

REPORT TO THE EXECUTIVE MEETING OF 8 JULY 2013

Meeting: Executive
Date: 8 July 2013
Subject: Improving the Planning Obligations Process
Report of: Stephen Pointer Strategic Planning and Housing Manager
Portfolio Holder: Cllr King

Status: For decision
Relevant Ward(s): All

1 Purpose of the Report

- 1.1 To set out proposals for improving the Councils approach to Planning Obligations arising from an internal appraisal of the Section 106 process following recommendations in the Transformation report in 2012.

2 Recommendations:

- 2.1 **That the Executive approve the recommended actions set out in the Schedule at Appendix A**

3 Summary of Reasons for the Recommendations

- 3.1 As part of the Transformation Programme, recommendation 34 in the report on Service Review, asked the Assistant Director (Community Services) to ensure clarity in the process of delivering S106 planning obligations.

4 Key Facts

- 4.1 Planning obligations (also known as s106 agreements – 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.
- 4.2 Planning Obligations are used for three purposes:

- Prescribe the nature of development (for example, requiring a given portion of housing is affordable),
 - 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).
- 4.3 The Community Infrastructure Levy Regulations 2010 introduced certain 'tests' for the use of planning obligations into law; it requires that any planning obligations must be:
- 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
- 4.4 It should be noted that negotiated planning obligations will continue even if a CIL is introduced by the Council in future to pay for certain types of infrastructure.
- 4.4 In April 2012 the Transformation Programme Service Re-design Workstream produced a Service Review Report setting out recommended actions for services across the District Council. The report included a recommendation "that the AD – Community Services takes responsibility for ensuring that there is complete clarity at all stages of Section 106 agreements."
- 4.5 Officers from Development Management, Legal Services, Financial Services, Cultural Services, Strategic Planning and Community Partnerships meet regularly to monitor all aspects of the S106 process and have considered this further.
- 4.5 The S106 Group has set out on the attached table steps to improve clarity and transparency in relation to the following six stages of the S106 process:
- **Development Planning** - establishing policy on planning obligations
 - **Pre Application** – applicants are provided with advice and information
 - **Application and Determination** – when a decision is made
 - **Legal Agreement** – when a detailed S106 agreement is finalised
 - **Monitoring** – to ensure that obligations are fulfilled
 - **Spending** – to ensure that infrastructure is delivered

The S106 officer group will monitor delivery of the actions in Appendix A and The Strategic Planning and Housing Manager who chairs the S106 Group will report progress via TENS to the Assistant Director as part of monitoring the Strategic Planning Team Plan where this work is an action.

5 Legal Issues

- 5.1 The making of S106 agreements is a considerable task which falls to legal officers to complete. Any improvements to the process will still require that the legal officers provide advice but receive instruction from planning officers. Legal Services are represented on the corporate S106 Group.

6. Resource Issues

- 6.1 The list of actions seek to improve clarity in the process and reduce the overall time and cost of developing S106 agreements. The work can generally be met within current levels of staffing and legal services budgets. One aspect that the work has raised is the need for improved in house competency in viability assessment. Further skills training for planning officers is proposed in the action plan and the potential for a shared resource for Leicestershire Councils to use when needed is being considered by the Leicester and Leicestershire Housing, Planning and Infrastructure Group.

7 Equality Impact Assessment Implications/Outcomes

- 7.1 The policy framework against which planning obligations are developed is contained in the Core Strategy which has been subject to appropriate equality impact assessment

8. Risk Management Implications

- 8.1 The planning authority must ensure that it has appropriate mechanisms in place to identify CIL Regulation compliant obligations at the time of considering planning applications, obtain sufficient legal support to ensure that the agreements are robust, systems in place to monitor that planning obligations are honoured and the ability to show that infrastructure is provided as required by the planning permission. Failure to do any four of these could risk reputational damage to the Council as a competent planning authority. Delivery of the actions outlined in Appendix A will militate against this risk and ensure the Council operates the S106 process in an open and transparent way.

9. Consultation

- 9.1 Through the Corporate S106 Group.

