

EXECUTIVE BOARD – 18 April 2017

Subject:	Planning Obligations: Process and Monitoring
Corporate Director(s)/Director(s):	David Bishop, Deputy Chief Executive/ Corporate Director for Development and Growth Paul Seddon, Chief Planner
Portfolio Holder(s):	Councillor Urquhart – Portfolio Holder for Planning & Housing Councillor Chapman Deputy Leader and Portfolio Holder for Resources and Neighbourhood Regeneration
Report author and contact details:	Paul Seddon, Chief Planner 0115 8762797
Subject to call-in:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Key Decision:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Criteria for Key Decision:	
(a)	<input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision
and/or	
(b)	Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input type="checkbox"/> No
Type of expenditure:	<input type="checkbox"/> Revenue <input type="checkbox"/> Capital N/A
Total value of the decision:	Nil
Wards affected:	All Wards
Date of consultation with Portfolio Holder(s):	
Relevant Council Plan Key Theme:	
Strategic Regeneration and Development	<input checked="" type="checkbox"/>
Schools	<input checked="" type="checkbox"/>
Planning and Housing	<input checked="" type="checkbox"/>
Community Services	<input type="checkbox"/>
Energy, Sustainability and Customer	<input type="checkbox"/>
Jobs, Growth and Transport	<input checked="" type="checkbox"/>
Adults, Health and Community Sector	<input type="checkbox"/>
Children, Early Intervention and Early Years	<input checked="" type="checkbox"/>
Leisure and Culture	<input checked="" type="checkbox"/>
Resources and Neighbourhood Regeneration	<input checked="" type="checkbox"/>
Summary of issues (including benefits to citizens/service users):	
	It has become timely to review the process for negotiation by planning officers of new s106 obligations required for new developments and also the process for oversight & management of our existing s106 obligations (collection, allocation and spend) to provide confidence that a robust process is in place.
Exempt information:	NONE
Recommendation(s):	
1	To endorse the report, the review and refresh of robust oversight and monitoring processes and note the current comprehensive review of existing s106 obligations.

1 REASONS FOR RECOMMENDATIONS

- 1.1 To update Leadership on recent amendments to legislation governing the use of s106 planning obligations and the refresh to the monitoring process.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

2.1 Background

The use of s106 planning obligations is governed by legislation, national and local policy and government/ministerial advice. An overview is provided below.

- 2.2 Planning obligations are entered into under Section 106 of the Town and Country Planning Act 1990 (as amended) to mitigate the impacts of a development proposal and are legally enforceable documents. The use of planning obligations has evolved considerably since it was first introduced under s52 of the Town and Country Planning Act 1971.
- 2.3 Section 106 outlines what planning obligations might be used for. A planning obligation may impose requirements
- (a) restricting the development or use of the land in any specified way;
 - (b) requiring specified operations or activities to be carried out in, on, under or over the land;
 - (c) requiring the land to be used in any specified way; or
 - (d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically.
- 2.4 Planning obligations should not be used where a planning condition is appropriate and obligations are used for three specific purposes. To:
- 1. Prescribe the nature of development (for example, requiring a given portion of housing is affordable),
 - 2. Compensate for loss or damage created by a development (for example, loss of open space), or
 - 3. Mitigate a development's impact (for example, through increased public transport provision).
- 2.5 The obligations may be provided by the developer "in kind" – by building or directly providing the matters necessary to fulfil the obligation. Alternatively, planning obligations can be met in the form of financial payments, or a combination of both.
- 2.6 The current legislation (CIL Regulations 2010) sets mandatory legal tests for s106 which must be met. These tests are well understood by the development community. The effect of these has been to restrict the scope for all contributions from developments. For any planning application where a s106 is required, the officer report sets out whether the CIL tests have been met. They are whether the obligation sought is:
- a) necessary to make the development acceptable in planning terms
 - b) directly related to the development
 - c) fairly and reasonably related in scale and kind to the development

Additionally, the number of s106s completed since April 2010 that can be pooled together towards an infrastructure project has also been limited to a maximum of five.

