

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **AUDIT COMMITTEE**

DATE: **WEDNESDAY, 25 SEPTEMBER 2013**

REPORT BY: **DIRECTOR OF ENVIRONMENT**

SUBJECT: **PLANNING - SECTION 106 AGREEMENTS**

1.00 **PURPOSE OF REPORT**

1.01 To update the Committee on issues related to the use of Planning Section 106 Agreements further to the audit of the use of Section 106 Agreements in February 2011.

2.00 **BACKGROUND**

2.01 A Section 106 Agreement is the legal agreement made between a Planning Authority and applicant / developer and any others that may have an interest in the land.

2.02 As part of the planning process, a Local Planning Authority and a developer can agree a planning obligation to provide infrastructure and services on, or off, the development site. The contribution can be in-kind, or a direct payment to the Authority.

2.03 Section 106 Agreements have become increasingly important to the provision of public services such as affordable housing, highways, recreational facilities and the improvement of educational facilities.

2.04 Whilst national legislation sets out the general principles under which Section 106 Agreements can be acceptable, it is for local authorities to interpret and apply Section 106 and this highlights the importance of having a solid policy base to their use.

2.05 To retain confidence in the planning system, Section 106 Agreements must be undertaken in accordance with the fundamental principle that planning permission must not be "bought or sold". Section 106 uses are limited to cases where they are:

- Relevant to planning;
- Necessary to make the development acceptable in planning terms;
- Directly related to the development;
- Fairly and reasonably related in scale to the development;
- Reasonable in all other aspects.

2.06 It is within this context that the internal audit into Flintshire's use of Planning Section 106 Agreements was commissioned by the Head of Planning. Since the findings of the audit report were published, there has been considerable progress in this area and this report seeks to set out that work and further work to be undertaken.

3.00 CONSIDERATIONS

3.01 Whilst the audit did not identify any fundamental risks it did identify a lack of confidence in the processes related to Section 106 Agreements and whether, once signed, the obligations of the Agreements were being recovered by the Council.

3.02 In response to this recommendation (3.67), a full list of all Section 106 Agreements signed since 2000 is being compiled for all areas of Flintshire.

3.03 This work has begun in the geographical areas of greatest growth over the past decade, as these areas were more likely to have been subject to planning permissions with Section 106 Agreements attached. Spreadsheets have been produced of each agreement signed; the triggers that have to have been reached for the money (or infrastructure) to be provided; what funds or infrastructure have to be provided; whether the trigger has been reached; whether the money or infrastructure has been provided; and whether the money has been spent and on what (particularly relevant to play equipment).

3.04 Once completed and verified, these spreadsheets have been shared with the Town and Community Councils. Generally, these have been well received as in some instances this data has been required from the Council for some considerable time. These reviews have helped improve the transparency of the Section 106 process. Pleasingly, the reviews have also revealed that there are very few occasions where Section 106 monies have not been forthcoming from a developer and in those cases resolution is being sought. The reviews have helped the pro-active monitoring of Section 106 Agreements and improved clarity regarding responsibilities for each step of the Section 106 process.

3.05 An example of such a geographical review will be provided to the Committee.

3.06 It has to be accepted that progress in this geographical review has been slow as the systems for monitoring were being established. However, now the reviews will move in to areas of less growth, it is hoped that progress will be quicker.

3.07 The audit also sought immediate progress in the review of the Local Planning Guidance Note on educational contributions (3.57) LPG 23. The primary concern expressed was that the level of contributions

being sought was not at an appropriate level and there was a lack of clarity regarding the circumstances when contributions would be sought.

- 3.08 Through the work of Planning Protocol Working Group, a revised Local Planning Guidance Note on educational contributions has been developed (LPG 23), consulted upon and subsequently adopted by the County Council in 2012.
- 3.09 LPG 23 has been updated and increased the level of financial contributions developers are required to provide to mitigate against the demand on school places in the locality. The revised contributions now reflect levels charged elsewhere in Wales. This increase has been welcomed by Lifelong Learning colleagues and by including funding formulas, calculation methodologies and circumstances when the formula will apply within the LPG, it has introduced greater clarity into the Section 106 process.
- 3.10 That said, the debate regarding educational contributions continues and a joint paper is being prepared with Lifelong Learning colleagues for consideration at Environment Overview and Scrutiny Committee in the autumn.
- 3.11 The audit report stressed the importance of ensuring that Section 106s accurately reflected the communities' desires for infrastructure improvements (3.13). This "Community Priority List" was identified as supporting the establishment of the Local Development Plan and needed to be drawn up in association with the Town and Community Councils. With the Delivery Agreement for the Local Development Plan now in its draft format, the concept of a "priority list" was discussed with Councils at the County Forum in June 2013. As part of the work on the Preferred Strategy for the Local Development Plan, appropriate aspects of infrastructure improvement will need to be identified. The Local Development Plan's production is to be monitored against the Delivery Agreement – a project plan for key document development.
- 3.12 Issues regarding delays with granting planning permissions that are subject to Section 106 Agreements were identified by the audit (3.23 and 3.26). Again, significant advances have been made in this area.
- 3.13 The format of recommendations to Planning and Development Control Committee have been amended so that if the Section 106 Agreement remains unsigned after six months, the Head of Planning can now refuse planning permission under his delegated powers (i.e. without the matter returning to Committee). This step has placed greater urgency on all parties to ensure that the agreements are concluded in a timely manner.
- 3.14 In addition to improvements in the signing of new agreements,

