

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

30 SEPTEMBER 2010

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Regeneration and Transport – Lead Cabinet Member – Councillor Cook

MEMBER INVOLVEMENT IN SECTION 106 AGREEMENTS FOR MAJOR APPLICATIONS

1. Summary

In March 2010, Stockton-on-Tees Borough Council adopted the Core Strategy which contained a specific policy (CS11) that required all new developments will be required to contribute towards the cost of providing additional infrastructure and meeting social and environmental requirements. In addition to this, in May 2008, a Supplementary Planning Document (SPD 6) had been adopted that also covered the use of planning obligations. The SPD was concerned with the current status of planning obligations at that time and did not consider the future legislative changes which may occur, especially now following on from the new coalition government. The purpose of the SPD is to provide developers, planning officers and the public with information and guidance concerning the Council's approach towards securing planning obligations associated with development within the Borough.

The use of planning obligations, or section 106 agreements as they are also commonly known, has become an important part of the planning process and are appended to many major planning applications, covering such things as affordable homes, education contributions, local labour agreements, infrastructure provision and open space and play provision.

Heads of Terms describing what will be included in a section 106 agreement must be open and transparent and be included within the planning report, and often the fine tuning and phasing of this is finalised after committee by officers. It is the intention of this report to outline how members can be more actively involved in this process whilst at the same time ensuring that applications are still determined within time.

This report was presented to the Planning Committee on 14th July 2010 and Members had no specific comments to make or objections to it.

2. Recommendations

Cabinet is recommended to endorse the protocol for member involvement in the planning obligations process

3. Reasons for the Recommendations/Decision(s)

It is important for Members to be involved in this process, and formalise how this will take place. Following on from the Killean Pretty review, guidance from DCLG on member involvement in major planning applications and the new localism agenda, Members need to

be able to put forward the priorities of their local area as perceived by themselves and local people. The latest advice is that Local authorities should put appropriate mechanisms in place to ensure that elected members can take part in discussions on development proposals at all relevant stages, including when options are being scoped and plans shaped, without prejudicing their decisions or compromising the integrity of the process. Elected members should be positively encouraged to make use of these opportunities to maximise their role as local representatives and provide civic leadership.

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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MEMBER INVOLVEMENT IN SECTION 106 AGREEMENTS FOR MAJOR APPLICATIONS

SUMMARY

In March 2010, Stockton-on-Tees Borough Council adopted the Core Strategy which contained a specific policy (CS11) that required all new developments will be required to contribute towards the cost of providing additional infrastructure and meeting social and environmental requirements. In addition to this, in May 2008, a Supplementary Planning Document (SPD 6) had been adopted that also covered the use of planning obligations. The SPD was concerned with the current status of planning obligations at that time and did not consider the future legislative changes which may occur, especially now following on from the new coalition government. The purpose of the SPD is to provide developers, planning officers and the public with information and guidance concerning the Council's approach towards securing planning obligations associated with development within the Borough.

The use of planning obligations, or section 106 agreements as they are also commonly known, has become an important part of the planning process and are appended to many major planning applications, covering such things as affordable homes, education contributions, local labour agreements, infrastructure provision and open space and play provision.

Heads of Terms describing what will be included in a section 106 agreement must be open and transparent and be included within the planning report, and often the fine tuning and phasing of this is finalised after committee by officers. It is the intention of this report to outline how members can be more actively involved in this process whilst at the same time ensuring that applications are still determined within time.

RECOMMENDATIONS

Cabinet is recommended to endorse the protocol for member involvement in the planning obligations process

DETAIL

1. The legal framework for planning obligations is set out under Section 106 in the Town and Country Planning Act 1990, as amended by section 12 of the 1991 Planning and Compensation Act. Circular 05/2005 'Planning Obligations' was issued by the government in July 2005, and supersedes Circular 1/97. Planning Policy Statement 1: Delivering Sustainable Development also contains further guidance, surrounding planning's requirement to deliver sustainable development.
2. According to Circular 5/2005, a planning obligation may be applied in the following forms:
 - prescriptive – for example requiring that a certain proportion of a housing development is affordable;

- compensates – for example secures a contribution from a developer to fund open space development;
 - mitigates – for example increased public transport provision.
3. Planning obligations are a legally binding agreement entered into between a developer and the Council. Circular 05/2005 'Planning Obligations' provides guidance as to how planning obligations should be applied. They are an effective tool in ensuring all development within the Borough of Stockton-on-Tees contributes to the objective of sustainable development. However, planning obligations should only be used to "make acceptable development which would otherwise be unacceptable in planning terms" (Circular 05/05, Para. B3). Every planning obligation must, according to the government's guidance, meet the following tests:
- Be relevant to planning;
 - Necessary to make the proposed development acceptable in planning terms;
 - Directly related to the proposed development;
 - Fairly and reasonably related in scale and kind to the proposed development;
 - Reasonable in all other respects.
4. The following is a list of topic areas where the Council seek planning obligations when appropriate, in that the development requires their provision to ensure that the essential infrastructure requirements are addressed:
- Highway Infrastructure
 - Affordable Housing,
 - Education,
 - Public Transport Infrastructure,
 - Open Space and Recreation,
 - Landscape,
 - Biodiversity and Public Realm schemes,
 - Employment and Training Initiatives,
 - Community Facilities and Community Safety,
 - Public Art.
5. Core Strategy Policy 11 on planning obligations clearly states that all new developments will be required to contribute towards the cost of providing additional infrastructure and meeting social and environmental requirements. It states that when seeking contributions, "the priorities for the Borough are the provision of highways and transport infrastructure, affordable housing, and open space, sport and leisure facilities". It must be pointed out that the type and amount of contributions will vary, dependent on the nature of individual sites, and these are negotiated on a site by site basis, the SPD and policy CS11 being the starting point for any discussions.
6. Planning obligations will be negotiated on a case-by case basis, and priority given to the 3 individual items as highlighted in the preceding paragraph, at the discretion of the Council. Consideration needs to be given to a range of policy issues, site characteristics, government guidance and comments received from consultations during the development process. Should a developer be unable to provide those contributions that have been requested because of the financial viability of the scheme and site costs involved, then an open book approach is adopted whereby the site viability costs are examined to see what the site can yield in terms of contributions, and consensus reached by negotiation between all parties involved.
7. This report was presented to the Planning Committee on 14th July 2010 and Members had no specific comments to make or objections to it

