

## **Section 106 Agreements are part of the Planning process**

Section 106 contributions to offset development impacts are sought in line with planning policies in the Council's Core Strategy (Development Plan Document). Publicity & consultation was undertaken during the preparation of the Core Strategy and all comments on its approach towards mitigating the impacts of development were considered before adoption.

A failure by applicants for planning permission to have regard to impact mitigation policies in the Council's Core Strategy can justify a refusal of planning permission.

Supplementing its Core Strategy, the Council has a planning policy document called Limiting the Impact of Development (LID) which sets out in some detail how impact mitigation policies will be applied to various types of development. Publicity & consultation was undertaken during the preparation of LID and all comments made were considered prior to approval (July 2007). It has details on what the Council expects and is a starting point for discussions with applicants for planning permission.

Planning Applications are the subject of publicity & consultations. Objections/representations highlighting that there will be an adverse impact upon local infrastructure and facilities are taken into account. In line with the Council's Core Strategy adverse impact may be addressed by S106 contributions towards the provision by others, of local infrastructure and facilities. Key to the assessment undertaken by planning officers will be

1. Is a S106 contribution in line with Council planning policies and guidance and,
2. Is a contribution relevant to planning, needed to allow the proposal to go ahead and fairly/reasonably related to the development.

The process of agreeing a S106 contribution is summarised in the attached extract from LID. Where a S106 contribution is reasonable and justified, Applications that are acceptable in planning terms will be approved subject to the prior completion of a S106 Agreement (sometimes a Unilateral S106 Undertaking). The Agreement is the mechanism by which S106 contributions are made, if the development goes ahead.

There can be a lengthy period (4-5 years is not unknown) between signing the Agreement/planning permission and receipt of S106 contributions. The terms of the Agreement will determine when the S106 contribution is paid and what it can be used for. The Agreement is a matter of public record. The LID document includes an example of an Agreement with standard terms which may be adapted in the course of discussions with applicants. Bespoke S106 Agreements are always a possibility in response to particular site circumstances.

### Holding and applying S106 contributions

On receipt of a S106 contribution, it is held by the Borough Council for allocation to a project that falls within the terms of the Agreement. This is an important point to stress. Contributions are received to mitigate against the impact of development and must be applied as intended – they are not a general source of capital.

In line with Departmental priorities, each year Council departments put forward their suggestions for schemes to be included in the capital programme. Whilst the emphasis is on schemes funded by the Council, suggestions will also include

schemes funded from external sources - predominantly government grants and S106 contributions.

Suggestions for schemes funded via s106 contributions fall into two distinct categories. Firstly, there are specific schemes e.g. the junction of John Nike Way/London Road and dualling on London Road where s106 money has been identified to part fund part of the scheme. Secondly, there are general approvals e.g. Section 106 schemes for leisure, culture and the visual environment where £250,000 has been approved for each of the next three years. These are non specific and enable the Executive Member (usually on the advice of officers) to decide during the course of the year how the money is allocated and spent. A report to the Executive member is required for them to formally sign off and approve the expenditure.

The proposals are consulted on as part of the general budget process during January. Consultation is with the general public via the website and the Residents Panel, with business ratepayers and with the Council's Overview and Scrutiny Commission and the Scrutiny Panels.

Consequently, schemes that are already identified in the capital programme benefit from wide consultation and no additional consultation mechanism is proposed.

While S106 agreements are a matter of public record and are accessible via the Council's web site, in reality the time lag between when a planning approval is given, when a development is built and when s106 money is received (this is often phased through a major development) means it is difficult for those outside the Council to keep abreast of what is happening. To overcome this issue, the Executive Member for Culture, Corporate Services and Public Protection distributes a list of the available s106 receipts to the Town and Parish Council Liaison Committee at least once per year. This ensures that these key stakeholders get appropriate information in a suitably timely manner.

For schemes not identified in the annual capital programme, ideas for the appropriate utilisation of receipts come from a number of sources. The LID document is a starting point since it determines why money is sought in the first place and gives a general guide to what the receipt should be spent on. The S106 agreement will also usually highlight where the money can be spent, usually described as a radius from the site (e.g. 3km from the development). Various Council strategies also generate potential projects as does the general awareness that officers and members have on the needs of a particular ward or area. Town and Parish Councils also generate ideas and in the past have identified partnership funding to enable suitable projects to progress. These ideas are normally submitted to officers who will discuss suggestions with the relevant Executive Member and feedback what the outcome of those discussions were.

However, Members have expressed some concerns that once these 'in year' schemes have been identified that consultation is inadequate. While it should be highlighted that the existing system requires an Executive Member approval and that this is open to public and Member comment prior to decision it is also recognised that the ad-hoc nature of these decisions as far as any particular ward is concerned does make it difficult for ward members to identify projects in their area.

Consequently it is proposed that officers will identify to Ward Members via e-mail any schemes that they intend seeking Executive member approval prior to completing the report. This will ensure that Ward Members are aware of what is planned and can influence the contents of the report. This is similar to the system developed by the

Executive member for Planning and Transport for Highway Safety Schemes which is successful in either clearly getting support for a project or generating timely discussions about their merits and purpose. It is proposed that this consultation procedure is implemented from September 2009.

If 'in year' projects identify a need to release additional S106 funding to that already approved in the capital programme, this can be achieved via a report to the Executive and then to Council.

## SECTION 106 PLANNING OBLIGATION PROCEDURE

