

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: THURSDAY, 18 DECEMBER 2008
title: THE USE OF PLANNING OBLIGATIONS
submitted by: DIRECTOR OF DEVELOPMENT
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1 PURPOSE

- 1.1 To consider the appropriate use of planning obligations in the determination of planning applications.
- 1.2 To establish a list of priorities of contributions which the Council will seek to secure through negotiations, thereby providing a systematic basis for officers to negotiate on such agreements and provide specific advice to developers on when contributions will be required.
- 1.2 Relevance to the Council's ambitions and priorities:
 - Council Ambitions – The appropriate use of planning obligations can help to make peoples lives safer and healthier, can assist in protecting and enhancing the existing environmental quality of the borough and match the supply of homes in our area with identified housing needs.
 - Community Objectives – Matters outlined in this report cover a number of issues raised in the Community Strategy.
 - Corporate Priorities – The use of obligations can conserve our countryside, the natural beauty of the area and enhance our built environment and secure the provision of additional affordable homes. Establishing a list of priorities for contributions will give clarity to developers and ensure consistency of approach.
 - Other Considerations – None.

2 BACKGROUND

- 2.1 Planning obligations are an established and valuable mechanism and intend to make acceptable development which would otherwise be unacceptable in planning terms. They are a negotiated agreement between a local planning authority and persons with an interest in a piece of land.
- 2.2 The obligation is termed Section 106 Agreement, although sometimes it may be referred to as a Unilateral Undertaking, and will contain covenants binding the application to a specific area of land. It will set out what the applicant agrees to do or not to do and the circumstances and timescales within which they will occur.

3 LEGISLATIVE FRAMEWORK

- 3.1 The legislative framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the 1991 Planning and Compulsory Purchase Act.

- 3.2 Further guidance is set out in Office of the Deputy Prime Minister (ODPM) Circular 05/2005 (Planning Obligations). The Circular makes clear that the obligations must be so directly related to the proposed developments, that the development ought not to be permitted without them – eg there should be a functional or geographic link between the development and the item being provided as part of the developer’s contribution. Planning obligations should not be used solely to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievements of wider planning objectives that are not necessary to allow consent to be given for a particular development.
- 3.3 Circular 05/2005 sets out the following tests that must be satisfied in order for obligations to be required:
- i) The obligation must be relevant to planning.
 - ii) The obligation must be necessary to make the proposed development acceptable in planning terms.
 - iii) The obligation must be directly related to the proposed development.
 - iv) The obligation must be fairly and reasonably related in scale and kind to the proposed development.
 - v) The obligation must be reasonable in all other respects.
- 3.4 The use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold. Thus it is not legitimate to grant permission for an unacceptable form of development because of benefits or inducements offered which are not necessary to make the development acceptable.
- 3.5 Planning obligations are unlikely to be required for all developments but may be used to prescribe the nature of a development (eg requiring a percentage of affordable housing on a site), or to secure a contribution from a developer to compensate for loss or damage created by development (eg loss of open space), or to mitigate a development impact (eg through public transport provision). The outcome of planning obligations should be that the proposed development concerned is made to accord with published planning policies (national, regional, local).
- 3.6 In order that developers can predict as accurately as possible, the likely financial contributions they will be asked to make, and therefore anticipate the financial implication for development projects, the local authorities should seek to include information in published documents which make up the LDF. Where local authorities do not have existing policies referring specifically to planning obligations in their adopted local plan or unitary development plan, they should set out the implications of planning obligations in a supplementary planning document based on policies in Circular 05/2005.
- 3.7 In 2006 the Department for Communities and Local Governments (DCLG) published a document entitled ‘Planning Obligations: Practice Guide’ which brought together a range of case study examples illustrating how local authorities, developers and others are working together to deliver planning obligations effectively.
- 3.8 Contributions can either be in kind or in form of financial contribution with there needing to be a clear audit trail of how any monies will be spent and in what time frame. If

contributions are not used within the agreed period there should be procedures in place to repay the original amount plus interest.

4 PLANNING OBLIGATIONS IN LANCASHIRE

4.1 Lancashire County Council adopted a paper entitled 'Planning Obligations in Lancashire Policy' in 2006 and updated it in September of this year. It puts forward principles, methods and good practice with the aim of developing a consistent and robust approach to planning obligations across Lancashire.

4.2 The paper went through two rounds of consultation prior to its adoption and outlines where contributions should be sought with the following forms of development:

Affordable Housing	Libraries
Children Centres	Minerals & Waste Developments
Countryside Access	Natural Heritage
Crime & Disorder	Open Space, Sport & Recreation
Culture & Heritage	Public Realm & Public Art
Education	Transport
Flood Defence	Utilities
Health	Waste Management
Inland Waterways	Youth & Community
Landscape Character and Design	

4.3 Members will have noted from planning applications presented to them for determination over the past 2 years that the County Council have sought contributions on some of the above. However the paper has not been formally adopted by this Council and thus a pragmatic approach has been taken as to whether the request for contribution is reasonable eg an affordable housing scheme where contributions were sought for waste management and upgrading bus stops – in that instance officers concluded that the benefits of a 100% affordable housing scheme outweighed the County Council request to secure those contributions which may have compromised the viability of the scheme.

4.4 Thus whilst mindful of the paper produced by the County Council its existence does not bind this Council to adhere by its principles.

4.5 Obligations will be negotiated on a site by site basis and the priority given to the differing types of obligation will be at the discretion of planning officers. However, in practice it is suggested that Committee agree the following as areas where this Council will seek to negotiate for contributions as a priority overall within the context of any other contributions required by partner bodies.

- affordable housing
- transport safety which cannot reasonably be covered by planning condition or S278 Agreement
- Open Space
- education

5 COMMUNITY INFRASTRUCTURE LEVY

5.1 The Community Infrastructure Levy (CIL) is a new charge which local authorities in England and Wales will be empowered, but not required, to charge on most types of new development in their area. The Planning Bill which was given Royal Assent on 26 November 2008 forms the legislative basis for CIL.

- 5.2 CIL charges will be based on simple formula which relates the size of the charge to the size and character of the development paying it but may only be spent on infrastructure needs contemplated by the development plan for the area. It is not there to remedy existing deficiencies eg transport, schools and health centres, flood defences, play areas, parks and other green spaces. Affordable housing provision should continue to be provided through the existing system of negotiated planning obligations.
- 5.3 In order for CIL to be charged in an area there should an up to date development plan with the updated PPS12 Local Spatial Planning indicating that the development plan should be supported by an infrastructure planning process to identify what infrastructure will be needed to deliver the plan.
- 5.4 CIL therefore needs to be considered as part of the LDF process. The facility to enter into a negotiated planning obligation using Section 106 of the 1990 Act will remain when CIL is introduced, as it is an effective tool to mitigate the specific impacts of a development.

6 RISK ASSESSMENT

6.1 The approval of this report may have the following implications:

- Resources – costs would be met within existing budgets
- Technical, Environmental and Legal - None
- Political - None
- Reputation – It will ensure the Council takes a consistent approach in the negotiation of planning obligations.

7 **RECOMMENDED THAT COMMITTEE**

7.1 Note the contents of the report and agree the list of contributions as outlined in paragraph 4.5 to thereby act as a position statement on priorities when seeking contributions.

DIRECTOR OF DEVELOPMENT SERVICES

BACKGROUND PAPERS

- 1 Circular 05/2005 – Planning Obligations
- 2 DCGL – Planning Obligations Practice Guidance
- 3 LCC – Planning Obligations in Lancashire Policy

For further information please ask for Sarah Westwood, extension 4516