NEXT STEPS

8. It is therefore important for Members to be involved in this process, and formalise how this will take place. Following on from the Killean Pretty review, guidance from DCLG on member involvement in major planning applications and the new localism agenda, Members need to be able to put forward the priorities of their local area as perceived by themselves and local people. The latest advice is that Local authorities should put appropriate mechanisms in place to ensure that elected members can take part in discussions on development proposals at all relevant stages, including when options are being scoped and plans shaped, without prejudicing their decisions or compromising the integrity of the process. Elected members should be positively encouraged to make use of these opportunities to maximise their role as local representatives and provide civic leadership.
9. In addition planning conditions and any section 106 requirements are encouraged to be worked out prior to an application being submitted and therefore views of the local ward councillors must be sought at this stage.
10. The protocol for member involvement is therefore set out in the flow chart at appendix 1. At the pre-application stage, officers will seek the initial views of consultees (internal and external) to establish what may be required through a planning obligation. Once those views have been obtained, contact will be made with the Ward Councillors in which the development is being proposed to obtain their initial views on what is being proposed and any local priorities that may arise in addition to this. Discussions will then take place with the developer around the amount and levels of contribution, with the corporate priorities as outlined as paragraph 5 in mind. Where more than one Ward may be affected as a result of ward boundaries, other Ward Members will be notified as appropriate. Ward members will be kept informed by email of the progress being made and the draft section 106 contributions. This will subsequently form the basis for the submission of the planning application.
11. For section 106 agreements already signed and relating to an existing extant permission, should developers wish to renegotiate the terms of the section 106 agreement due to the different economic circumstances now in existence, then this shall be treated in the same way as a pre-application enquiry and Members contacted and involved in the same manner.
12. Should no pre-application meetings take place and a major application be submitted without the benefit of this having taken place, then Ward Councillors will be contacted at the appropriate point as the application progresses in the same way as outlined above. Ward Councillors will be given 3 working days in which to respond in order to keep the application on track and in time. It must be recognised that there will be occasions where there is a difference between the local perspective and the borough wide corporate priorities e.g. with sport and leisure facilities. In these circumstances, if there is a difference of opinion, then that will be clearly outlined in the accompanying committee report, and planning committee will ultimately decide on the contents of the section 106 agreement. If the application is to remain delegated, then the Head of Planning and the Chair of Planning Committee will arbitrate, as determined by the corporate priorities. Core Strategy policy 11 is a material consideration in the resolution of any differences at this stage.
13. Should any alterations or phasing be required after an application has been to committee, then this will be reported to the Ward Councillors and Chair of Planning for their input. There will only be one re-consultation taking place at this stage, the response time to be determined at that point depending on the expiry date of the application in order to keep it within an effective timescale for determination. Any final arbitration at this stage will again be delegated to the Head of Planning and Chair of Planning Committee. Due to the time

limiting nature of the process at this point, if contact cannot be made with the Ward Councillors, then again this will be delegated to the Head of Planning and the Chair of Planning Committee to keep the application within time.

14. In cases where the Head of Planning is not available to carry out the arbitration at any stage of this protocol, the decision will be delegated to the Development Services Manager or Spatial Planning Manager, or the Vice Chair of Planning Committee in the absence of the Chairperson.

FINANCIAL IMPLICATIONS

15. Any financial implications will be accommodated within normal budgetary provisions

LEGAL IMPLICATIONS

16. Section 106 Agreements are a legally binding document that require to be drawn up and signed by the Head of Legal Services.

RISK ASSESSMENT

17. Member involvement in section 106 agreements for major applications is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.”

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

18. The use of planning obligations, or section 106 agreements as they are also commonly known, has become an important part of the planning process and are appended to many major planning applications, covering such things as affordable homes, education contributions, local labour agreements, infrastructure provision and open space and play provision.

Community Safety Implications –

19. This proposal has no direct impact upon community safety

EQUALITIES IMPACT ASSESSMENT

20. This report is not subject to an Equality Impact Assessment because it relates to Member involvement in Section 106 Agreements and does not affect the original Supplementary planning document relating to Section 106 Agreements which was subject to an Equality Impact Assessment.....

CONSULTATION INCLUDING WARD/COUNCILLORS

21. Report considered by the Planning Committee on 14th July 2010

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Education related No

Background Papers

SPD 6: Planning Obligations

Stockton-on-Tees Adopted Core Strategy

Development management: Proactive planning from pre-application to delivery

Consultation on a draft new planning policy statement on development management, and on draft policy annexes on the pre-application and determination stages
DCLG December 2009

Ward(s) and Ward Councillors: All ward and ward Councillors

Property

No implications on Council property

Appendix 1

