use of Planning Obligations.

Planning Obligations are used following the granting of planning permission (normally major developments) to secure community infrastructure to meet the needs of residents in new developments and/or to mitigate the impact of new developments upon existing community facilities. They can also be used to restrict the development or use of the land in a specified way or require specific operations or activities to be carried out on the land.

Benefits will be secured either in kind or via financial contributions depending on what is required. The main areas to benefit are generally: Affordable Housing; Primary and Secondary Education; Urban Green Space; Highways Improvements; Public Transport etc. This list is not exhaustive and any other relevant and necessary matter may be included within a Planning Obligation that can not be secured through the normal planning process but is required in order for the development to be deemed acceptable in planning terms which would otherwise be refused.

Each development is judged on its own merits, however there are certain requirements that apply to most major applications e.g. Affordable Housing / Education Provision.

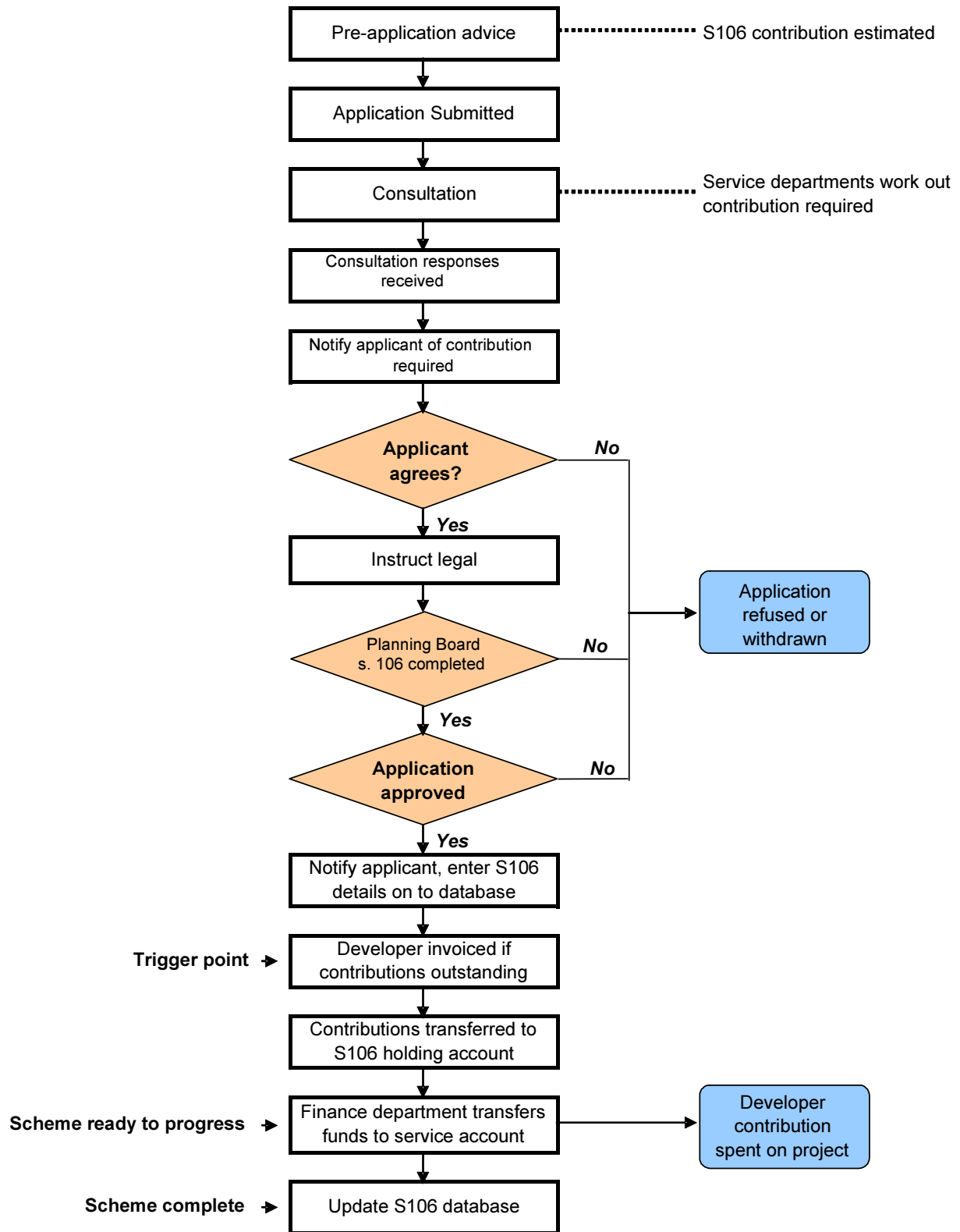
The use of planning obligations is governed by the fundamental principle that planning permissions cannot be bought or sold.

