

DEVELOPMENT COMMITTEE

4TH APRIL 2013

REPORT OF HEAD OF REGULATORY SERVICES

SECTION 106 OBLIGATIONS

1.0 PURPOSE

- 1.1 The purpose of this report is to advise Members of the contributions received through section 106 agreements and those anticipated. It also sets out to update the Committee on current issues relating to section 106 agreements. This report is to be presented to the Policy Finance and Administration (PFA) Committee on 10th April 2013 following requests made in the January meeting of that Committee.

2.0 RECOMMENDATIONS

- 2.1 **That the content of the report and the details in Appendix A are noted.**
- 2.2 **The Committee considers any comments and recommendations it wishes to forward to the PFA Committee for consideration.**

3.0 KEY ISSUES

- 3.1 Section 106 of the Town and Country Planning Act permits the Council to enter agreements with developers to secure obligations related to development, including financial contributions for infrastructure for which the development concerned creates the need, and other obligations restricting to scope or use of the development. Such obligations are complementary and different to conditions imposed on planning permissions because they are entered into voluntarily by developers in agreement with the Council, and have a wider scope than is permitted by conditions. Section 106 is to be replaced by the 'Community Infrastructure Levy' (CIL) but this has yet to be developed locally (through the Local Development Framework process) and this report does not address CIL. The legislative basis for s106 obligations is set out in Section 6 of this report below.
- 3.2 Appendix A to this report sets out the position in respect of S106 receipts. Part 1 of the Appendix conveys the s106 contributions that have been received as a result of developments taking place and are held in accounts awaiting assignation to a project. Members will be aware that s106 contributions have been collected over many years and have funded a wide range of projects and infrastructure improvements. It will be noted that receipts from s106 are held in accounts for very specific purposes, and this reflects a fundamental principle of s106 contributions – that they must address the demands created by the development itself (i.e. cannot make a generic contribution to wider funding streams). Additional information on this aspect is provided in Section 6 below.
- 3.3 Part 2 of the Appendix lists the s106 agreements we have in place but have not yet been 'activated' because the development concerned has either not started, or not reached the stage at which the payments are due. This part sets out the source (i.e the relevant development) of the obligation, the purpose to which each obligation relates and the quantum concerned.
- 3.4 Part 3 of the Appendix highlights some current and emerging issues relating to s106 agreements and the approaches developers have made. This is anticipated to be a developing trend reflecting market conditions and costs. The Government recently consulted on an initiative to enable the renegotiation of s106 obligations where they are

an impediment to development. The results of this are not yet known but the suggestion was that they should be negotiated locally where possible but an 'adjudication' regime (utilising the Planning Inspectorate) could be introduced to resolve disagreements. Part 3 has to be treated as exempt as it contains commercially sensitive information for the parties concerned.

4.0 POLICY AND CORPORATE IMPLICATIONS

- 4.1 Section 106 agreements have existed since 1990 and replaced their predecessor, s52 agreements, and as such are a well developed concept. S106 obligations have facilitated development by addressing issues that would otherwise have been impediments and in turn have facilitated development projects that would otherwise have been impossible. In this respect they have made a considerable contribution to local economic development and housing supply.
- 4.2 S106 is also the key tool by which affordable housing is secured from within housing schemes and as such are a key tool in addressing the Corporate objective of providing a housing supply that reflects local needs.
- 4.3 Where receipts for s106s are received for capital projects within the remit of the Council, they are identified through the project management system and the capital programme via the relevant Committee. These controls ensure that the funds are dedicated to their intended purpose and, where there is discretion, that it is an optimal use of the funds.

5.0 FINANCIAL AND OTHER RESOURCE IMPLICATIONS

- 5.1 S106 agreements are negotiated and secured as part of the 'mainstream' work of the Applications and Advice Team and Development Committee from within annual budgets and are similarly concluded as a binding contract by the solicitor to the Council.
- 5.2 Agreements can be construed as a source of revenue for the Council but within the context of them meeting the additional cost that the development gives rise to. The Council incorporates obligations for County and Parish Council services where applicable in its role as Local Planning Authority. In each case it adjudicates whether the obligations are acceptable within the regulations that govern their scope (see below).