Context post 2008

- 2.7 Since the financial crash in 2008 and the 2010 election, the government has repeatedly issued statements that LPAs should be flexible on s106 obligations where appropriate so that 'planning' does not hold up otherwise acceptable development and to help encourage development to take place. This is particularly the case for housing development which most commonly necessitates s106 obligations.
- 2.8 The National Planning Policy Framework states that: where obligations are being sought or revised, local planning authorities should take account of changes on market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.
- 2.9 The development picture in Nottingham has remained challenging during this period and the financial viability of many developments has been difficult. The ability to negotiate s106 obligations since 2008 has therefore been tangibly different from that 'pre-crash'. The adopted position has been to present a supportive and development friendly planning approach that seeks to build a positive reputation as a place to invest and develop.

Current Negotiation Approach

- 2.10 Our current planning policy basis results in s106 obligations primarily covering the following: Affordable housing, Education, Open Space/Parks, Transport Infrastructure, set out in Nottingham's local plan documents.
- 2.11 All Planning Officers negotiate for the full s106 obligation that is required either by adopted policy or to mitigate adverse impacts of a development. Where a developer does not propose to provide the mitigation themselves or pay the full s106 obligations these have been and remain subject to a viability assessment that is then subjected to robust independent scrutiny. The Valuation Office provides this service currently (in place since July 2015) and will be used in all cases (unless a conflict of interest arises) to ensure a consistency of approach and understanding of Nottingham specific issues.
- 2.12 In many cases this process requires negotiation by Planning Officers who seek to balance the viable delivery of positive development and investment in the city with the level of s106 obligations.
- 2.13 Where Officers propose approving a development without requiring a full s106 contribution (and therefore not meeting adopted policy,) the application is always referred to Planning Committee for decision.
- 2.14 Whilst delivering viable development schemes remains challenging, it appears that development viability is improving within Nottingham, as is the position by banks and other funding institutions providing development finance. The picture is a complex one and current indications are that construction and materials cost are currently seeing rapid inflation. This therefore often still translates through to pressure on the level of s106 contributions.

Negotiating Approach Going Forward

- 2.15 The use of the Valuation Office to provide independent scrutiny of s106 viability assessments is felt to provide the necessary robust, up to date and Nottingham specific evidence to support Planning negotiations around s106 obligations.
- 2.16 Likewise it remains appropriate that applications where a less than policy compliant obligation is proposed by a developer be determined by the Planning Committee .

2.17 The viability of development will remain an evolving picture within a Nottingham context. It is likely to be positively affected by improvements in development finance, confidence from the development market and as significant regeneration schemes are delivered. On the negative side, the increasing cost of materials and construction costs are likely to be an increasing challenge. This picture will be kept under continuous review and advice to planning committee will provide the evidence needed to make sound decisions. Reports will in future carry a section referring to s106 implications.

Monitoring and management of s106 obligations

2.18 It has been identified that the availability of monitoring information and the level of colleague capacity to manage the completed s106 planning obligations required review.

2.19 The last review had been carried out in 2008 and monitoring procedures were established within planning and finance at that time. Staffing changes have subsequently taken place and there is now a need to ensure a fit for purpose and simple system is in place for oversight and management of all planning obligations going forward.

2.20 The first stage of the current review has been to re-allocate responsibility for regular oversight and monitoring of s106 obligations. This now lies with the Business Development and Technical Support Manager post within the Planning Directorate. Financial expertise and the monitoring of receipts and the spend of monies is provided by the Commercial Business Partner - Projects. The overall responsibility for managing s106 obligations lies with the Chief Planner.

2.21 All s106 planning obligations are recorded on a database. This is subject to a comprehensive review and updating at the moment to clarify the realistic level of contributions that are expected to be received from development in the next few years. The database is continuously reviewed to ensure that obligations are pursued in a timely fashion

2.22 A new process map has been developed to provide clarity on the roles and responsibilities for the ongoing monitoring and collection of s106 contributions. This is attached at appendix 1.