Current Policy

Currently, the Planning Service encourages all developers to engage in the pre-application advice process where all issues, including potential s106 requirements, will be discussed. All planning applications submitted for 15 or more dwellings are required to contribute to the provision of affordable housing in consultation with Strategic Housing & Investment Services. For all developments over 10 dwellings, consideration is given to the necessity for the provision of open space (in consultation with Leisure and Greenspaces) and Education provision (considered with Schools and Lifelong Learning). All other requirements are considered on a case-by-case basis in consultation with the necessary service areas.

This process relies on each recipient service engaging in the process, considering the impact of the proposed development at an early stage, then providing a justified reason for the required contribution together with calculations used, to ensure consistency.

Figure 1: Section 106 planning obligations process



The majority of planning applications including a section 106 agreement are reported to Planning Board and the details of the proposed agreement included in the report for consideration by Members. At this stage this normally includes the heads of terms of what is required together with details of any reasons such as abnormal costs that the developer claims should be taken into account in reducing the requirements. Assuming Board resolves to approve the application Legal Services complete the Planning Obligation prior to planning permission being issued. The details of the amount to be paid and when (at specified trigger points) or the action required is set out in the Planning Obligation.

The collection of the contribution therefore depends on whether the planning permission is granted and then on whether the applicant actually implements the planning permission.

Should the development be implemented, within the 3 year period generally allowed, and a trigger point reached then an invoice is raised and the monies credited to a central code before Finance transfer the funding to the recipient service area. The process is shown in the form of a flow chart at Figure 1 above.

Once s106 agreements are signed the “trigger points” for contributions control when payments should be made and this may be at various stages in the development e.g. prior to commencement (which may be any time within 3 years of the permission being granted) or on completion of “x” amount of residential units / floorspace or prior to occupation. Therefore the monitoring of the development and s106 agreements is essential to ensure that payments are made at the appropriate time. In terms of financial planning of projects, utilising s106 monies, this is difficult to do in advance with any certainty as the contribution relies on the timescales around progress of the development which is outside of the Council’s control.

The move away from s106 to Community Infrastructure Levy will remove the reliance on information being provided by individual services for each individual application, and therefore provide more certainty for developers, the Local Authority and the public on the infrastructure provision related to new development. However, it must be noted that s106 can still be used in conjunction with CIL going forward.

Benefits Secured

Contributions secured by s106’s, negotiated through the planning process over the last 5 years, amounts to approximately £22,000,000 pledged for: open space provision and maintenance, highway improvement, bus service subsidies, education contributions etc. Obviously this contribution will only be paid if the development is implemented and once the trigger point is reached. For example a large percentage of the monies (approximately £15 million) to be generated through s 106 relates to the Waverley New Community (3980 houses, schools, retail, community facilities, green space, play space etc) which will be built out over a 20 year period with trigger points though out the life of the development. Over the same period there are additional s106 requirements which do not require a financial contribution e.g. play area provision on site and provision of affordable housing.

Payments made over the same period (where earlier permissions have been granted, developments implemented and trigger points reached) total around £1.5

million and relate to provision of highway improvements around the Advanced Manufacturing Park, provision of play areas and multi use games areas, education contributions etc. Additional non financial requirements have been provided and include a requirement to provide 239 affordable residential units.

Community Infrastructure Levy (CIL)

It is expected that the use of s106 agreements will be largely replaced by CIL. The tariff based system will require set contributions based on the scale of the development. The monies can be used to support development by funding necessary local infrastructure, for example highway schemes, play areas, schools etc and is intended to simplify the process by providing certainty about the amounts to be paid and therefore remove the necessity for each contribution to be negotiated separately for each application.

Work has been undertaken as part of the Local Plan to produce an Infrastructure Delivery Plan – which provides the evidence base around infrastructure needs across the Borough to accommodate the new development proposed – the costs from which will be used to inform a tariff schedule. Once the tariff schedule is in place the requirement for s106 will be much reduced and used for site specific mitigation only.

Both s106 and ultimately CIL are dependant on the economic climate and viability of sites and schemes. Current advice from the Government encourages Local Planning Authorities to renegotiate s106 at a developers request if viability is an issue to bring forward stalled sites.