6.0 LEGAL IMPLICATIONS/POWERS

- 6.1 S106 of the Town and Country Planning Act 1990 allows Local Planning Authorities to enter into agreements with developers to develop obligations for a range of matters which cannot be secured by conditions. These can extend to financial matters and 'off site' issues which are beyond the scope of conditions.
- 6.2 The use of the s106 facility is regulated by Circular 5/2005 and, more recently, by the CIL Regulations 2010. This requires their use to be limited to:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
- 6.3 The effect of these requirements is to ensure they are not used to secure benefits which are not a consequence of the development and to limit their use to making applications acceptable when otherwise they would not be.

7.0 COMMUNITY SAFETY

7.1 There are no Community issues arising from this report, although it is feasible that s106 obligations can encompass some community safety issues (e.g. road safety improvements; CCTV etc).

8.0 EQUALITIES

8.1 There are no equalities issues arising from this report.

9.0 RISKS

9.1 There are no risks identified as a result of this report.

10.0 CLIMATE CHANGE

10.1 There are no climate change issues arising from this report.

11.0 CONSULTATION

11.1 All planning applications referred to in the Appendix are subject to statutory local protocols on consultation.

12.0 WARDS AFFECTED

12.1 To varying degrees, most if not all wards are affected.

Contact Officer: J Worley, Head of Regulatory Services

Date: 21st March 2013

Appendices: Appendix A –s106 position statement summary

Background Papers: Planning application files in respect of applications contained within

APPENDIX A : s.106 CONTRIBUTIONS

Part 1: SUMS IN RECEIVED

Received from	Purpose of Contribution	Amount	MBC Commitment (where applicable)
Doctors Lane (Barratt Homes)	Open Spaces - country park	£18,150	£18k committed to replacement equipment at Melton Country Park (original receipt was £53,550 re: Doctors Lane of which £21k used for I-play unit and £14.4k for climbing pyramid at MCP play areas)
Beckmill (DS Lee)	Open Spaces	£20,000	None
Windsor St Development	Outdoor Leisure facilities "within the vicinity of the development"	£9,688	Possible proposal to use part of this monies to provide enhanced Equipment at Melton Country park (see Barratt Homes) although Development Committee approval required.
Windsor St Development	Transport Infrastructure "within the town centre of Melton"	£10,000	Included as possible contribution to car park improvement works Proposed in 2013/14 on basis some works required to car park in vicinity of Chapel St

Part 2: COMMITTED OBLIGATIONS (to be realised when development begins and/or trigger point reached)

Ref	Address	Date of permission /agreement	Development	Purpose of Contribution	Amount
07/00298/FUL	Six Elms Asfordby Road Melton	19.06.07	Residential development for 19 houses and associated works	(i) Education contribution (ii) Library contribution (iii) Civic Amenity Contribution	(i) £1608.465, (ii) £61.68 per dwelling 3/4 bedrooms, (iii) £75.13 per dwelling
07/00733/FUL	War Memorial Hospital, Ankle Hill, Melton Mowbray	12.03.2008	Residential Development	(i) Civic Amenity Contribution (ii) Library Contribution (iii) Affordable Housing (iv) Maintenance and transfer of open space	(i) £8114; (ii) £4940; (iii) 38 units - 19 for rent and 19 for shared ownership (iv) sum to be determined after agreement of maintenance scheme, to cover 20 years future maintenance
08/00249/OUT	Silverdale, Scalford Road, Melton Mowbray	24.04.09	Residential Development to a maximum of 12 units	(i) Library contribution (ii) Civic Amenity Contribution (iii) NHS Primary Care Trust (iv) Affordable Housing	(i) Based on a formula contribution – 1 bedroom houses/apartments @ £27.18 per house 2 bedroom houses/apartments @ £54.35 per house 3/4/5 bedrooms/apartments @ £63.41 per house (rounded to the nearest £10) (ii) Based on a formula contribution - £79.82 per dwelling (iii) £583 per 1&2 bedroom dwelling (iv) No less than 40% of the total dwellings shall be rented and shared ownership units - subject to an affordable housing plan

