

Report to Governance Select Committee



Date of meeting: 6 October 2015

Subject: Section 106 Agreement Annual Report for 2014-15

SCRUTINY

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Committee Secretary:

Recommendations/Decisions Required:

That the Annual Section 106 Agreement Report be noted.

Report:

1. Section 106 of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a land owner/developer over a related issue. The planning obligation is often termed simply as a 'Section 106 Agreement' (other common terms used are developer contributions, planning contributions or planning agreements).
2. Section 106 agreements can act as a main instrument for placing restrictions on developers, often requiring them to mitigate on-site and site specific impacts. Recent changes to legislation now limit the pooling of no more than 5 contributions from a number of developments that have previously been used to minimise the impact of their development on the local community and to carry out tasks providing community benefits.
3. Such agreements may be sought when planning conditions are inappropriate to ensure and enhance the quality of development and to enable proposals that might otherwise have been refused planning permission to go ahead in a sustainable manner. They are not to be used simply to take a share of the developers' profits into the public purse for that can result in the accusation that the Council is 'selling' planning permissions, nor are they to be used to gain a benefit that is unrelated to the development. Local Authorities should ensure that the combined total impact of such requests for contributions does not threaten the viability of the site and scale of development. Contributions may, for example, be secured by:
 - Work in-kind provided or constructed by the developer;
 - A financial payment (which may be decided using a formula - as in the case of an educational facility);
 - The transfer of land for a facility.
4. The eligibility criteria for Section 106 contributions secured through the planning system are defined by legislation and set out in the Community Infrastructure Levy Regulations 2010 and National Planning Policy Framework (NPPF). Paras 203-205 of the NPPF state that Section 106 planning obligations should meet the following three tests:
 - (a) Be necessary to make the development acceptable in planning terms;
 - (b) Be directly related to the proposed development;
 - (c) Be fairly and reasonably related in scale and kind to the proposed development.

Planning obligations should always be relevant to and proportionate to the scale and

kind of the development in question. Unrelated or unnecessary planning obligations are not a means of securing planning permission for unacceptable development, as case law has established. A formal assessment of Section 106 contributions is made on a case-by-case basis, but having clear planning policies and evidence on what is required helps to reduce uncertainty.

What are Planning Obligations?

5. Section 106 Agreements are deeds drawn up by legal professionals and have traditionally taken some months to bring to a conclusion. There is no substitute for such a legal document when the benefit being sought is of a complex nature such as affordable housing, or when it is anticipated that the enforcing of the provisions need might be especially robust.
6. They are used to deliver, for example, the following:
 - affordable housing,
 - requiring highway works to be carried out
 - requiring land to be dedicated and equipped as public open space
 - the restoring of a listed building
 - sums of money to be paid for the provision of off-site infrastructure or for the long-term maintenance of open space.

Affordable Housing and other requirements relevant to EFDC

7. One area where Section 106 Agreement prevails, is in respect of Affordable Housing. Under the current adopted Local Plan, affordable Housing is required where a certain threshold (15 dwellings or more or where the site is 0.5 of a hectare or above) is reached in a single development proposal where the population of the settlement is greater than 3,000 people. The requirement in this case would be 40% of all houses would be affordable and the only way to secure this is through a legal agreement. In smaller settlements outside the Green Belt, up to 50% would be sought. There are policies in the Council's Local Plan that state this (H5A - H8A) and therefore make it clear to developers what is the Council's requirement.
8. Where negotiation becomes more complex and delays the determination of planning application's, is where the developer argues that the level of affordable housing requirement threatens the viability of the proposed development. Applicants are required to submit evidence on scheme viability, which the Council assesses through the use of consultants. A payment rather than in-situ affordable housing may be more appropriate, for example, in respect of elderly person's apartments.
9. Basically, an affordable housing contribution should cover the difference between the value of a residential unit on the open market and the amount a housing association could pay for it to charge affordable rents. We therefore need a valuation for each unit and, in order to understand what a housing association would pay, a development appraisal based on a cash flow of a housing association managing the units over 30 years netted back to the present value.

Performance for the Year 2014/15

10. The appendix to this commentary is divided into two parts:
Part 1 lists all those agreements (or obligations) entered during the past year. There are 5 in total.

Part 2 provides a list of benefits actually realised through the year, including monies received where work has commenced on site. There are 11 in total.