10. Background Papers

- 10.1 [Planning Obligations – A Developer Guidance Note Harborough DC: 2009](#)

Previous report(s): None

Information Issued Under Sensitive Issue Procedure: N

Ward Members Notified: NA

Appendices:

A. ACTION PLAN TO IMPROVE THE PLANNING OBLIGATION PROCESS

APPENDIX A:

MEASURES TO IMPROVE THE CLARITY OF THE PLANNING OBLIGATION (s106) PROCESS

Stage	Element	• Issues	• Actions	By When Service
Stage 1	Development Plan Policy	<ul style="list-style-type: none"> • Core Strategy/Local Plan Infrastructure Schedule (LPIS) forms the basic scoping list of required infrastructure as a result of development/ It is tested by independent examination and formally adopted by Council - but is very general and often uncosted. • LPIS in its current form needs updating for New Local Plan development. 	<ul style="list-style-type: none"> • Seek to establish infrastructure list as set of specific projects with estimated costs • Future liaison with providers to require specific projects & costs before being accepted as required infrastructure under CIL Regulation • Liaison with Parishes on community facilities to identify specific sites, costs e.g. sports facilities calculated using Sport England's equations • Assist Parish evidence base include specific projects - perhaps through parish plans and help with costing the project. • Create a template for parish plans to synchronise with the LPIS 	<p>December 2013 Strategic Planning</p> <p>December 2013 Strategic Planning</p> <p>October 2013 Community Partnerships</p> <p>On-going Community Partnerships Cultural Services</p> <p>October 2013 Community Partnerships</p>

Stage	Element	• Issues	• Actions	By When Service
Stage 2	Pre Application Advice	<ul style="list-style-type: none"> Development Management offer bespoke pre application planning advice service and make a standard charge . This provides a signposting service on information and 	<ul style="list-style-type: none"> Clarity and consistency best dealt with by updating the existing Planning Obligation Developer Guidance Note to outline the range of obligations which may be required, 	<p>October 2013</p> <p>Strategic Planning</p>

Stage	Element	• Issues	• Actions	By When Service
		<p>further advice, advises on required information for application submission and also highlights expected planning obligations. It is not clear if the advice on planning obligations is comprehensive nor how other services are involved consistently in terms of pre application advice.</p> <ul style="list-style-type: none"> • Planning Obligation Developer Guidance Note approved by HDC as an interim planning guidance note in September 2009 to outline range of obligations sought. This note is now dated needs updating • There is concern that parishes need specific targeted advice on engaging with planning applications 	<p>how each obligation is justified in light of CIL Regulations 2010 and how monetary costs of each obligation is calculated.</p> <ul style="list-style-type: none"> • Guidance Note for Parishes on Planning has been issued in the past and could be updated to provide specific advice on planning obligations and ensuring that infrastructure requests are informed and evidence led. 	<p>working in partnership with HDC , LCC, Health and Emergency Services</p>
Stage 3	Application Received and Consultation	<ul style="list-style-type: none"> • Who needs to be consulted and what information is needed ? Current notification process needs to be accompanied (in the case of service providers making requests for planning obligations) by information that evidence is required to justify planning obligations • Infrastructure providers are notified (internally and externally to HDC) but can this be more effective by 	<ul style="list-style-type: none"> • Need to update the checklist for case officer to cover scope of potential S106 contributions, prepared at time of creating Planning Obligation Guidance Note. • Issue reminder to consultees on the information required to make S106 requests CIL compliant • Development Management 	<p>July 2013 Strategic Planning</p> <p>July 2013 Development Management</p> <p>March 2014 Development Management</p>