09/00026/OUT	Long Clawson Dairy, Langar Lane, Harby	18.01.10	Construction of 8 new residential units, and change of use to form 1 unit from industrial to residential.	(i) Affordable Housing (ii) Village Hall Contribution (iii) Civic Amenity Contribution (iv) Library Contribution	(i) 40% - ¼ to be intermediate (for sale) and ¾ social rented (ii) £13,973 (iii) £79.82 per dwelling (iv) Based on a formula contribution – 1 bedroom houses/apartments @ £27.18 per house 2 bedroom houses/apartments @ £54.35 per house 3/4/5 bedrooms/apartments @ £63.41 per house
09/00356/OUT	Holwell Works, Welby Lane, Asfordby Hill	15.06.2010	Industrial development 35,080 square metres of B1(c) B2 and B8 industrial,	(i) Highways contributions for Welby Lane (ii) Parish Council for street cleansing infrastructure (iii) Construct a proportion of the estate road	(i) £20,000 (ii) £3750 (iii) N/A
09/00635/FUL	Land off Loughborough Road, Asfordby	06.07.10	Erection of 64 dwellings (resubmission of previously approved application)	(i) Affordable Housing (ii) Bus passes (iii) Bus stop infrastructure works (iv) Civic amenity contribution (v) Library Contribution (vi) Open space maintenance/contribution (vii) travel pack contribution (viii) TRO Contribution	(i) 19 units (min 42% intermediate housing units & 58% social rented units) (ii) 2 adult bus passes per dwelling (iii) 2 bus stops on Loughborough Rd (iv) £551.76 (v) £79.81 per dwelling Based on a formula contribution – 1 bedroom houses/apartments @ £27.18 per house 2 bedroom houses/apartments @ £54.35 per house 3/4/5 bedrooms/apartments @ £63.41 per house (rounded to the nearest £10) (vi) 8.9% of application site maintained at £0.53 per sq.m. (vii) £48.00 per dwelling (viii) £6,500
08/00380/FUL	36 - 44 Thorpe End, Melton Mowbray	17.09.10	Redevelopment to form three retail units and twelve two bedroom residential flats	(i) Affordable Housing (ii) Civic amenity contribution (iii) Infrastructure Contribution (iv) Library Contribution	(i) 2 ground floor social rented units & 2 intermediate affordable housing units based on 33.33% of total no. of dwellings (ii) £878.00 (iii) £30,448 (iv) £650.00
10/00178/FUL	Car Park, Nottingham Road, Melton Mowbray	13.05.11	Redevelopment of the site for a new foodstore (Class A1 Use) with associated car parking, access, highway works, landscaping and servicing.	(i) Bus shelter contribution (ii) Pedestrian Crossing contribution (iii) LCC Town Centre Linkage Contribution (iv) Town Centre Management Contribution (v) Town Centre Promotional Board	(i) £38,000 (ii) £40,000 (iii) £70,000 (iv) £70,000 (v) N/A

12/00123/OUT	Belvoir Rd, Bottesford ¹	14.03.2013	Residential Development (up to 56 dwellings)	<ul style="list-style-type: none"> (i) 22 affordable units (ii) Primary education (Bottesford C of E Primary School) (iii) Secondary Education (Bottesford High School) (iv) Police infrastructure (v) Highways infrastructure – bus stop improvements and travel packs and bus passes 	<ul style="list-style-type: none"> (i) 11 shared ownership and 11 social rented), limited to local occupancy (ii) £162,610 (iii) £167,142 (iv) £ 33,936 (v) £22,000
12/00806/FUL	Stathern Lane, Harby ¹	14.03.2013	Residential development (5 bungalows)	<ul style="list-style-type: none"> (i) Affordable housing (ii) Sales/lets prioritised to local residents 	<ul style="list-style-type: none"> (i) 2 units (ii) Cascade of Harby, Parish, Borough then others.

¹: Agreement reached but s106 documentation not yet complete.