

DUDLEY METROPOLITAN BOROUGH COUNCIL

HALESOWEN AREA COMMITTEE - 24th January 2008

REPORT OF THE DIRECTOR OF THE URBAN ENVIRONMENT

Information about the application and calculation of Planning Obligations Section 106 Monies.

Purpose of Report

1. This report follows on from a request at the 14th November 2007 Halesowen Area Committee meeting where a report on the allocation of Section 106 monies and how it was spent was requested.

Background

2. Nationally, Planning Obligations (often known as S106 agreements) are legal agreements attached to planning applications. To assist the Area Committee, the report will set out the national background for seeking developer contributions which is the most common use of S106's. Government Circular 05/2005 sets out the background of development contributions and what can and cannot be sought during the processing of a planning application.
3. Circular 05/2005 (Planning Obligations) set out the national background for seeking developer contributions and defines such undertakings as follows;

"Planning obligations (or s106 agreements) are private agreements negotiated usually in the context of planning applications, between local planning authorities and persons with an interest in a piece of land (or "developers"), and intended to make acceptable development which would otherwise be unacceptable in planning terms. Obligations can also be secured through unilateral undertakings....."

4. The Circular goes on to set out the background of development contributions; i.e. what can and cannot be sought during the processing of a planning application. Such obligations can prescribe the nature of

the development (e.g. private affordable housing), compensate for loss arising (e.g. provide public open space) and mitigate a development's impact (e.g. enhanced off-site public open space). There are 5 tests to be applied in seeking contributions as follows:

- Relevant to the development
- Relate in scale and kind to the development
- Reasonable
- Necessary to enable the development to take place
- Directly related to the development

5. The Planning Obligations secured in each case, in Dudley, relate to the policies in the Council's approved Unitary Development Plan 2005. This has been refined by the very recently adopted Supplementary Planning Document on Planning Obligations which was agreed by Cabinet in December 2007. This document adds to the scope for increased developer contributions in the future and provide transparency and certainty for both developers and the community. Increased contributions will be forthcoming for example Transport Infrastructure Improvements and Public Realm improvements.
6. The monies obtained are not held together in a central fund and nor would it be appropriate or proper financial practice for this to be done. Instead, in the proper manner, they are kept in specific budgets dependent upon the purpose of the contribution. The financial procedures are of course subject to formal audits in the usual way. For example, in the case of off site public open space, contributions provided for this purpose can only be spent on schemes for the delivery of new or improved public open space within the locality of the development for the benefit of the new occupiers of the proposed development and for no other purpose. Whilst there may be some consequential gain to the existing community, this is ancillary to the primary purpose of providing for the proposed residents of the development. For off site public open space contributions a project team comprising officers from a number of Directorates with an interest in green space issues makes a recommendation on how to spend particular monies, based on a robust set of objective criteria applied to all such contributions. This ensures compliance with the S106 agreement and consistency, transparency and fairness. Following consultation with the Cabinet Member for Leisure on the proposals for spending these monies, Cabinet is recommended to include them in the Capital programme. A process is currently being set up to inform Members in the wards benefiting from the proposed expenditure of the monies which have been approved. The decisions made are fed into a programme of works which is monitored to ensure quality and also compliance with the requirements of Circular 05/2005 (i.e. spent within 5 years). Landscape and Urban Design Officers work closely with the Planning Obligations Officer in this monitoring.

7. In the last six financial years (2001-2007) there were 20 planning applications approved with S106 legal agreements and on land within the Area Committee remit. At the time of writing this report, as would be expected in any planning authority, not all of the developers have paid all of their monies. This is due to a number of reasons:
 - The trigger has not yet been reached (typically as development has not commenced)
 - The follow on Reserved Matters application (the 'details') has not been approved yet
 - Not all S106 agreements require monies to be paid but contribution may be in kind for e.g. on site provision of facilities.
8. This report focuses on those direct sums of money that are generated by planning obligations in the Halesowen area and have to be tracked. However members will be aware that planning obligations will require direct delivery by developers of infrastructure provision or improvements e.g. highway improvements, traffic calming, pedestrian crossings and so on. Importantly only exceptionally are monies accepted towards the provision of affordable housing and the on-site provision is the normal requirement. The monies obtained from developers are often used by the spending service as a pump priming mechanism and are often used to generate match funding adding further value.
9. In the Halesowen area the sums of money received and affordable housing being constructed so far totals for the period (2001 – 2007) :-
 - £211k for improving public open space/play areas close to the respective development
 - £34k for lost car park income
 - £32k towards affordable housing
 - 9 Affordable dwellings
10. Attached to this report as Appendix 1 is a complete list of the 20 planning applications with the amount of money attributed to each application and the other S106 developer contributions.
11. The Select Committee on Regeneration, Culture and Adult Education has been closely involved in scrutinising S106 agreements over the last 3 years. Reports have been taken to the Select Committee highlighting historic S106s and also debating the improvement in the managing and monitoring of such agreements. Lists of all the s106s going back to 2001 have been taken to members of the Committee including the planning applications listed on the attached report.

