

CABINET	AGENDA ITEM No.
24 NOVEMBER 2008	PUBLIC REPORT

Cabinet Member responsible:	Cllr Graham Murphy – Cabinet Member for Housing, Regeneration and Economic Development	
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S106 PLANNING OBLIGATIONS IMPLEMENTATION SCHEME

RECOMMENDATIONS	
FROM : <i>Scrutiny Committee, Deputy Chief Executive and, Cabinet Member for Housing, Regeneration and Economic Development</i>	Deadline date : The draft SPD needs to be in place by 1 January 2009
<ol style="list-style-type: none"> 1) That the s106 Planning Obligations Implementation Scheme be approved, for phased introduction after the December meeting of Council. 2) That there be further work carried out to give the Implementation Scheme status as a Supplementary Planning Document. 3) That for applications both approved between 1st January 2009 and 31st December 2009, and substantially completed before 31st December 2010 there will be: <ul style="list-style-type: none"> • A discount of 30% on s106 financial contributions • A reduction of 'expected' Affordable Housing level from 35% down to 25% 4) That meetings are convened for the members of each Neighbourhood Investment Area, to ensure that Members are fully involved in discussing, identifying and confirming required infrastructure for each area, and the means of provision, including s106 Planning Obligations. 	

1. ORIGIN OF REPORT

- 1.1 This report is submitted to Cabinet following Scrutiny Committee on 10 November 2008 and CMT on 18 November 2008.

2. PURPOSE AND REASON FOR REPORT

The purpose of this report is to update the committee on the progress of the S106 Obligations Implementation Scheme in light of the withdrawal of the report that was originally submitted to the Planning and Environmental Protection Committee meeting on the 28 July 2008. The report has been substantially redrafted and widely consulted on with the development industry. It is recommended that Cabinet now grant approval for the

amended draft for proceeding for eventual adoption as a Supplementary Planning Document.

2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.4 *To promote the Council's corporate and key strategies and Peterborough's Community Strategy and approve strategies and cross-cutting programmes not included within the Council's major policy and budget framework.*

3. **TIMESCALE** *The intention is that the S106 Scheme is adopted as council policy and for the purposes of consultation and sustainability appraisal and then reported back with a view to adoption as a SPD (Supplementary Planning Document).*

Is this a Major Policy Item/Statutory Plan?	YES	If Yes, date for relevant Cabinet Meeting	24/11/08
Date for relevant Council meeting	10/12/08	Date for submission to Government Dept <i>(please specify which Government Dept)</i>	N/A

4. **MAIN BODY OF REPORT**

4.1. **BACKGROUND**

The S106 Scheme has been devised as a corporate framework which is intended to be acceptable to landowners and developers and meet the needs of service departments and the council's partners in its growth strategy. The current and proposed arrangements are integral to providing funding to the Corporate Plan, Sustainable Community Strategy and Local Area Agreement (LAA) priorities and outcomes. The document helps to deliver Local Plan Policy IMP1 and is consistent with the emerging policy CS11 of the draft Core Strategy.

The council agreed in 2007 that it needed to adopt a more detailed S106 framework and consultants working jointly for PCC & Opportunity Peterborough (OP) developed proposals. A report on the Planning Obligations Implementation Scheme was submitted to the Joint Scrutiny Committee on 28 July 2008. In the light of comments made, it was agreed to reflect further on the concerns raised and subsequent discussions have been held with house builders, developers' representatives and others. The council has also looked to revise the document due to economic changes in the development industry and the document before you reflects all of these changes.

The council has a Planning Obligations Policy (IMP1), which is a saved policy under the Local Plan (First Replacement) 2005. As part of that policy the council confirmed that separate guidance would be produced to outline priorities for the provision of infrastructure and facilities within the city. This Planning Obligations Implementation Scheme delivers on that commitment and therefore can be adapted as an SPD (Supplementary Planning Document).

The council has plans to grow Peterborough, which requires new infrastructure and replacement infrastructure to ensure that the city's growth is sustainably achieved. The council has worked with partners to capture the infrastructure requirements which are set out in the Integrated Growth Study (IGS) and the Integrated Development Programme (IDP).