11. Benefits negotiated through the year (**from Part 1 below**) will provide:
- a total of £456,674 to be received into the public purse
 - Improvements to bus-stops in Epping
 - Footpath and other community benefits in Stapleford Abbots
 - Funding for a local bus service for Chigwell
12. Benefits actually realised through the year (**from Part 2 below**) have provided:
- a total of £1,195,557 received into the public purse
 - 69 affordable houses delivered on site

PART 1

Section 106 Agreements concluded between April 2014 and March 2015

1. **EPF/0282/14 – 5 x 2 Bedroom Flats** granted 11/04/2014
212 Manor Road, Chigwell
Benefit – £40,000 Affordable Housing contribution
2. **EPF/0987/14 - 14 flats** granted 25/07/14
54A Centre Drive, Epping
Benefit - £22,749 Primary School Education Contribution and improvements to 2 bus-stops.
3. **EPF/0910/14 – 2 houses** granted 22/08/14
White House, Epping Road, Epping Upland
Benefit – £10,000 Affordable Housing Contribution
4. **EPF/0604/14 – 8 houses and a parish room** granted 13/10/14
High House Farm, Stapleford Road, Stapleford Abbots
Benefits - £100,000 Affordable Housing Contribution, footpath improvements, lease village green land and new parish room building to local parish council.
5. **EPF/0853/14 – Autism spectrum school, playing fields and enabling development of 60 houses** granted 26/03/15
Tottenham Hotspur Training Ground, Luxborough Lane, Chigwell
Benefits - £120,000 Affordable Housing, £50,000 Chigwell Bus Service, £66,701 Early Years & Childcare Education contribution, £27,484 Secondary School Education, £19,740 NHS contribution and requirement for contamination work to be carried on infill land site.

PART 2

Benefits Carried Out between April 2014 and March 2015

1. **EPF/0631/02** agreement concluded 25/03/2002
Former Mother Hubbard PH Valley Hill Loughton
Street Lighting upgrade with £10,000 highway safety funding and remaining £9,657 Education contribution towards new class-bases at Buckhurst Primary School.
2. **EPF/0856/01** agreement concluded 28/03/2003
ECC Shelley Depot, Epping Road, Ongar
£35,000 enhanced highway facility – pedestrian crossing at Great Lawns in March 2015.

3. **EPF/1832/03** agreement dated 19/01/2004
Burtys PH, Lower Queens Road, Buckhurst Hill
£22,000 Education contribution towards new class-bases at Buckhurst Primary School
4. **EPF/1244/05** agreement dated 20/11/2006
Epping Forest College (Upper Site) Borders Lane Loughton
Highway works contribution – £10,000 Emergency only vehicular gate installed at Newmans Lane site entrance.
5. **EPF/1008/11** agreement concluded 15/11/2011
Millrite Engineering 151-153 London Road, Stanford Rivers
£37,000 affordable housing contribution received.
6. **EPF/0739/10** agreement concluded 29/09/2011
Threshers, Hastingwood Road, Hastingwood
£100,000 affordable housing contribution received.
7. **EPF/2664/10** agreement concluded 06/12/2011
Woolston Manor Golf Club, Abridge Road, Chigwell
£877,000 affordable housing contribution received.
8. **EPF/1907/10** agreement concluded 02/01/2013
Oakley Hall, Hoe Lane, Nazeing
£40,000 NHS payment made.
9. **EPF/2256/12** agreement concluded 20/03/2013
Railway Homes, Station Approach, Theydon Bois
£43,000 community facility contribution received and transferred to Buxton trust to pay for changing rooms at Theydon Bois Cricket Club; £9,800 education contribution and £2,100 secondary transport contribution received.
10. **EPF/1399/09** agreement concluded through a deed of variation on 21/01/2013
Jennykins Nursery Manor Road, Chigwell
52 affordable houses completed on site.
11. **EPF/2361/09** agreement concluded on 14/08/2012
212 Manor Road, Chigwell
17 affordable housing units completed on site.

Reason for decision:

Options considered and rejected:

None -. Annual Report required for Audit purposes.

Consultation undertaken: Assistant Director of Resources (Accountancy)

Resource implications:

Budget provision: None

Personnel: None

Land: None

Community Plan/BVPP reference: None

Relevant statutory powers: Town and Country Planning Act 1990; Community Infrastructure Levy Regulations 2010 and The National Planning Policy Framework (NPPF).

Background papers: Summary spreadsheet of all Section 106 Agreements held by the Section 106 Monitoring Officer.

Environmental/Human Rights Act/Crime and Disorder Act Implications: None

Key Decision reference: None

Impact Assessment:

Risk Management

There are no risk management issues arising from the recommendations of this report. All Section 106 Agreements including deadlines are monitored by the S.106 Monitoring Officer and by a Section 106 Monitoring Group made up of senior officers of the Council.

Equality:

There are no equality implications arising from the recommendations of this report.