Finance

12. This report is financial in nature and relevant information is contained within the body of the report.

Law

13. The relevant law is:

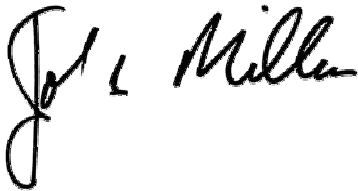
- S106 of the Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004.

Equality Impact

14. The proposals take into account the Council's Equal Opportunities Policy. The provision of contributions towards education and public open space in particular is of benefit to children and young people.

Recommendation

15. That the Halesowen Area Committee note the report.



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J. B. MILLAR – DIRECTOR OF THE URBAN ENVIRONMENT

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List of Background Papers

The relevant law is as stated in Section 12 above.

Appendix 1

Planning Applications Subject to a Section 106 Legal Agreement and signed between 1/4/2001-31/3/2002

Planning Application Number	Address	Proposed development	Planning Gain Received
99/50394	West Midlands Private Hospital, Colman Hill, Halesowen	Widening of access, modify wall, lower FP, thin trees	Highway works
P00/51903	Service Station, Park Road, Halesowen, B62 2	Erection of restaurant (MacDonalds)	Highway works
P00/51904	Service Station, Park Road, Halesowen, B62 2	Erection of restaurant (MacDonalds)	Highway works
P01/0524	Site of Former Mash Tun PH, Halesowen Road,	Erection of 32 flats	9 Affordable dwellings

Planning Applications Subject to a Section 106 Legal Agreement and signed between 1/4/2002-31/3/2003

Planning Application Number	Address	Proposed development	Planning Gain Received
P02/1118	Copes Petrol Filling Station, Merrivale Road, Halesowen	Erection of 16 dwellings	POS £11,013.60

**Planning Application Subject to a Section 106 Legal Agreement and signed between
1/4/2003-31/3/2006**

Planning Application No	Address	Proposed development	Planning Gain received
98/51810	Old Vine Public House, Two Gates, Halesowen	9 Terraced Houses	Visibility splay
P02/1074	Land off Newbury Close, Manor Lane, Halesowen	Erection of 10 houses	£16.1k-POS
P02/1550	86 Portsdown Road, Halesowen	Erection of 7 houses	Road improvements
P02/1704	Former Honda Car Sales, 370 Hagley Road, Halesowen	18 Terraced Dwellings	£15.2k-POS
P03/0139	Land at the junction of Furlong Lane and Colley Street, Cradley	Full-Erection of 20 dwellings	£17.4k-POS
P03/0848	Huntingdon Gardens off Colley Lane/Butchers Lane, Colley gate	Erection of 86 dwellings	£82k-POS £32k-Housing
P03/1629	Former MEB Headquarters, Mucklow Hill	Residential Development-Outline	Requirements determined at the Reserved Matters planning applications stage.
P03/2363	Smartcars Lot, 99 Haden Hill Road, Halesowen	15 two bed apartments	£5.4k-POS
P03/2429	James Grove site, Stourbridge Road, Halesowen	8 houses and 15 apartments	£5.8k-POS
P04/1109	Furlong Lane and Colley Gate, Cradley, Halesowen	Residential	£17.9k-POS

**Planning Applications Subject to a Section 106 Legal Agreement and signed between
1/4/2006-31/3/2007**

Planning Application Number	Address	Proposed development	Planning Gain Received
P04/1829	- Former Henley Foundaries, Banners Lane, Halesowen	Outline-Residential	£11,800 for POS/Play
P05/0878	Part Cornbow Centre, inc. land adjacent to Regent House and Multi Storey car park, Halesowen	Redevelopment of part of site to create shopping centre extension	1.Signing strategy 2. Replacement video recorder for car parks. 3. £34,000 compensation for lost car park income up to 20/5/08. After 20/5/08 additional funds can be claimed for lost income prior to the development opening.
P05/0936	Clancey Site,Belle Vale, Halesowen,B63 3PA	Erection of 89 dwellings	Overtaken by P06/2112 approved 28/8/2007 (13 affordable dwellings and £144,943.83 for POS/Play-received 14/9/2007)
P05/2759	Fanum House, Dogkennel Lane, Halesowen.	Outline-Residential	Requirements determined at the Reserved Matters planning applications stage.
P06/2057	Two Gates Garden Market, Oldnall Road, Halesowen.	Erection of 17 dwellings	POS £28,399.23