

 Overview and Scrutiny Committee 14 October 2008.		Agenda Item No.
Title	Section 106 Obligations – Current procedures and position	
For further information about this report please contact	John Edwards	
Service Area	Planning	
Wards of the District directly affected	Whole District	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No	
Date and meeting when issue was last considered and relevant minute number		
Background Papers	Circular 05/2005: Planning Obligations ODPM Planning Obligations: Best Practice Guide July 2008 CLG Community Infrastructure Levy: Policy Statement August 2008 CLG	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	Yes

Officer/Councillor Approval		
With regard to officer approval all reports <i>must</i> be approved by the report authors relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Relevant Director		
Legal	29.9.2008	Simon Best
Finance	29.9.2008	Marcus Miskinis
Portfolio Holder(s)		
Consultation Undertaken		
None		
Final Decision?	Yes	

1. **SUMMARY**

- 1.1 This report provides a summary for members of current procedures operating in respect of Section 106 Obligations/Agreements under the Town and Country Planning Act, with particular reference to the monitoring of compliance with the terms of the various agreements.

2. **RECOMMENDATION**

- 2.1 That the contents of the report be noted.

3. **REASONS FOR THE RECOMMENDATION**

- 3.1 The report gives members an opportunity to review the current position in respect of current processes in place for the formulation and monitoring of section 106 obligations and indicate areas for enhancement if considered necessary.

4. **ALTERNATIVE OPTION CONSIDERED**

- 4.1 As this report is primarily for information purposes, no alternative options have been considered.

5. **BUDGETARY FRAMEWORK**

- 5.1 Section 106 obligations may result in financial payments to the Council but these are designed to cater for the infrastructure requirements of the development to which the obligation specifically relates and do not directly relate to the Council's Budgetary Framework as such.

6. **POLICY FRAMEWORK**

- 6.1 At District Council level, the overarching policy framework which provides the basis for securing Section 106 Obligations is the Warwick District Local Plan 1996-2011 within which a number of policies in Chapter 5 "Sustaining Communities" cover the areas where obligations may be required. i.e. affordable housing – policy SC11, transport improvements – policy SC12, open space and recreation improvements – policy SC13, community facilities (libraries, education, health care and other community facilities) -policy SC14 and public art – Policy SC 15. In addition, policy DP9 on Pollution Control covers matters including air quality.

7. **BACKGROUND**

- 7.1 Section 106 of the Town and Country Planning Act 1990 as substituted by Section 12 of the Planning and Compensation Act 1991 enables a planning obligation to be entered into by agreement between a developer and a local planning authority or by means of a unilateral undertaking by a developer. It allows anyone with an interest in the land to enter into a planning obligation, which is enforceable by the District Council. The use of the term "planning obligation" reflects the fact that obligations may be created other than by agreement between the parties (that is, by the developer making an undertaking) Such obligations may restrict development or use of the land; require operations or activities to be carried out in, on, under or over the land; require the land to be used in any specified way; or require payments to be made to the authority either in a single sum or periodically.

National Policy Background

- 7.2. The Government has recognized that Sections 46 and 47 of the Planning and Compulsory Purchase Act 2004 gives the Secretary of State the power to make regulations to replace s106 and issued Circular 05/2005 as an 'interim guide' which clarifies the basis on which planning obligations should be assessed for their acceptability in policy terms and gives further guidance on the process of securing obligations
- Current national policy: Circular 05/2005.**
- 7.3 This circular states that Planning Obligations may restrict development or use of the land; require operations or activities to be carried out in, on, under or over the land; requires the land to be used in any specified way; or require payments to be made to the authority either in a single sum or periodically and the obligations created run with the land.
- 7.4. The principal objective of the planning system is to deliver sustainable development, to ensure that social, environmental and economic objectives are achieved. In some instances, it may be possible to make otherwise unacceptable development proposals acceptable through the use of planning conditions or, where this is not possible, through planning obligations. The imposition of a condition is the preferable method.
- 7.5. **A PLANNING OBLIGATION** may only be sought where its potential provisions meet all of the following tests:
- (i) relevant to planning
 - (ii) necessary to make the proposed development acceptable in planning terms;
 - (iii) directly related to the proposed development
 - (iv) fairly and reasonably related in scale and kind to the proposed development;
- and
- (v) reasonable in all other respects
- 7.6. It is not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms.
- 7.7. Development Plan policies, therefore, provide the only justification for seeking any planning obligations, since they set out the matters which, following consultation with potential developers, the public and other bodies, are agreed to be essential in order for development to proceed.
- 7.8 Following the issue of Circular 05/2005, in 2007 the government consulted on a proposed Planning Gain Supplement (PGS) as recommended in the Barker review of Housing Supply which would have the effect of scaling back planning obligations to cover only those matters relating to the physical development of the development site and affordable housing provision. The latest government policy statement on this (2008) relates to the proposed "**Community Infrastructure Levy**" (CIL) which would have a similar effect
- 7.9 CIL is now the government's preferred way forward and an indication has been given that regulations may be introduced in 2009 to bring it into effect. The recent policy statement makes it clear that local authorities will be "empowered" rather than obliged to bring in CIL at the local level. The underlying rationale is that overall infrastructure demand arising out of new development would be costed and a set of formulae arrived at, whereby payments would be made to the Local

Authority who has set the charge, most likely at the stage of the grant of planning permission for the development. The CIL would be a component of the overall Local Development Framework for the area and a draft schedule of charges would be published and consulted upon before being formally adopted.

7.10 **Current processes within Warwick District**

Section 106 obligations have been a long established feature of the decision making process on major planning applications and all the major development site allocations under the original Local Plan adopted in 1995, as well as a number of other major development sites, have been the subject of such obligations. Planning permission for such development is granted following the signing of the agreement, which then becomes a local land charge. The finalised agreement is a public document viewable as part of the statutory planning register.

- 7.11 Details of the agreement are entered onto a spreadsheet updated by staff within the enforcement section within the development control group in order to provide a basis for monitoring of the agreement. Details of all the agreements entered into over the last three years are set out in Appendix A, with the current position on each agreement summarised in the right hand column.
- 7.12 The monitoring process involves identification of trigger points by which time financial contributions are payable or some form of site specific provision e.g. affordable housing is required. A large proportion of the agreements contain requirements for financial contributions for education provision, libraries or highway works which are items monitored by WCC.
- 7.13 Within planning, the enforcement section open a specific monitoring file on a development subject to a S106 obligation and enforcement staff undertake regular reviews of progress on site and checks against S106 trigger points. Recent enhancements include the purchase of the Acolaid module on Planning Obligations which will facilitate monitoring of trigger points.
- 7.14 A corporate S106 group with officers from the various units to which particular S106 obligations relate has been set up in recent months to promote shared awareness of the various obligations that have been entered into and a system of quarterly reporting to the group has been instituted to ensure effective following up of trigger points.
- 7.15 As from October 2007, all planning application documents are viewable on the Council's website via the search a planning application facility and this documentation includes completed S106 obligations entered into since that time .Legal Services are also progressing scanning of historic agreements in order to assist the land charge search process and the aim is to ensure the scanned documents are also held within the online planning register.
- 7.16 In summary, therefore, the key elements of an effective monitoring system are now either in place or in course of implementation with the following features
- capability to readily search all signed agreements,
 - a current facility for web display of completed agreements,(comprehensive access via the website is related to progress on back scanning which is ongoing)

- regular updating of the spreadsheet of completed agreements and circulation on a quarterly basis, and
- circulation of the spreadsheet to a corporate S106 group with staff from different parts of the authority who may be involved with the particular obligation triggered by the development.