

**SELECT COMMITTEE ON REGENERATION, CULTURE AND ADULT  
EDUCATION -  
29<sup>TH</sup> OCTOBER 2007**

**REPORT OF THE DIRECTOR OF THE URBAN ENVIRONMENT**

**PLANNING OBLIGATIONS**

**"SECTION 106" LEGAL AGREEMENT MONIES RECEIVED FROM THOSE  
PLANNING APPLICATIONS APPROVED BETWEEN 2001/2002 TO  
2006/2007 INCLUSIVE**

**Purpose of Report**

1. To provide information on planning gain from those planning applications approved in the 3 financial years of 2001/2, 2002/3 and 2006/7. Included in the report for the sake of completeness is the information on the years 2003/4, 2004/5 and 2005/6 which were reported to the Select Committee on the 26<sup>th</sup> April 2007.

**Background**

2. The Select Committee and its predecessors have taken an active interest in the topic of planning obligations (S 106 Agreements) over the last 2 years. During that period your officers have explained the process and set out a programme for improvement, focused around the appointment of a self financing Planning Obligations Officer, who took his post in November 2006. At regular intervals over the last 2 years officers have given information and advice to the Select Committee. In particular at the 26<sup>th</sup> April 2007 Select Committee officers were able to report on planning obligations received in 2003/4, 2004/5 and 2005/6. Officers are now in a position to report both on the two financial years 2001/2 and 2002/3 and the most recent year 2006/7. This report focuses on those three years but it allows the Members to have information related to a consolidated six year period. Having now established this information base it is the intention to take an annual report to the Development Control Committee.

3. Members may recall that there was a report on the 26<sup>th</sup> April 2007 to this Committee on all the S106 Legal Agreement benefits received by the Council in the three financial years between 2003/4 to 2005/6. This report is a follow on to the earlier report. The purpose of this report is to advise members of the Working Group of the Select Committee of the total monies and other benefits obtained through Section 106 Legal Agreements (S106) attached to those planning applications determined between 1<sup>st</sup> April and 31<sup>st</sup> March in each of the three years 2001/2, 2002/3 and 2006/7.. Because of the necessity for all those parties with an interest in the subject of the planning application to sign the S106, it must be recognised that there can be, at times, a considerable delay between the Committee or Chairman resolving to approve an application and the final release of the S106.
4. It may be helpful to set out the national background for seeking developer contributions. Circular 05/2005 (Planning Obligations) 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.....”*
5. 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 developments 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
6. The Planning Obligations secured in each case, in Dudley, relate to the policies in the Council's approved Unitary Development Plan. This will be refined by the forthcoming Supplementary Planning Document on Planning Obligations which is due to be considered by Cabinet in December 2007. This document will add to the scope for increased developer contributions in the future and provide transparency and certainty for both developers and the community.

7. The monies obtained are not held together in a central fund and nor would it be appropriate for this to be done. Instead in the proper manner, they are kept in specific budgetary codes dependent upon the purpose of the contribution, 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 and for no other purpose. 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 work closely with the Planning Obligations Officer in this monitoring.
8. In the **2001/2** there were 14 planning applications approved with S106 obligations, in **2002/3** 8 such planning applications and in **2006/7** 28 such planning applications. Because of the necessity for all those parties with an interest in the subject of the planning application to sign the S106 legal agreement there can be, at times, a considerable delay between the Committee resolving to approve an application subject to a s106, and the final engrossment of the legal agreement and subsequent issuing of the decision notice. 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 development has not commenced.
  - The follow on Reserved Matters application (the 'details') has not been approved
  - Some S106 agreements do not require monies to be paid.
9. This report focuses on those direct sums of money that are generated by planning obligations and have to be tracked. 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. Significant amounts of monies are obtained from S278 Agreements (under the Highway Act) arising from planning applications to be spent on highway related

improvements. Importantly only exceptionally are monies accepted towards the provision of off site affordable housing and the on-site provision is the usual requirement. The monies obtained from developers are often used by the relevant service to initiate a scheme and can often be used to generate match funding adding further value to the community.

