



Report of Chief Planning Officer

Scrutiny Board: City Development

Date: 10th November 2009

Subject: **THE CURRENT POSITION WITH S106 PLANNING AGREEMENTS**

Electoral Wards Affected:



Ward Members consulted
(Referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1. PURPOSE

- 1.1 The purpose of this report is to provide the Scrutiny Board with;
- An overview of the current system for managing S106 Agreements in Leeds.
 - A breakdown of funds generated from S106 Agreements in Leeds and protocols for spending sums.

2. BACKGROUND

- 2.1 Planning Obligations, also known as S106 agreements, are typically agreements negotiated between local authorities and developers in the context of granting planning consent in order to mitigate their impacts and make them acceptable in planning terms. Direct provision, through on-site benefits, and/or commuted financial contributions may relate to transport provision, affordable housing, greenspace, education or other community benefit. The wording of each S106 agreement will vary depending upon the benefit being sought.
- 2.2 Circular 05/2005 sets out Government policy for the use of S106 agreements. A document entitled Planning Obligations: Practice Guidance published July 2006 by the Department for Communities and Local Government provides further guidance to all parties involved in the planning obligations process. Leeds Unitary Development Plan (UDP) policies carried forward as part of the emerging Local Development Framework (LDF) provide the local policy context in which the authority can seek planning obligations from developers. These policies are translated further within published Supplementary Planning Guidance (SPG) retained as part of the LDF or more recently through the draft Supplementary Planning Documents (SPDs) which are being produced as part of the LDF process.

- 2.3 The SPG/SPD documents provide information on the level of contribution, the method of payment and the monitoring of agreements. The level of contribution may be, for example, the provision of land laid out as Greenspace (on the development site) or a commuted sum in lieu of this but which has to be spent on the provision or enhancement of Greenspace in the same community area. The SPG/SPD documents primarily ensure a district wide approach to securing contributions, however, additional area specific guidance is also provided by a number of approved SPG and SPD documents (e.g. Eastgate) & Holbeck Urban Village.

3. PRINCIPLES GOVERNING THE MANAGEMENT OF PLANNING OBLIGATIONS

- 3.1 The responsibility for monitoring S106 Agreements lies with the Chief Planning Officer, although a number of different service areas are involved at several stages. The Planning Agreement Manager is responsible for co-ordinating the different stages of this process and manages a database detailing information on all planning obligations. This information includes;
- monies received
 - monies due
 - monies spent
 - monies available to spend
 - restrictions on spend
 - any on-site works due/carried out

Previously, this information has been reported to Ward Members and key officers (from across the Council) on a quarterly basis. The database is updated on a daily basis and in order that accurate information can be continuously available to Members, Officers, developers and the public.

- 3.2 The process for tracking sums received, or works carried out and the allocation of monies varies according to the type of obligation (e.g. direct provision by developers on site or commuted sum benefits). In the case of Greenspace, the process for reaching agreement with Ward Members and local communities about how the money received should be spent and then securing the necessary formal approvals for schemes to progress is the responsibility of officers within Strategy & Policy but close working with colleagues in Parks & Countryside is essential. Other parts of the Council are responsible for delivering other benefits but a key element in all of this activity is the role of the Planning Agreement Manager who ensures that this range of work is properly co-ordinated. This includes;
- Education contributions,
 - Affordable Housing
 - New Generation Transport
 - Greenspace
 - Other Community Benefits.

4. ALLOCATION OF MONIES RECEIVED FROM S106 PLANNING OBLIGATIONS

- 4.1 Although the system for managing planning obligations, is led by the Chief Planning Officer numerous parties and departments of the council are involved in the process, typically Planning & Development Services, Strategy and Policy, Finance and Legal Services and other external bodies such as Metro.
- 4.2 The process for the allocation of monies varies and can depend on the type of benefit the commuted sum is in lieu of or in contribution to (e.g. Greenspace, Affordable Housing, Education, Community Benefits, Highways and Public Transport Infrastructure).