2.23 A quarterly s106 monitoring report providing information on new obligations, contributions due and spend of received contributions will be presented to the Portfolio Holder for Resources and Neighbourhood Regeneration.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

3.1 Require the full s106 on all developments without any assessment of viability – this may adversely affect developments from being built and would be likely to result in increased planning appeals which would be difficult to defend in light of national and ministerial advice. The reputation of Nottingham as a place to invest and do business would be likely to be affected.

3.2 Determine not to request s106 obligations from development. This may provide a positive message to the development industry and act to encourage some investment and regeneration in the city that may not otherwise happen but would mean that necessary mitigation of impacts from all development would not be delivered. The costs associated to mitigate harmful impacts and additional

demand would in all cases then fall on the public purse. This approach would require justification on the merits of each application or amendment to all relevant policies which would incur considerable time and expense.

4 FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 4.1 The monitoring of Section 106 agreements is potentially complex and time consuming due to the length of time that may elapse between the granting of permission and start on site (indeed, many developments may never take place). Agreements require monitoring on a regular basis to determine whether any triggers for payment have been reached. These have historically been monitored by individual planning officers who are also responsible for updating the S.106 status on the Planning system. Over time this has resulted in a long list of agreements showing as neither started, abandoned or paid. The current exercise undertaken by Planning will result in up to date information, providing reliable data for the Business Development and Technical Support Manager to monitor in future.
- 4.2 In tandem with the records held on the Planning system, the Technical Accounting team hold a complete database of contributions, and the projects upon which they are spent. Amongst other data, this includes the expenditure deadline dates, which are monitored to ensure that projects are committed against the receipts. A reconciliation has been carried out between the Finance database and Planning records of S.106 agreements, referencing records held by other departments including Legal Services. This has resulted in a list of enquiries for Planning to resolve, which is currently being worked through. This will result in an up-to-date database. Planning will then pursue any outstanding sums identified.
- 4.3 The design of a simple process involving all involved parties is essential in order to ensure that payments are received in a timely fashion, and that departments have the appropriate information to ensure effective and timely use of the contributions. Amongst other benefits, adopting such a process will maximise available resources for investment in the communities around developments and protect against the risk of refunding monies to developers. The new process will be triggered upon the signing of a Section 106 agreement, and will conclude once all obligations have been met. It will include the regular reconciliation of Planning and Finance records.

5 LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND INCLUDING LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

- 5.1 As indicated above the use of planning obligations is regulated by a statutory and policy framework and they may only be required for specified purposes which meet the relevant tests set out in paragraph 2.6. The Council's Local Development Documents contain various policies relating to the use of planning obligations.
- 5.2 The approach outlined reflects the requirement to consider applications against existing policies and only to depart from those policies where material considerations dictate otherwise. In this respect where a planning officer is recommending to Planning Committee that the full planning obligation required by the Council's policy should not be requested the full reasons and justification for that approach should be outlined in the report and can be taken into consideration by the Committee in so far as they amount to material planning considerations.

5.3 Having applications/schemes viability checked by a suitably qualified independent third party appears both prudent and reasonable. Similarly the proposals for the monitoring and future management of planning obligations appears prudent to ensure protect public finances and interests. The proposals appear to be within the Council's powers.

6 STRATEGIC ASSETS & PROPERTY COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)

6.1 N/A

7 SOCIAL VALUE CONSIDERATIONS

7.1 N/A

8 REGARD TO THE NHS CONSTITUTION

8.1 N/A

9 EQUALITY IMPACT ASSESSMENT (EIA)

9.1 Has the equality impact of the proposals in this report been assessed?

No



An EIA is not required because: no policy change is proposed.
(Please explain why an EIA is not necessary)

10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

10.1 None

11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

11.1 None.

12 OTHER COLLEAGUES WHO HAVE PROVIDED INPUT

12.1 Ann Barrett and Judith Irwin - Legal
Susan Tytherleigh - Finance
Kevin Shutter - Property