10. **2001/2:** The sums of money received and affordable housing being constructed so far totals:

£156,409 for improving public open space/play areas close to the respective development

£40,000 for upgrade to Butterfield Court (Eve Hill, Dudley) and Stourhurst (Lower High Street, Stourbridge)

£80,000 for off site affordable dwellings

28 Affordable dwellings provided on the planning sites

11. **2002/3:** The sums of money received and affordable housing being constructed so far totals:

£208,558 for improving public open space/play areas close to the respective development

£550,000 towards sports/recreation in Dudley area

£117,996 for off site affordable dwellings

105 Affordable dwellings provided on the planning sites

12. **2006/7:** The sums of money received and affordable housing being constructed so far totals:

£400,012.33 for improving public open space/play areas close to the respective development

£120,000 for improvements to an adjacent canal

£39,000 for highway works

96 Affordable dwellings provided on the planning sites

13. Attached to this report is a complete list of the 50 planning applications with the amount of money attributed to each application and the other S106 developer contributions.

### **Long Term Picture April 2001-March 2007**

14. It may be helpful to incorporate the sums of money and affordable housing provided from the S106's determined between 1/4/2003 & 31/3/2006. The sums of money were reported to the Select Committee Working Group at the 26<sup>th</sup> April meeting earlier this year. The figures give a consolidated picture of the benefits negotiated through the Planning process by Development Control staff. Therefore the total sums of money received and affordable housing in the 6 financial years from 2001/2 to 2006/7 are-

- £3,454,840 for open space/housing/highways/community use/nature reserve/education/Dudley sports/waterways.
  - 361 Affordable dwellings
15. There has been a significant increase in the planning benefits gained by officers through the processing of planning applications over the last 6 years. As well as monies for off site infrastructure improvements there has been improvements to adjacent infrastructure (often roads/junctions and so on) which all benefit existing residents. Indeed in the last two weeks 3 cheques totalling £473,844 for open space improvements have been received by planning. On the 12<sup>th</sup> December 2007 a report will be taken to Cabinet which will seek approval for a significant expansion of infrastructure improvements which planning officers will seek to obtain from developers as part of a new Supplementary Planning Document which has been the subject of extensive consultation.
16. With regard to the monitoring and management of current and future planning obligations, Members will be aware that the Council has appointed a Planning Obligations Officer. This post is self funded by a fee attached to each new planning obligation. The role of the post is to facilitate, manage and monitor planning obligations to ensure that the agreed planning gains, be it affordable dwellings or monies for infrastructure improvements, are delivered. Individual Services are responsible for monitoring their own spend on their specialist areas and will report progress of the spending to the Planning Obligations Officer.
17. At the last Select Committee Working Group reference was made of the need to inform all members of the benefits to the Borough obtained through planning obligations. Annual reports will be presented to the Development Control Committee about the S106 benefits delivered in the preceding financial year (the first such report was taken to the Development Control Committee on the 17<sup>th</sup> October). Consideration has been given to the production of future expanded Annual Reports to give an overview of all planning gain obtained in that financial year with each Service listing the amount and location of planning gain delivered. Officers are proposing these expanded annual reports will be first reported to Members of Development Control Committee and subsequently available to all members for their information.

### **Finance**

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

### **Law**

19. The relevant law is:
- S106 of the Town and Country Planning Act 1990 (as amended)
  - Planning and Compulsory Purchase Act 2004.

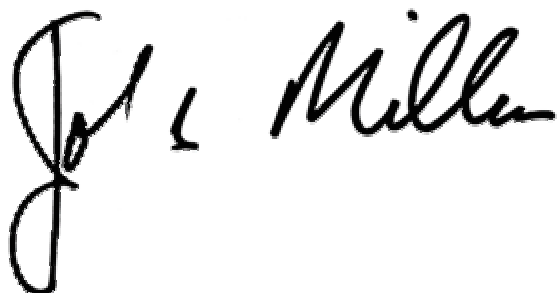
- Circular 05/2005-Planning Obligations

### **Equality Impact**

20. The proposals take into account the Council's Equal Opportunities Policy and seek to enable all sections of the community (including children and young people), within the Borough to gain from the effective implementation of planning obligations and the associated benefits envisaged.