4.2. **KEY ISSUES**

The council has relied on policy IMP1 for its current s106 policy framework since 2005 with the adoption of the current Local Plan. This is proving unsatisfactory in that it is: -

- insufficiently detailed
- open to different interpretations

- not a reliable framework on which service departments can depend in planning capital programmes
- unreliable as a framework for assessing developer contributions

For these reasons, the new scheme strengthens the council's negotiating position with developers.

4.3. THE SCHEME SEEKS TO PROVIDE: -

- a costed social and physical infrastructure programme which has to be funded for the growth strategy to succeed, and to which new development needs to make a proportionate contribution
- the principle that all significant developments including minor residential but not house extensions make a contribution to infrastructure growth because of their impact on the use of social and physical infrastructure like schools and public transport
- on-site infrastructure and contributions to neighbourhood and city-wide provision, on a phased basis in some cases and by negotiation on larger sites
- standard contribution figures for a range of different developments which will be used to assess the S106 Obligation. This includes a range of softer community, social and environmental projects which would not necessarily have attracted a contribution under the current Scheme
- a requirement that contributions are paid on all housing – including affordable
- pooled arrangements for taking funds from a series of relevant developments and banking them over a period, adding other funding until the project is fully funded and can commence implementation
- scenarios showing the impact on new development, and a separate report which assesses this. The report's conclusion is that the new scheme's impact will vary case by case, but that it enhances transparency and consistency for developers
- the scheme will be carefully monitored and reviewed at least annually and modified to ensure it meets its objectives. Its infrastructure costs and contributions will be indexed
- the scheme will collect contributions for PCC and partner services
- there will be a charge on development towards the costs of running the S106 activity which will be administered within the Planning Service and be accounted for to the Planning and Environmental Protection Committee
- there has been extensive consultation with developers and other parties who have contributed to the development of the scheme

4.4. CHANGES MADE IN RESPONSE TO SUBMISSIONS ARE:

- Confirmation of legality – The scheme has been changed to minimise both the risks of legal challenge and consequences of legal challenge, if any
- Simplification and shortening of the report, with the inclusion of a 'flow chart' that visually describes the process flow
- Raising the thresholds of contributions from non-residential uses – this will mean that smaller developments (often involving small and start-up companies) will not contribute
- In response to the 'Credit Crunch', the introduction of discount of 30% for new applications approved over a period of a year (between 10 December 2008 and 31 December 2009), and developed to substantial completion before 31 December 2010. This will not apply retrospectively, but may be extended or amended during the annual review
- partial suspension of 'affordable housing' requirements from 35% down to 25% - for new applications approved over a period of a year (between 10 December 2008 and 31 December 2009), and which are built before the end of 31 December 2010. This could improve the viability of schemes, but may involve loss of Housing Corporation support in some cases

- A 'Ready Reckoner' has been created, suitable for use in large majority of cases, allowing an early and clear statement of the obligation, and how it will be spent
- The council agrees that it should be more flexible in accepting Unilateral Undertakings – this will save some developers substantial time and cost

4.5. CHANGES NOT MADE DESPITE SUBMISSIONS ARE:

- Details of proposed infrastructure have been criticized for giving inadequate detail – 'Opportunity Peterborough' are currently updating the Integrated Development Programme which will address this issue
- Some developers are of the view that the 'Credit Crunch' is so drastic that contributions should be discounted by 100% - the view of officers is that contributions from developers are necessary and without which there is a serious risk that development will be deprived of infrastructure and therefore be unsustainable
- A number of people have suggested that the Neighbourhood Investment Areas are too large – our consultants suggested two (Urban and Rural) – the view of officers is that the current areas reflect the common investment areas agreed with partners and the planned pattern of development. While other neighbourhood areas can be considered in future, at the present time they are the most coherently defined areas proposed. In addition, the Scheme ensures that facilities are provided locally where this is feasible
- Defer a decision until after the Credit Crunch, the recession, the Community Infrastructure Levy etc – deferring a decision will not only continue major delay to applications, unfairness and misunderstandings, but would fail consistently to address a number of key applications due in the coming year, and risk failure to deliver key items of infrastructure.