Stage	Element	• Issues	• Actions	By When Service
		<p>pointing to specific documents.</p> <ul style="list-style-type: none"> • Draft S106 agreement should be prepared as the application is considered (as scheme is not acceptable unless obligation is entered into) but agreements are costly and if there is a chance that the application could be refused there is no point in investing in detailed agreements • The determination of planning applications has strict time constraints which conflicts against the need to spend time making sure appropriate discussions are had regarding Section 106, Open Space and affordable housing contributions 	<p>to ensure that documentation is uploaded prior to consultee notifications being issued</p> <ul style="list-style-type: none"> • Development Management to explore how consultees notifications can enable consultees to more easily access specific documents in the electronic folder. • Protocol on post application correspondence needed with infrastructure providers– what is placed on file and what is email correspondence pending formal comment; also on dialogue and negotiation with the applicant. • Need to explore further training for case officers on their role in the planning obligation process. 	<p>March 2014 Development Management</p> <p>March 2014 Development Management</p> <p>March 2014 Development Management</p>
Stage 4	Decision and completion of Legal Agreement	<ul style="list-style-type: none"> • The Section 106 agreement is not likely to be completed by the time of the planning decision. It is 	<ul style="list-style-type: none"> • Create a standard/model Heads of Terms which is less subject to legal negotiation following 	December 2013 Development Management & Legal Services

Stage	Element	• Issues	• Actions	By When Service
		<p>confirmed post approval. This encourages developers, once their application has been approved, to try to negotiate out of as much Section 106 obligation as possible.</p> <ul style="list-style-type: none"> • Agreed Heads of Terms are made but then the process is handed to lawyers and fresh negotiation occurs following decision of officer/committee sometimes directly with service providers and legal services • Planning Committee and Ward Councillors information • In cases of viability being raised as a factor to reduce cost of obligations, developer pays for assessment – and for HDC critique of the work. Need for HDC officers to become more expert in considering these reports. • Requests to vary Legal Agreement 	<p>decision.</p> <ul style="list-style-type: none"> • Training /dialogue with planning officers about how to get the most robust Section 106 following decision. • Case Officers to remain involved post decision and ensure that case officer, not the service providers are the instructing officer to Legal Service. • Review system for ensuring Planning Committee and Ward Councillors are informed about Section 106 finalisation • Review system of legal agreements with HDC, LCC and other parties to improve clarity and efficiency • Improve training and skills for officers in viability assessment and explore potential for shared service/expertise in other Councils. • Set out more clearly in the new Developer Guidance Note the approach the 	<p>December 2013 Development Management</p> <p>December 2013 Development Management and Strategic Planning</p> <p>December 2013 Development Management</p> <p>December 2013 Legal Services</p> <p>December 2013 Development Management / Strategic Planning</p> <p>October 2013 Strategic Planning</p>

Stage	Element	• Issues	• Actions	By When Service
			<p>Council will take to prioritisation of obligations where viability issues require agreement on reduced obligations</p>	
Stage 5	Monitoring	<ul style="list-style-type: none"> • Obligations are triggered by either start of development or some point in terms of amount of development completed. • HDC has S106 monitoring officer to track progress of development on C106 sites and raise invoices when funding is due 	<ul style="list-style-type: none"> • Need for more information on all schemes with S106 obligations outstanding and process of each and when obligations are due . New Database now prepared to allow member and officer information • Refresh of website pages on S106 obligations to publish information on place, scheme and obligations expected and delivered. 	<p>July 2013 Strategic Planning</p> <p>August 2013 Strategic Planning</p>
Stage 6	Spending	<ul style="list-style-type: none"> • The recent Section 106 review of Community Facility Grants has looked at the grants process and made recommendation for a new process accordingly. Methods of spending will be included in developer guidance note • A protocol has been in place since July 2008 dealing with how off site Affordable Housing 	<ul style="list-style-type: none"> • New grant process to start in June. • Update and include in Planning Obligations Developer Guidance 	<p>June 2013 Community Partnerships</p> <p>October 2013 Strategic Planning</p>

Stage	Element	<ul style="list-style-type: none"> Issues 	<ul style="list-style-type: none"> Actions 	By When Service
		<p>obligations are spent but this requires including in the updated Developer Guidance Note.</p> <ul style="list-style-type: none"> How do we ensure that when developers meet obligations to other services (non HDC) by payment of funding that these funds are spent locally 	<p>document</p> <ul style="list-style-type: none"> Consider further and include in Planning Obligations Developer Guidance document 	<p>October 2013 Strategic Planning</p>