### **Recommendation**

21. That the Select Committee note the report and recommends to the Chairman of Development Control Committee that each year they receive an annual report on planning gain for the preceding 12 months.



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### **List of Background Papers**

Circular 05/2005-Planning Obligations

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

<b>Planning Application Number</b>	<b>Address</b>	<b>Proposed development</b>	<b>Planning Gain Received</b>
98/50175	Land to the west of 202 Tipton Road, Sedgley,	Erection of 2 dwellings (Outline)	1. Construct and maintain a 2m public footpath Tipton Road-Roper Way 2. Public access on path 3. landscape the POS adjacent
98/50176	Land at Dearne Court, Sedgley,	Erection of 3 dwellings (Outline)	Outline
99/50394	West Midlands Private Hospital, Colman Hill, Halesowen	Widening of access, modify wall, lower FP, thin trees	Highway works
99/51659	Wilson Road, Brockmoor, Brierley Hill,	Erection of 19 dwellings (Social Housing)	POS £25,596.69. Highway stopping up
99/51850	Land of Eve Hill, Salop Street/Himley Road, Dudley	Erection of 95 dwellings and convenience store with flat above	POS £74,460.98. £10,000 for Butterfield Court upgrade
P00/50807	Rear car park, Albion Parade Shopping Centre, Albion Street, Wallheath	Erection of 6 bungalows and 4 flats	Car park, refurbish precinct elevations and one unit for community use, construct a basketball court at Wall Heath Park.
P00/51086	Land between 5-30 Rainbow Street, Coseley	Erection of 16 dwellings	POS £8,924.11
P00/51163	Mount City Industrial estate, Milking Bank/Dibdale Road,	Erection of 46 dwellings (RM)	POS £17,525
P00/51436	Stourhouse and no8 adjacent land, Lower High Street, Stourbridge	Refurbishment of Stourhouse and construction of 32 dwellings	Affordable housing monies-£30,000. Refurbish Stourhurst
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
P00/51988	Land off Swan lane and Lower Valley Road,	Erection of 14 dwellings	POS £29,903
P01/0499	Former BT Telephone Exchange, Parsons Street	Conversion to 38 Flats	Affordable housing monies-£50,000
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
P01/0402	Clockfields, Brettell Lane, Brierley Hill,	Section 73 application to omit Condition 10	POS £62,000
P01/0555	Land fronting Holloway Street and Ruiton Street, Gornal	Erection of 63 dwellings(Fieldstone View)	16 Affordable dwellings
P01/1253/P01/1252	Dudley Campus, Castle View, Dudley, DY1 3HR	Residential development(Sovereign Heights) together with 1.77h for educational use	£550k towards improved sports facilities in Dudley. Affordable housing
P01/1491	Brigadoon and rear 22 Foley Road, Stourbridge	Erection of 10 dwellings	POS £21,118.67
P01/1655	Land to the west of Pedmore Road, Merry Hill	Residential development of 105 dwellings and	POS £30,000. Affordable housing monies £117,996
P02/0956	Northway Service Station, Northway, Sedgley, Dudley	Erection of 18 apartments	POS £5,669.98
P02/1118	Copes Petrol Filling Station, Merrivale Road, halesowen	Erection of 16 dwellings	POS £11,013.60
P02/1521	Former gas holder station, Moss Grove, Kingswinford	Residential (Outline)	POS £78,756.64. Education monies £15,000. Highway works. Management of nature Reserve



