

Cabinet – 15 July 2009

Dealing with S106 Agreements and the need to review Supplementary Planning Documents as a result of the economic down turn

Portfolio: Councillor A Andrew, Deputy Leader and Regeneration

Service: Development and Delivery

Wards: All

Key decision: Yes

Forward plan: No

1. Summary of report

- 1.1 The report sets out recommendations of the Regeneration Scrutiny Panel of 23 April 2009 which considered how the council deals with S106 Agreements and reviewed its approach to negotiating agreements and the Supplementary Planning Documents as a result of the economic down turn. The Panel agreed that the council is following good practice in considering the individual financial viability of schemes as validated by the District Valuer when completing agreements or requests to vary agreements associated with the determination of planning applications.
- 1.2 Whilst being satisfied with the current approach the Panel considered and endorsed a series of minor changes in practice and process that will aid developers to bring forward developments in these difficult economic times. These are set out in the recommendations below. The minutes of the Panel meeting are attached.

2. Recommendations

That Cabinet approve the recommendations from the Regeneration Scrutiny Committee (see **Appendix A**) that:

- i the Council continue to deliver Section 106 agreements based on the individual financial viability of cases as evidenced by independent viability assessments as considered by the Development Control Committee;
- ii. the Council continues to renegotiate supplementary variations where evidenced that the development is no longer viable on a case by case basis;
- iii. all planning decisions involving Section 106 agreements are granted for five years to commence instead of three years;

- iv. the Council undertakes to waive interest on late payments for up to twelve months. However, at the expiry of this period interest payments for subsequent late payments should be rigorously enforced;
- v. the eight percent part payment requirement on completion of the Section 106 agreement for public art contributions in The Designing Walsall Supplementary Planning Documents is collected on implementation;
- vi. the Council continues to reduce its up front staff charges (legal and planning) for single heads of terms agreements where justified;

3. Background information

- 3.1 At its meeting on 23rd April 2009 the Regeneration Scrutiny Panel considered a referral from Development Control Committee regarding:
 - a.
 - i. Implications of deferring S106 contributions to encourage future development in Walsall
 - ii. Supplementary Planning documents - understanding what an SPD is and process to draft one.
 - b. the wider issue of how to encourage development in Walsall in current economic conditions?
 - i. Do SPD's make a difference?
 - ii. How can flexibility be introduced and ensured?
 - iii. What else can be done to make a difference
- 3.2 These issues were raised following a Development Control Committee resolution to consider the Council's continued approach to how it deals with Planning Obligations in accordance with section 106 of the Town and Country Planning Act 1990 and its Supplementary Planning Documents (SPD's) in the current economic down turn.
- 3.3 The Development Control Committee resolved that the findings of the Panel form the basis of recommendations that are to be reported to Cabinet.

4. Resource considerations

- 4.1 **Financial:** The Panel considered the extent of contributions negotiated and received since 2003/4 as set out in the table below recognising the value of these contributions towards infrastructure and the decline in payments received last financial year in context to 2007/08 when development and contributions were on a high. Clearly the decline in activity is related to the economic down turn and officers will continue to negotiate maximum contributions and affordable housing provision where possible in accordance with existing policy and the viability of schemes. It should also be noted that if the council undertakes to waive interest on late payments for up to twelve months there is therefore a financial implication to the council potentially due to late payments, as incentive to pay on time is not there if we waive charges.

Year	No. of S106 Agreements	Total contributions negotiated £	Total collected £	No. of affordable homes negotiated	No. of Affordable homes built
2003/04	29	£1,176,256.26	£306,656.26	89	47
2004/05	45	£562,122.56	£538,422.56	0	0
2005/06	21	£522,187.03	£388,260.35	44	32
2006/07	27	£1,403,374.62	£391,590.20	58	10
2007/08	35	£3,819,961.68	£571,417.87	217	8
2008/09	17	£1,439,712.10	£122,692.90	68	0
Totals	174	£8,923,614.25	£2,319,040.14	476	97

- 4.2 As a result service areas who rely on the receipt of contributions in order to help provide much needed infrastructure will be compromised. For education this will mean that any loss of contributions where these have been identified as necessary in line with the SPD would impact on the resources available to the Council for the provision of school places. The same could be said for the provision of open space and affordable housing and as a result the Development Control Committee is required to consider such impacts when considering planning applications or requests to renegotiate contributions for developments. In many instances this represents a stark choice between subsidising the development based on the viability of delivering the schemes or possibly preventing development to come forward.
- 4.3 **Legal:** Planning Obligations are primarily negotiated as part of the determination of planning applications in accordance with Government Circular 5/2005, policy GP3 of Walsall Unitary Development Plan and adopted Supplementary Planning Documents. It is not possible for a council to switch on and off existing policy as it will need to produce new replacement policy or supplementary policies if it wanted to set aside current policies.
- 4.4 **Staffing:** Currently the Planning Monitoring Officer and the Planning Policy Monitoring Officer are part financed by S106 agreements. The planning Monitoring Officer is paid for from a monitoring charge of £950 or 9% of the planning fee whichever is higher paid by the applicant as part of completing the agreement. Due to the down turn in activity this post is currently being temporarily back filled from Planning Delivery Grant to make up the shortfall.