Developments

1. In addition to the work carried out on CIL for the Local Plan a very clear policy relating to developer contributions has been included which states:

“Where appropriate and necessary, development proposals will be required to provide contributions (including financial contributions and planning obligations) in order to meet the needs arising from the development itself and/or compensate for any adverse impact of the development on local amenity or resources. Such contributions will relate to the provision of:

- a) affordable housing;*
- b) the provision, enhancement and maintenance of any greenspace and play equipment on-site or the enhancement of off-site facilities where these would serve the development’s open space needs*
- c) new and/ or improvements to infrastructure including public and/ or private transport infrastructure including footpaths and cycle lanes, travel plans, highways and public transport improvements;*
- d) the progressive introduction of network management technology to maximise benefits for public transport, cycling and to reduce congestion and delay.*
- e) improvements to the quality of individual green infrastructure assets and the broader green infrastructure corridor network*

- f) *new and/or improvements to existing sport, leisure, recreation and other community facilities such as health facilities, places of worship, community building provision;*
- g) *provision of educational infrastructure to accommodate anticipated demand arising from development;*
- h) *workplace facilities and support, such as training plans and programs, and childcare facilities;*
- i) *the provision of education programmes, training and local employment opportunities*
- j) *countryside access arrangements, woodland planting/ management and local landscape and environmental improvements schemes;*
- k) *habitat creation/ enhancement on and off site as the result of either direct or indirect impact of development;*
- l) *flood mitigation and/or construction of parts of, or contributions towards the construction of, the Rotherham Renaissance Flood Alleviation Scheme;*
- m) *the provision of utilities infrastructure*
- n) *renewable energy generation”*

The prioritisation of these elements and the contributions towards them will be further developed through the introduction of a CIL Levy and Charging Schedule for which there will be further consultation.

2. In relation to provision of schools places and the impact of future development a Cross Service Strategic Schools Planning Meeting has been established, as a result of the recommendations from the Cabinet School Planning Away Day. Its remit is to enable all services to meet to allow a more strategic overview towards the forward planning of future school places to be established. The allocation and development of future sites via the Local Plan will be fed into the schools forward planning work to ensure future needs can be adequately met.

3. Finance have reviewed the s106 process and established clear lines of invoicing, collection and monitoring of s106 monies.

4. Additionally, a corporate s106 officer working group has been established, with work being undertaken since the summer, and the first meeting to be held at the beginning of December.

The remit of the group is to: Assess the effectiveness of the current processes used to prepare s106 and seek improved use and monitoring; to establish clear links between financial resources and deliverability of schemes set out in the agreements, assessing and monitoring existing agreements, providing input to future s106 agreements and forming the basis for a CIL steering group.

The group incorporates representatives from Planning, Finance and Legal Services together with representatives from all potential recipient services (as no one officer / service is responsible for s106) and will be chaired by the Planning Manager.

Consultation of the Local Plan has also raised issues regarding the provision of infrastructure for new development and therefore ways of raising public awareness of s106 and then CIL will also be considered

Next Steps

Actions and information sharing from the corporate s106 officer working group will improve management / coordination of planning obligations.

The group will be used to discuss current applications and assist to improve effectiveness of negotiation with developer.

Detailed records of the calculation of commuted sums will be reported to the working group to ensure consistency.

Recipient services will be required to have in place a monitoring procedure and report back to steering group on a quarterly basis to ensure a clear audit trail for timing of and projects contributions spent on by recipient services.

A report on monies received to the Council will be prepared for the meeting and recipient services will then ensure that the monies are expended in a timely manner and on projects directly connected to the development.

Finance will be represented on the group to ensure continuing sound financial governance is in place regarding receipt of s106 contributions.

5. From the information provided to the working group an annual report for members will be collated of s106's pledged during the period, monies received in conjunction with a s106 and projects that the monies have been expended on.

8. Finance

Finance have established a clear means of monitoring s106 payments and spend and will form part of the corporate working group.

9. Risks and Uncertainties

The intentions of the proposals are to reduce risks around:

Negotiations failing to produce maximum benefits

Agreements are not being properly monitored and payments missed

Monies not being expended on the agreed projects, or monies having to be repaid to developers as not spent within specified time periods or on specified projects.

10. Policy and Performance Agenda Implications

The work is part of the development of the Local Plan and related Infrastructure Delivery

11. Background Papers and Consultation

Legislation: Section 106 of the Town and Country Planning Act 1990 & Section 12(1) of the Planning and Compensation Act 1991.

Guidance : Circular 05/2005

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