

**Select Committee on Regeneration, Culture and Adult Education –
4th March 2009**

Report of the Director of the Urban Environment

**Member Engagement with Process Associated with Planning
Obligations**

Purpose of Report

1. To put forward proposals for engagement and communication with Ward Members in relation to the processes associated with Planning Obligations.

Background

2. This report has been prepared in response to the request of Members at their meeting of this Committee on the 12th January 2009.
3. In dealing with planning applications, Local Planning Authorities negotiate with developers to mitigate against impact of their developments through the use of planning obligations. Section 106 of the Town and Country Planning Act 1990 allows this, and Circular 05/2005 (Planning Obligations) sets out what may and may not be sought via planning obligations.
4. Section 106 agreements are private legal agreements negotiated between local planning authorities and developers.
5. Section 106 legal agreements can prescribe the nature of the development (e.g. provide affordable housing), compensate for loss arising (e.g. provide Open Space, Sport and Recreation) and mitigate a development's impact.

There are five 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. In addition to Section 106 under the Planning and Compulsory Purchase Order Act 2004, the Cabinet approved in December 2007 a Planning Obligations Supplementary Planning Document, which details the Council's policy with regard

to requiring Planning Obligations and the criteria against which it can be spent. This includes the following needs:

- Affordable housing
- Open Space, Sport and Recreation
- Libraries
- Public realm
- Transportation (Highways)
- Historic environment
- Education
- Contaminated land

Delivery in Kind

7. In relation to the needs above, they can be met by direct provision by the developer (e.g. the construction of highways improvements, and associated maintenance, affordable housing on site). In these instances, the legal agreement is explicit. Therefore the direct works are delivered in conjunction with the site to make the development acceptable and there is no further work required on allocation and therefore no role for further allocation discussions.

Financial Contribution as Alternative to Delivery in Kind

8. Where a sum of monies is allocated against a specific need within the S106 agreement, it is kept in a specific budget code for the purpose, e.g. in the case of off-site Open Space, Sport and Recreation, contributions provided for this purpose can only be spent on schemes for the delivery of new and improved Open Space, Sport and Recreation within the locality of the development, and for no other purpose. If the allocation requires maintenance, then this must be ring-fenced for that purpose only.
9. In the allocation process to ensure a strategic fit with existing approved plans, officers identify any existing specific plans within the locality which have been subject to consultation with Ward Members and the community, e.g. a park masterplan or minor capital programme of highway works supported by an Area Committee. This provides a strategic context, prioritisation and recommendation for the relevant Cabinet Member for inclusion in the Council's Capital Programme to be approved by Cabinet.
10. It is proposed that Ward Members representing the areas, within which the proposed receptor sites are located, be contacted by officers prior to the sign-off by the Cabinet Member, to ensure that the local information and intelligence, e.g. a Park masterplan, is still relevant, and the intention of the proposal meets both local and strategic needs.
11. Where officers have been required to deliver strategic projects in terms of for, e.g. infrastructure as part of approved Council Plans - monies from several 'donor' sites may be required to deliver the scheme.

This approach would be discussed with Ward Members representing the vicinity in which it is intended to deliver the scheme for their views on implementation.

12. When agreed schemes have been delivered, it will be the responsibility of the Lead Officer of the specific service to inform the relevant Ward Members of the outcomes.
13. The proposed process for engagement and communication is outlined in Appendix A.
14. Detailed reports on signed agreements, allocation and spend for the whole Borough will be taken to Development Control Committee at least annually for the preceding year.
15. The engagement of Ward Members is key to ensuring planning obligation contributions add value to the community.

A detailed audit trail is maintained to demonstrate that the requirements of the specific legal agreements under S106 are met.

The Council's Audit Services will regularly undertake a full audit on corporate activity associated with planning obligations. In January 2008 the report stated "that the systems in operation, and records maintained, are operating in a satisfactory manner".

Finance

16. S106 Agreements generate receipts which are earmarked for specific purposes. There are no direct financial implications arising from the recommendations of this report.

Law

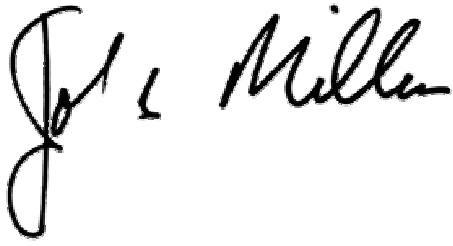
17. The relevant law is:
 - a. S106 of the Town and Country Planning Act 1990 (as amended).
 - b. Planning and Compulsory Purchase Act 2004.
 - c. Circular 05/2005 – Planning Obligations.

Equality Impact

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

Recommendation

19. It is recommended that Members recommend this approach to member engagement to the Cabinet Member for Economic Regeneration.



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J. B. MILLAR
DIRECTOR OF THE URBAN ENVIRONMENT

Contact Officer: Sue Holmyard, Assistant Director, Planning & Environmental Health
Tel: 01384 81**4030** email: sue.holmyard@dudley.gov.uk

Rupert Dugdale, Head of Regeneration Delivery
Tel: 01384 81**5538** email: Rupert.dugdale@dudley.gov.uk

List of Background Papers

None.