5. Citizen impact

Planning Obligations are negotiated to offset any associated deficit in education, open space, health, affordable housing or other related impact from a development that needs to be provided or managed in order to enable the development to proceed.

6. Community safety

It is possible that some agreements can include requirements to address public safety where they meet the tests of 5/2005 related to it being relevant, proportionate and necessary to a planning application. The police have made several requests for contributions for policing across a raft of planning applications but no payments yet have been agreed as no development has been able to make such contributions and remain viable.

7. Environmental impact

The impacts of planning decisions on the environment are considered as part of the consideration of the individual planning applications in accordance with local and national planning policies.

8. Performance and risk management issues

Members receive a quarterly report from the Head of Planning and Building Control on individual Planning Obligations together with the total sums collected within the year to help inform and assure members of the accounting probity and monitoring that is being undertaken.

9. Equality implications

An Equality Impact Assessment has been carried out for Development Control which included how the local planning authority manages S106 agreements equitably. The study found that current process and procedures are compliant with the Council's equalities requirements and that all persons involved in the process are able to participate in as part of the planning application procedures currently in place.

10. Consultation

Officers in Legal Services, Finance, Housing Services, Greenspaces and 'Walsall Children's Services - Serco' have been consulted in the preparation of this report.

Background papers

Walsall Unitary Development Plan 2005
Supplementary Planning Documents:

- Affordable Housing 2005
- Urban Open Space, April 2006
- Healthcare, January 2007
- Education, February 2007

Circular 5/2005 Planning Obligations

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A handwritten signature in blue ink, appearing to read 'D. Elsworthy', followed by a vertical line.

Tim Johnson
Executive Director
Regeneration

30 June 2009

A handwritten signature in blue ink, appearing to read 'Adrian Andrew', with a stylized flourish at the end.

Councillor Adrian Andrew
Deputy Leader
Portfolio holder: Regeneration

15 July 2009

APPENDIX A

Minutes of the Panel meeting:

The Panel considered a referral from the Development Control Committee which asked the Panel to consider the implications of deferring Section 106 (S106) planning gain payments and to review the Council's Supplementary Planning Documents. The Panel also considered what could be done to encourage development in the current economic downturn.

In introducing the presentation on S106 Agreements and SPDs (annexed) David Elsworthy explained that significant action in respect of S106, including its suspension to stimulate development was not viable as planning policy cannot be switched on and off. He explained that instead he wanted to present the Panel with a number of options, which included deferring or not requiring S106 contributions on a case by case basis to encourage future developments in Walsall. He provided an explanation of how the S106 planning process operates as a contractual arrangement between the Council and a developer. The Council operated a standard approval process in which the Development Control Committee is presented with the heads of terms for a proposed agreement and is then required to interpret Council policy and relevant Supplementary Planning Documents (SPDs), the Council's own guidance which elaborates on regional and national provisions via a development plan policy, as well as consider issues such as financial viability, before making a decision. He also outlined to the Panel that there had been a fall of thirty-two percent from 2007 to 2008 in planning applications and S106 agreements as a result of the economic downturn. There has also been a significant fall in income received from S106 agreements and the number of affordable homes being built. He concluded his guidance on S106 by highlighting the potential positive and negative outcomes of its deferral. He pointed out that it was possible that continued deferral based on independently accredited viability assessments could encourage future development and applications, although this was not certain as other factors play a significant part in the decision to undertake development activity.

He outlined that SPDs currently exist to support decision making in a range of areas, including affordable housing, education, open space and health care. The benefit of an SPD was that it provided greater clarity and consistency of approach on the Council's development priorities which developers could factor in to their development applications. SPD's also assisted in the prevention of challenge to planning applications as the Council's development policies were clearly defined. He emphasised that introducing a general approach or moratorium would cause problems in delivering required infrastructure as there was currently no other realistic income stream to deliver this in support of new developments in areas. A more realistic method of introducing flexibility would be to take into account individual circumstances consistent with best practice which is the Walsall Way. This includes financial viability assessments and realistic triggers for payments that could be activated at a later stage in a development to improve cash flow. Other action that might be considered includes discounting up front costs, waiving interest on late payments, and increasing the life of approvals from three to five years, together with action to reduce legal and planning costs.

Set out below is a summary of the discussion that followed the presentation:

- The Development and Control Team presented information to LNPs on how S106 income was spent.

- Members agreed that the Council's SPDs were an important part of the development control process and should not be switched "on and off".
- Members supported the waive interest on late S106 payments for twelve months so long as payments were rigorously pursued upon completion of the twelve month period.
- A number of Members also suggested that the Panel request that the Chair and Vice Chair of the Development and Control Committee be invited to the next Panel meeting to discuss their views on the Council's Section 106 and SPDs policies.