- i) In the case of **Greenspace**, Ward Members, officers or the local community may first identify potential Greenspace projects. A corporate officer working group, the Greenspace Implementation Group (GIG), has been established to bring these schemes forward in accordance with agreed priorities and to ensure that there is Ward Member and community support for suggested schemes. Irrespective of where a particular scheme originates, the support of Ward Members is a pre requisite for it to progress.
- ii) Financial contributions received for **Education & Highways** are passed on directly to Education Leeds & Highways, respectively, as they are related to specific schemes or provision of facilities in the vicinity of the development.
- iii) Where sums are secured for **Affordable Housing**, they are in effect, 'banked' until sufficient funds are in place to implement schemes. However, the key aim of the policy to secure affordable housing is to ensure that provision is made on the application site.
- iv) **New Generation Transport** contributions are ring fenced for those schemes identified within the West Yorkshire Local Transport Plan and/or for specific measures in the vicinity of the application site.
- v) Other **Community Benefits**. These are developer contributions which are not specifically for a named project but must be spent in locations, which as closely as possible, meet the needs of the residents of the generating development, within the same or adjoining Community Area. An example might be a community centre.

5. THE YORKSHIRE EVENING POST ARTICLE

- 5.1 A recent lead article in the Evening Post stated that the Council is sitting on large sums of money given by developers following the grant of planning approval in order to undertake works which were deemed necessary as a consequence of their particular development. This includes sums for the provision or enhancement of greenspace, public transport, affordable housing, education provision etc. The newspaper claimed that the figure unspent was around **£17 m**, to the detriment of local communities who need the cash and that red tape is preventing it being spent.
- 5.2 It is considered that the article lacks balance and is inaccurate. The reporter at the EP based the article on figures which are significantly outdated as monies are received and spent on an ongoing basis. The sum of monies actually available to spend is currently **£4.9** million and not £17 million once account has been taken of sums ringfenced for Public Transport Infrastructure, specific works at Holbeck Urban Village, specific Highways & Education works, and sums currently going through an approval process for spending on Affordable Housing. These figures in fact change every day, as monies are received, committed and spent. It is important to understand that many of these funds are restricted geographically or tied to specific works or are currently undergoing the 'approval for spend' process. The breakdown of this £4.9 million is provided within Appendix 1. The key point is that there is an active programme to ensure that these monies are spent in accordance with the legal agreements concerned and that no funds are left "sitting" in the Council's bank account in the absence of plans being in place to invest these in local priorities.
- 5.3 The Evening post article strongly suggested that the City Council was in imminent danger of losing money through 'claw back' mechanisms in the legal agreements signed with the developer. This is not the case. Each s.106 agreement is closely monitored to ensure that the money is spent within the specified timescale (where this stated). The systems and procedures relating to s.106 and s.278 agreements was presented to Scrutiny Board on 18th December 2007 and that the conclusions of the Board were complementary about the procedures that are in place.

6. SPECIFIC SCHEMES IDENTIFIED WITHIN THE YEP ARTICLE

6.1 £20,000 received and not yet spent in Armley;

A total of £100,000 was paid in December 1998. £70,000 of this was spent on playing pitches, £30,000 was earmarked in the S106 Agreement for spending on Greenspace in Armley of which £10,000 has been spent on Victoria Pocket Park. The remaining £20,000 must be spent in the locality of the development and agreement has been reached with elected members to invest this to improve the greenspace at Armley Moor in line with the priorities for enhancement of greenspace contained in the West Leeds Gateway Area Action Plan.

6.2 £2,300 received and not yet spent in East End Park;

This is a residual sum. A total amount of £14,490 was paid in June 1996. £12,166 of this was used to refurbish a play area in East End Park. The remaining £2,324 is a contingency sum. This S106 Legal Agreement does not include a Clawback clause or the monies would have been returned. A potential scheme to invest this sum at Raincliffe Recreation Ground is being investigated. The £2,300 will part fund a scheme with a total value of £32,000.

6.3 £16,000 received and not yet spent in Rodley

This £16,046 has been earmarked for some time for a specific scheme and, during recent months, has been undergoing consultation. Ward Members and the local community have now given their approval to spend the sum and it has been committed to the refurbishment of Brookfield Recreational Ground which will be joint funded by other S106 receipts and from Playbuilder (a national play initiative).

