

**Select Committee on Regeneration, Culture and Adult Education –  
14<sup>th</sup> January 2009**

**Report of the Director of the Urban Environment**

**Planning Obligations**

**“Section 106” Legal Agreements signed between 1<sup>st</sup> April 2007 and 31<sup>st</sup> March 2008, and planning obligation monies received and spent within the same period.**

**Purpose of Report**

1. To provide information on planning gain that was either received or spent during the financial year of 2007/8 together with information on the S106 Legal Agreements that were signed during 2007/8.

**Background**

2. The Select Committee has taken an active interest in the topic of planning obligations (S106 Agreements) over the last 2 years. At previous committees officers have reported on planning obligations received for each financial year from 2001/02 up until 2006/07. This Committee requested at the Select Committee meeting on 29/10/07 that an annual update be provided on planning obligations. This report provides a summary of all the planning obligations received and monies spent during the 2007/8 financial year, along with information on the S106 Agreements that were signed during this period. In future it is the intension to take annual reports on planning obligations to Development Control Committee.
3. 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.....”*

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 against the impact of a development (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 relate to the policies in the Council's adopted Unitary Development Plan 2005 and adopted by Cabinet Planning Obligations Supplementary Planning Document (SPD). The SPD was adopted by the Council in December 2007 and introduced a range of new planning obligations for future developments within the Borough. In many respects Dudley are at the forefront in it's policy on planning obligations within the region, as very few Local Authorities in the West Midlands have developed specific planning obligations documents.
6. As set out in the SPD, S106 financial contributions are not held together in a central fund; rather they are kept within specific budgetary codes dependant upon the purpose of the contribution. These contributions must be spent within any timescales defined by the agreement, and any unspent monies are liable to be paid back to the developer with accrued interest. Agreements have recently been amended to specify that the timescales for the repayment of unspent monies will apply from the date the monies are received rather than the date that the S106 is signed. This amendment reduces the risk to the Council on repaying monies as it extends the time periods for which monies can be spent.

### **S106 Agreements signed 2007/08**

7. During 2007/08 a total of 34 S106 Agreements were signed and these are detailed in Appendix 1. It is important to note that the signing of the S106 does not necessarily mean that contributions have simultaneously been received. There are two main reasons for this:
- In the majority of cases the payment of monies is not required until development commences.
  - The S106 is signed on the Outline Application but until the follow on Reserved Matters application has been approved no monies are required.

For these reasons there is often a time lag from when the S106 is signed to the receipt by the Council of the financial contributions.

### **Planning Contributions received and spent during 2007/08**

8. The areas of infrastructure and service that either received or spent planning contributions during 2007/08 were Affordable Housing, Open Space, Sport and Recreation, and Transportation. It is anticipated that as the Planning Obligations SPD was introduced in December 2007, there will be additional infrastructure income and spend during 2008/09. This will be reported in next year's annual report. Each of the relevant services has procedures in place for the allocation and spending of monies received.

### **Open Space, Sport and Recreation**

9. During 2007/08 contributions totalling £1,671,017.60 were received for Open Space, Sport and Recreation. During the same period a total of £741,984.11 was spent on a combination of construction (£601,261.55) and maintenance (£140,722.56). Details of this income and spend are detailed in Appendix 2.

### **Affordable Housing**

10. No financial contributions for affordable housing were received during 2007/08. Of existing monies a total of £311,000 was spent. In terms of on-site provision of affordable housing a total of 48 dwellings were built via S106 Agreements during 2007/08. This comprised of 44 shared ownership units and 4 social rented units. In addition 22 units were provided by other means outside of the S106 process, for example, grants from the then Housing Corporation. Details of all affordable housing planning obligations can be found in Appendix 3.

### **Transportation**

11. During 2007/08 contributions received for Transport and Highway Works equated to £49,750 and £2,800 was spent. £31,000 has been allocated to Highway Improvements to the A456 Grange Road junction programmed for the second quarter of 2009/10. Details of exact income and expenditure can be found in Appendix 4.

### **Finance**

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

### **Law**

13. 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**

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

### **Recommendation**

15. It is recommended that the Select Committee note the report and recommends to the Chairman of Development Control Committee that the Development Control

Committee consider an annual report on planning obligations secured and spent for the preceding financial year.



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**J. B. MILLAR**  
**DIRECTOR OF THE URBAN ENVIRONMENT**

Contact Officer:

Jo Bozdoganli      Telephone: 01384 816816 Email: [jo.bozdoganli@dudley.gov.uk](mailto:jo.bozdoganli@dudley.gov.uk)

### **List of Background Papers**

*Circular 05/2005 – Planning Obligations*  
*Planning Obligations Supplementary Planning Document*  
*Dudley Unitary Development Plan*