progress has been made with tackling the backlog of unsigned Section 106 Agreements which followed a resolution of Committee to grant planning permission. Work with the Cabinet Member, Head of Planning and the Head of Legal and Democratic Services have returned a number of cases to Planning and Development Control Committee to refuse planning permission where the agreement remains unsigned after considerable time. Progress is being made to reduce the backlog.

- 3.15 In addition, the delegated powers of the Head of Planning have been extended so that not all applications that are subject to Section 106s have to be reported to Planning and Development Control Committee. If the Section 106 Agreement only refers to the provision of play equipment or public open space, that application need not be reported to Planning and Development Control Committee. This has improved the performance of the Planning Service against the national indicators that monitor the speed of decision making.
- 3.16 Recommendation 3.29 required that all Members and Town and Community Councils were provided with training on Section 106 Agreements. County Councillors were provided with an overview of Section 106 Agreements during their Phase 2 training on planning. Town and Community Councils were provided with this at the County Forum. Further training on this matter will be provided at the forthcoming Town and Community Council Focus Group.
- 3.17 Regarding work of a wider nature, the County Council needs to be prepared for the introduction of the Community Infrastructure Levy in 2015. To this end, the Council has partnered with the other North Wales Authorities to fund a shared post to generate a consistent approach to CIL across the region. The post will also ensure that Section 106s are being used effectively. This was the subject of recommendation 3.32.
- 3.18 Following receipt of the audit report's recommendations, the process of how and who handled Section 106s was reviewed (recommendation 3.33). This work has also helped to address recommendation 3.66 which sought to establish a clear audit and referencing system for Section 106. This is now in place and is used as part of the geographical audits, referenced above. Personal responsibilities and roles in the process are now clearly defined. Progress is monitored by the established Section 106 group which meets regularly to clarify issues and progress of unsigned agreements (recommendation 3.35).
- 3.19 Whilst the above demonstrates progress that has been made against the significant risks identified in the audit report, the revision of the overarching Local Planning Guidance on development contributions (currently LPG 22) has yet to be brought to Planning Strategy. This revised LPG, which is still in draft form, will seek to address

recommendations 3.27, 3.28, 3.44, 3.50 and 3.68.

The lack of a revised LPG has meant that we have had to rely on the original which does not conflict with the direction of the audit report's recommendations, but needs to be amended to pick up the wider desires of the report (for example – clarifying the role of Members, recommendation 3.27).

The Service has prioritised the other recommendations addressed above as they were seen to be of immediate concern to staff, Members and the development community. The changing position in relation to Community Infrastructure Levy (CIL), for a time questioned the value of reviewing LPG 22, given that CIL will ultimately replace Section 106s. Now that CIL has been delayed until at least April 2015, there is real value in bringing forward the revised LPG 22, and this is one of a number of LPGs due to be considered at the Planning Strategy Group meeting in October 2013. This version will be drafted with the assistance of the officer who is working on Section 106 / CIL issues for all North Wales authorities, thereby satisfying recommendation 3.7.

4.00 RECOMMENDATIONS

4.01 That the content of the report is noted.

5.00 FINANCIAL IMPLICATIONS

5.01 All Section 106 payments now individually tracked and monitored.

6.00 ANTI POVERTY IMPACT

6.01 None.

7.00 ENVIRONMENTAL IMPACT

7.01 None.

8.00 EQUALITIES IMPACT

8.01 None.

9.00 PERSONNEL IMPLICATIONS

9.01 None.

10.00 CONSULTATION REQUIRED

10.01 Further consultation required on the developer contribution Local Planning Guidance Note and at all stages of the Local Development Plan.

11.00 CONSULTATION UNDERTAKEN

11.01 Consultation undertaken on LPG 23, with Town and Community Councils and with Planning Strategy Group.

12.00 APPENDICES

12.01 One – significant risks identified in the Section 106 Audit Report 2011,

**LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985
BACKGROUND DOCUMENTS**

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