6.4 £50,000 received and not yet spent in Alwoodley

Members of Alwoodley Community Association had been hoping to get a bowling green in the grounds of their community centre. Unfortunately, the site that has been identified is not large enough to accommodate a competition size bowling green and alternative schemes are being considered by the Community Association.

7. REASONS LEADING TO DELAYS IN SPENDING S106 COMMUTED SUMS

7.1 The article in the Yorkshire Evening Post suggested that there can be delays in spending S106 commuted sums. The Council's aim is not simply to spend these monies at the earliest opportunity but rather to invest the sums available on viable and sustainable schemes which meet local needs and priorities. This approach values consultation with ward members as a means to ensure that local communities are involved in these decisions. This whole process can take a considerable length of time. Listed below are some of the key reasons why monies may remain unspent for a period of time;

- i) Some monies have specific restrictions on where/how they must be spent. (*Obligations must also be directly related to proposed developments, for example, there should be a functional or geographical link between the development and the item being provided as part of the developers contribution'* - ODPM Circular 05/2005 Planning Obligations). These monies will then form part of a series of phased payments required to fund a particular scheme which is in line with the restrictions on how/where the money must be spent. Also, it is often the case that we need to fund priority schemes, or a more comprehensive project, from a number of different sources in the same locality. Consequently, some funds have

to remain untouched until **all** the funding is in place. The effects of the economic downturn have compounded this issue.

- ii) Some monies are earmarked for specific schemes which are programmed but not yet carried out.
- iii) Some of these monies have only been received recently, even though the planning approval was some years ago. This is because payment of the sums is tied to 'trigger points' the development process, e.g. commencement of works, first occupation, 50% occupation, amount of floorspace constructed etc.
- iii) The process for agreeing the implementation of the monies differs depending on what the money is to be spent on. The system for spending monies for Greenspace & Play Areas involves extensive consultation with the relevant Ward Councillors, communities and other council departments). There is then a tender process to follow and a construction period which is often seasonable by its very nature.
- iv) Commuted Sums are only identified as 'committed' once official approval has been achieved. The sums are then only identified as 'spent' when they are actually allocated, i.e. paid out. This is to ensure the transparency of the Council's accounting procedures and meet the requirement of auditors. Consequently, many sums which are left 'uncommitted' are currently going through the approval for spend process or are at the early stages of consultation.

7.2 In mid-October 2009, the total sum of greenspace monies received stood at £6,235,462. Of this, £2,207,421 is committed or spent with £4,028,042 available to spend which is termed uncommitted. All of this, however, is restricted in some way by the wording in the various section 106 agreements, either to a specific project or to the community area in which the development is located. If the sums of money or on-site benefits were not restricted in this way then they would not be in accordance with national and local policy and guidance. Thus, any attempt to utilise s.106 funds in locations which are remote from the funding development or to pay for unrelated, non-greenspace projects, would be open to challenge from developers and the legality of such actions would also be questioned by the Auditors.

8. SUMS NOT YET RECEIVED FROM SIGNED S106 LEGAL AGREEMENTS

- 8.1 The current figure of sums pledged under S106 but not yet received by Leeds City Council is £31m. This sum is broken down further within Appendix 2.
- i) A considerable amount of these sums (just under £15m) have been recently pledged from several major developments which have either not hit appropriate trigger points in the development process or, owing to the current economic downturn, have been mothballed. There are, for example, several major developments which may not be implemented for the foreseeable future e.g. the Eastgate Quarter and sites within Holbeck Urban Village.
 - ii) On bigger schemes, S106 monies may be paid at different stages of development and this phasing may affect the speed at which payments are made. For example, the planning application may have been approved in 2008 and the Legal Agreement drawn up in 2008 when the planning permission was granted. Development on site, which is outside Leeds City Council control, may not commence until 2011 (especially due to the economic downturn), and monies may not be due to be paid to the Council until the development is fully occupied which may be 2013/2014 or some other future date. It's important to note that due to the current climate some sites are not progressing with speed.