## 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
99/50765	Former Daniels Land, Level Street, Brierley Hill.	Erection of a Hotel and Canalside restaurants.	Extinguish planning permission 97/50807
. P04/0020	Shops and surgery, Turners lane, Withymoore Village, Brierley Hill.	Renewal of 98/50507 for extension to form shop and office.	Highway works-1.£25,000 for local safety scheme 2.£14,000 for footway works
. P04/0091	Dudley Zoo, Castle and grounds, Castle Hill, Tipton Road and Birmingham New Road, Dudley	Outline-Redevelopment of the Zoo, Garden Centre, Craft and Tourist related Retail, Restaurant,Fitness centre,Motel, Public House and 65 houses.	Outline
P04/1829	- Former Henley Foundaries, Banners Lane, Halesowen	Outline-Residential	£11,800 for POS/Play
P05/0224	Fomer Blowers Green Timber Yard,Halesowen Road,Netherton,Dudley.	Erection of 189 dwellings	1.£100.128.66 POS/Play 2.£120,000 British Waterways 3. 30 Affordable dwellings received by housing association 2006
P05/0414	Polly Brooks yard, Pedmore Road, Lye, Stourbridge	Outline-Residential	Outline
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. NOTE Can claim £34,000 compensation for lost car park income up to 20/5/08 4. If not open by 20/5/08 can claim £2,000 per free car park days
P05/0936	Clancey Site,Belle Vale, Halesowen,B63 3PA	Erection of 89 dwellings	
P05/1092	Land adjacent to Washington Arms PH, Hillside Road, Dudley	Erection of 16 Flats	POS £5,924.41
P05/1876	Piper Place, Amblecote, Stourbridge	Erection of 6 flats	POS £8,836.42
P05/2037	Ashmores, Tipton Road, Dudley	Erection of 104 dwellings	Due late 2007
P05/2374	Former Gasworks site, High Street, Stourbridge	Erection of 85 dwellings	Outline P03/1862.1.POS £162,413.11- Received 3/4/07. 2.Highway works- Completed 3. Nature Conservation Management Plan-Completed and agreed. 4.39 Affordable dwellings-32 handed to Accord HA, remaining 7 by end June 07
P05/2393	Land adjacent to Parkinson House, Jews lane, Dudley	Residential-Outline	Outline
P05/2759	Fanum House, Dogkennel Lane, Halesowen.	Outline-Residential	Outline

P06/0003	Former Layland Garage, Hayes Lane, Lye, Stourbridge	Erection of 12 dwellings	See P06/1883
P06/0190	Land at and to the rear of 155 The Straits, Lower Gornal, Dudley.	Erection of 6 dwellings	POS £5,498.53
P06/0586	Irvon Steel Stockholders, 301 Halesowen Road, Netherton, Dudley.	Erection of a foodstore (Lidl)	Highway works
P06/0608	Land adj 15 Caroline Street, Dudley	Erection of 6 flats-Outline	Outline
P06/0890	20/22 King Street, Dudley, DY2 8NY	Conversion to 5 flats	POS £4,547
P06/0895	Land at Junction Road/49 Audnam Road, Amblecote	Erection of 8 dwellings	POS £14,757.32
P06/1005	190/192 High Street, Pensnett, Brierley Hill, DY5 4LG	Erection of 6 flats.	POS £3,514.61
P06/1104	- Land at Brook Street, Atwood Street, Lye.	Residential-Outline	Outline
P06/1178	Land adj The Fiddlers Arms, Straits Road, Gornal Wood, Dudley.	Erection of 6 dwellings	POS £4,506.57
P06/1454	Land at and rear of The Hillyfields PH, 82 Parkes Hall Road, Woodsetton, Dudley	Erection of 10 dwellings-Outline	Outline
P06/1640	Former Wordsley Hospital, Stream Road/Aukland Road, Wordsley, Stourbridge	Residential development 307 dwellings	Not yet commenced
P06/1852	Pedmore House Hotel, Ham Lane, Stourbridge	Erection of 12 dwellings	POS £38,234.70
P06/1883	Former Layland Garage, Hayes Lane, Lye, Stourbridge	Erection of 12 apartments	POS £11,451.77
P06/2057	Two Gates Garden Market, Oldnall Road, Halesowen.	Erection of 17 dwellings	POS £28,399.23