

## **Technical Note No. 1: Section 106 Agreements in the Planning Process**

### **Aim**

The aim of this Technical Note is to set out in more detail the Council's co-ordinated approach to the negotiation of Section 106 contributions within the planning process. It supports the overall objectives for greater community involvement which are set out in the Borough Council's '**Protocol for Community Involvement in Infrastructure Planning**'

### **Background**

New development can bring significant benefits to local communities, including new homes, jobs and other amenities, but there may be impacts on the local area as a result of development. These impacts can be addressed through 'planning obligations', which are commitments, made by the person with an interest in the land and formalised by a legal agreement with the local planning authority under the Town and Country Planning Act 1990. The legal agreement is known as a 'Section 106 Agreement' and forms part of a planning approval.

Since planning obligations may involve developers making financial and/or non-financial contributions to the Council, it is essential that such arrangements are operated in a way which is seen to be fair, open and reasonable in order to retain public confidence in the fundamental principle that planning permission cannot be bought or sold.

### **Scope of Section 106 Agreements**

The planning process provides an opportunity to require developers to provide new facilities, or to pay for projects to help manage these impacts and promote sustainable development. Section 106 Agreements can be used to:

- Prescribe the nature of development (for example, requiring a given proportion of housing as affordable housing),
- Compensate for loss or damage created by a development (for example, loss of open space), or
- Mitigate a development's impact (for example, through increased public transport provision).

### **Legislative Background**

The Government sets out rules which determine what Section 106 Agreements can be used for (these rules are the Community Infrastructure Levy Regulations also known as the CIL Regulations). Developers can only be asked to provide, or contribute towards, projects which meet the following three tests:

- **necessary** to make the development acceptable in planning terms;
- **directly related** to the development; and
- **fairly and reasonably related in scale and kind** to the development.

The table below shows how this might work in practice through a series of examples:

<b>Test</b>	<b>What We Can Ask For ...</b>	<b>What We Can't Ask For ...</b>
Necessary to make the development acceptable in planning terms	A community hall or sports club is already operating at full capacity and the proposed development will increase the demand further.	New facilities where there is spare capacity available even allowing for the increased demand due to the proposed development.
Directly related to the development	There is a play area next to the proposed development which needs new equipment and residents of the development will use them.	There is play area some distance away from the proposed development which needs new equipment but which the new residents are unlikely to use.
Fairly and reasonably related in scale and kind to the development	There is already traffic congestion in the area and the proposed development will increase the problem by 20%. We could request a contribution of 20% of the total cost of fixing the problem.	There is already a traffic problem in the area but the proposed development will not make it significantly worse.

## **Section 106 Agreements in the Planning Process**

### **1. Before a Planning Application is made**

The Council is committed to pre-application discussions to help improve the quality of development proposals and to speed up the process of determining planning applications. The Council expects developers of major sites to undertake meaningful consultation with the local community before finalising their proposals<sup>1</sup>.

If undertaken properly and in accordance with policy it is envisaged that early engagement through the pre-application process will produce realistic Section 106 obligations which will fulfil the aspirations of the local community. Collaborative discussions at an early stage will help to shape better quality schemes and improve the outcomes of a proposed development.

For major development the Council will expect to have face to face discussions with the developer prior to the formal submission of a planning application. Discussions will take place on the impacts of the development proposal and how the developer will put in place measures to mitigate these impacts. The Borough Council will involve all relevant Service areas in informing these discussions.

<sup>1</sup> As set out in the adopted Statement of Community Involvement (see: <http://www.charnwood.gov.uk/pages/statementofcommunityinvolvement>)

Subject to the developer's consent we will inform the local ward councillor(s), the parish/town council and relevant community groups in Loughborough at the earliest opportunity of a development enquiry where these are likely to have local impacts which will need to be addressed by a Section 106 Agreement. Proforma 1 has been prepared for this purpose. It will be used to invite comments on the application and the measures to mitigate its impacts. All comments received will be collated and used to inform ongoing negotiations.

We hope that involvement in pre application discussions with potential applicants will ensure that local aspirations are incorporated at an early stage before a final application scheme becomes 'fixed'.

We will expect ward members to make direct approaches from developers known to the case officer who is dealing with the proposal at the earliest opportunity so that the nature of the discussions and outcomes can be recorded. Advice at pre-application discussion will be given in good faith, but without prejudice to the Council's determination of any planning application that may be submitted.

## **2. During the determination of a Planning Application**

The impacts of a development and the infrastructure which will be put in place to mitigate those impacts will be considered as part of the formal process of determining a planning application. This will be informed by the views of officers from within the Council in addition to other authorities and statutory consultees.

The community and its representatives will have an opportunity to formally contribute their views during this consultation process. To facilitate this process the Council will issue Proforma 2 to all relevant ward councillors, parish/town councils and relevant community groups when a planning application is submitted for planning permission. Views will be invited within 21 days including comments on the proposed infrastructure and community facilities. All comments will be taken into account in preparing the report to Plans Committee and the infrastructure and facilities requested will be clearly set out in the report.

The report to Plans Committee will include a section referring to the S106 Agreement detailing its necessity to make the development acceptable in planning terms, stating how the requirements are directly related to the development being proposed and demonstrating how they are fairly and reasonably related in scale and kind.

## **3. After a Decision is made**

Where an application has been approved subject to a planning obligation being signed, the planning permission will be issued once all parties have signed the Section 106 agreement. After the granting of planning permission, the Council will seek to ensure that the benefits of a Section 106 Agreement are realised as soon as they are due, and that money will then be spent appropriately, promptly and effectively. We will monitor Section 106 Agreements on a quarterly basis and maintain a summary of the money received, amount of spend and any outstanding money to be accrued. In addition an annual report of the money received by the Council and how it is spent is published every year.

A dedicated web site contains detailed information on Section 106 Agreements and copies of all completed Section 106 Agreements are available on the planning file accessible on the Planning Explorer web portal.

Ward members and parish/town councils will be encouraged to submit their views on the effectiveness of infrastructure projects to see if any lessons can be learnt for the future.