

Briefing Note on Section 106 Issues
for Buckingham Local Area Forum 26 March 2009

Context

Current basis for seeking provision from developers for physical and social infrastructure is set out in Government Circular 05/2005 (Planning Obligations). These obligations, or developer contributions, are normally secured through an agreement under S106 of the Town and Country Planning Act 1990 and as such they are often referred to as “S106 agreements”. S106 are usually negotiated in the context of planning applications, between local planning authorities and persons with interests in land (or “developers”).

New developments including residential or commercial schemes should be supported with the necessary infrastructure i.e. roads, water and sewerage infrastructure, public transport, schools, libraries, recreational and health facilities and open spaces. A S106 will usually be required to secure these matters, although a local planning authority may use planning conditions where appropriate.

General Principles

Where existing infrastructure is inadequate to deal with the extra demands placed upon it as a result of new development, developers are expected to ensure that the necessary additional provision is made at no extra public cost.

Contributions are normally secured by way of a S106 between developers, Parish/Town, District and/or County Councils as service providers and facilitators. In addition to covering matters such as the scale and phasing of provision or contributions, a S106 will also cover trigger points for payments of contributions and arrangements for security bonds to provide financial guarantees.

Planning obligations are intended to make acceptable development which would otherwise be unacceptable in planning terms and contributions towards provision may either be in kind or in the form of a financial contribution. The latter can be made in a lump sum, or as phased payments. Their use however, is governed by the fundamental principle that planning permission may not be bought or sold.

In order for developers to predict the likely contributions they will be asked to make and anticipate the financial implications for their schemes, local authorities are advised to include as much information as possible in their Local Development Frameworks (LDF). General policies relating to the principles of planning obligations should be set out in the new-style Development Plan Documents (DPD), whereas more detailed policies applying to specific localities and the likely quantum of contributions should be included in Supplementary Planning Documents (SPD).

In Buckinghamshire’s case, relevant Development Plan policies currently include saved policy IN1 of the Buckinghamshire County Structure Plan (1991-2011) together with supporting policies in each of the four District Council Adopted Local Plans. Detailed requirements are also set out in various Supplementary Planning Guidance notes, (SPG).

Protocol/liaison with Districts

BCC welcomes consultations from the four Districts in their roles as determining authorities, as well as approaches from developers to identify the potential need for contributions at the earliest opportunity.

Consultation may be through the Plan making process (i.e. consultation on DPD and SPD), and also at the pre-planning application and planning application submission stages. This is

in order to identify the potential need for contributions, thereby enabling developers to build those needs into their land costs and negotiations; and so requirements can be identified enabling a clear policy background for the requirements to be a material consideration in the determination of any application.

S106 requirements do not necessarily need to be in a local plan/DPD for them to be a material consideration; some may arise through Environmental Assessment, Transport Assessment, or the public consultation process. It is advised that consultations should take place at pre-application stage whenever possible, however the need for transportation infrastructure will depend on issues identified through the Transport Assessment process and any assessment may need to be completed and agreed before the form of obligations can be defined.

For major developments where multiple services are involved, the BCC Developer Contributions Co-ordinator acts as the central point of contact for arranging S106 and project meetings with BCC staff. Where discussions between BCC and a developer result in agreement being reached in principle to S106 terms copies of correspondence and information on the agreement reached are passed to the relevant District Council.

Where a lack of infrastructure provision for BCC services is a major issue in the consideration of development proposals at Development Plan Inquiry or planning appeal, BCC provides evidence in support of its requirements where appropriate.

AVDC is to establish a Developer Contributions SPD in partnership with BCC and pre-production of the draft document is to be completed by August 2009, with a public consultation exercise scheduled for September/October 2009. BCC will seek to ensure that the SPD is consistent with any evolving County Council approaches and policies on S106.

Scale and Type of Contributions

Initial estimates of the likely demand for services/infrastructure maybe based on the size or impact of a proposal, typically floor area in the case of commercial development, and, number of dwellings in the case of housing developments. This enables key parameters such as additional population, workforce, pupil numbers and traffic movements to be calculated.

In determining any needs arising from additional demand, BCC and the Districts will usually take into account any surplus capacity where available within existing infrastructure. Individual cases must be judged on their merits and this will be done in light of the County and Districts' service standards.

In line with Government advice, where the combined impact of a number of developments creates the need for infrastructure, it may be reasonable for local planning authorities to "pool" the associated contributions to enable infrastructure to be secured fairly and equitably.

S106 Monitoring

BCC and AVDC monitor compliance with individual County/District S106 provisions and ensures adherence to the terms of agreements. To assist with this process at BCC the Developer Contributions Co-ordinator monitors agreements and developments to ensure payments are both collected and spent in accordance with the terms of the S106 and maintains a database for those purposes.

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