- iii) Some Legal Agreements may be drawn up and monies agreed but developments are never implemented so these monies would then not be payable. Once again the economic climate has led to an increase in mothballed sites.
- iv) Some monies may be held as a bond and therefore may not be due unless onsite works are not carried out as agreed. If the onsite works are carried out these sums would then not be payable e.g. greenspace may be provided on-site by the developer instead and there is no default position.
- v) Some monies may only have been agreed recently and so are not due to be paid to the Council for some considerable time. Regular monitoring checks are carried out to ensure that triggers for payment are adhered to and any problems are identified and addressed.

9. CONCLUSION

- 9.1 The situation is actually much less straightforward than suggested in the YEP article and officers are working continuously to invest this money for the benefit of Leeds people. For example, over the last two financial years the Council has made commitments to invest £1.2 m and £1.4 m. respectively in greenspace projects from money received through s.106 Agreements. Investing this money wisely takes time and effort. Officers will continue to be prudent in spending this cash in order to secure long term benefits to people living and working in Leeds and, in particular, those communities which are directly affected by the development process.
- 9.2 Officers will continue to maintain the s.106 database and calculations of contributions to ensure accountability and to maintain transparency. Robust procedures are in place to manage s.106 Agreements effectively, both in terms of securing the funding from developers and also in terms of investing these sums in accordance with the relevant legal agreements, good financial management and Government guidance.
- 9.3 Officers will also continue to report unspent balances to members, appropriate officers and departments, to ensure that monies continue to be utilized at the earliest opportunity in a way which meets local priorities. An interim update report was sent out in October 2009 and the next regular reports be issued in January and July 2010.
- 9.4 The continuing involvement of members and community groups in the allocation of greenspace monies will be maintained in order to ensure that the needs of local community are addressed in determining priorities for spending.

10.0 RECOMMENDATION

- 10.1 Scrutiny Board is asked to note the contents of this report.

BACKGROUND PAPERS

Town & Country Planning Act (1990)
Circular 05/2005
Planning Obligations: Practice Guidance (2006)
Leeds Unitary Development Plan (UDP)
Local Development Framework (LDF)
Internal Audit Report (2007)
Supplementary Planning Guidance

S106 Planning Agreements: Quarterly Schedule of Funds

APPENDICES

APPENDIX 1: A BREAKDOWN OF FUNDS GENERATED FROM DEVELOPERS UNDER S106 AGREEMENTS

This breakdown does not include works which are provided onsite as agreed under S106 of the Town & Country Planning Act. It only includes commuted sums paid in lieu of works being carried out.

Type Of Obligation	Total Sums received	Sums Committed* Or Spent	Sums which are ringfenced, tied or restricted to specific works	Total Uncommitted Balance**	Restrictions on Spend
Community Benefits	£126,232	£55,148	0	£71,084	
Greenspace & Play Areas	£6,235,462	£2,207,421	0	£4,058,042	
Affordable Housing	£1,104,431	£433,513	0	£670,917	
Other/Highways & Travelwise	£5,939,004	£4,505,957	£1,470,539	0	Tied to specific works.
Holbeck Urban Village	£839,577	£70,051	£769,527	0	Tied to specific works.
Education	£240,258	£60,000	0	£180,258	
New Generation Transport	£2,900,555	£15,000	£2,885,555	0	Rinfenced to be spent on NGT.
TOTALS	£17,528,012	£7,422,089	£5,125,621***	£4,980,301	

*The term 'committed' only applies to monies which have been matched to specific schemes and approved by Panel. This does not include ideas in the pipeline. Therefore, some of the sums marked 'uncommitted' may be in the early stages of being matched to specific schemes.

** These sums may be geographically restricted or may be in the early stages of consultation with members or may be within the approval process. *** The unspent balance is brought to the attention of Members and council officers on a quarterly basis with the aim of stimulating debate on how any available monies can be spent.

APPENDIX 2: A BREAKDOWN OF SUMS PLEDGED UNDER S106 IN LEEDS

Type of Obligation	Total Sums Agreed
Greenspace	£4,908,099
Education	£423,784
Public Realm	£204,090
Highways	£3,899,107
New Generation Transport	£4,978,849
Affordable Housing	£702,500
Other Community Benefits	£1,134,954
Major Developments	£14,903,013*
TOTAL	£31,154,396

*Holbeck Urban Village, Eastgate Quarter, Sharp Lane, Wellington Place, Bellway, High Royds, Kirkstall Forge, Headingley stadium