Modifications to the report have been made following further discussions with developers and other parties and following Scrutiny Committee. Scrutiny Committee had reservations about the reduction in affordable housing from 35% to 25% however in officers' view that level of reduction is appropriate in the current market conditions.

5. CONSULTATION

- 5.1 Extensive discussion and structured consultation over a period of months with several draft proposals have been carried out by PCC, OP and others. Members have had periodic reports and a formal report in July 2008.
- 5.2 Following CMT and Cabinet approval as a draft Supplementary Planning Document:
- the Scheme will undergo a Sustainability Appraisal and will be publicised and consulted on prior to adoption as a Supplementary Planning Document
 - training will be provided for relevant staff and agents
 - relevant internal procedures will be introduced and tested in advance
 - it will operate from 1 January 2009 informally as a 'pilot' until such time as it is approved as SPD for those applications validated on or from then
 - there will be transitional arrangements for developments 'in the system'

Monitoring will take place throughout and will be reported as part of the business planning cycle

6. ANTICIPATED OUTCOMES

The proposed S106 Scheme has the following implications;

- It will ensure more widely dispersed contributions from more developments towards a wider range of social and physical capital programmes of PCC and partner services providers
- Developers' contributions towards off-site physical infrastructure may be reduced in some cases
- In current market conditions the council would consider a discount for developers as long as they started and finished their development within two years
- Because of current market conditions and the proposed discount of contributions, there will be a potential 'gap' in the funding for infrastructure, and therefore an increased risk that infrastructure will be delayed or under-provided
- Development projects will need to be transparently presented along with the planning application
- Unspent earmarked balances will be returned to contributing developers if not used within ten years of receipt
- The current S106 database needs to be updated and linked to the Infrastructure Development Plan and PCC's financial planning
- Service departments need training and guidance on how to work with the new scheme
- The Scheme will be administered corporately by the Planning Obligations Officer supported by Planning case officers, and relevant staff in services and partner organisations
- New process and procedures will need to be introduced to operate and maintain the new arrangements which will need to be fully monitored and audited

7. REASONS FOR RECOMMENDATIONS

The Planning Obligations Implementation Scheme will be markedly clearer, faster and fairer than at present and with a reduced risk of misunderstanding, delay and complaint. It will provide a clear 'stepping stone' to the finalisation of a Supplementary Planning Document following the approval of its Core Strategy.

The council needs robustly to test the proposals and then approve them subject to review in April to ensure a scheme is in place as soon as practical.

8. ALTERNATIVE OPTIONS CONSIDERED

GVA Grimleys, consultants advising the PCC have considered a range of S106 schemes but recommend this one

The Council could choose not to operate a scheme, but this approach is unsatisfactory for the reasons highlighted at paragraph 4.2..

9. IMPLICATIONS

Corporate Resources

Financial

The report has considerable income potential for PCC which can be realised if the staffing and organisation proposed in the Business Transformation Plan for the Planning Service. This is within budget.

Legal

The report has legal risks of challenge by developers.

Human Rights Act

The report will respect this

Human Resources

Staffing is being provided by the Planning Service

ICT

The data base and links will need developing

Property

There are no direct additional accommodation issues

Contract Services

There are no additional implications here

Cross-Service Implications

How does your proposal effect colleagues providing related services?

The S106 Scheme is designed to give benefits to service departments and PCC partners

Have they been consulted?

They are in the process of being fully involved and consulted

Risk Assessment

Have you evaluated risks and identified remedial actions?

Yes and these are considerable with a new scheme but experience with other local authorities suggested the process can be managed.

Community Implications

Race Equality Impact Assessment – No

Impact on other potentially disadvantaged groups – The Scheme is designed to produce a wider range of benefits and to be more inclusive than the current S106 Scheme.

Community Safety Assessment – No

Consultees

Ward Councillor(s)

Parish Council(s)

Community Association(s)

Partner Organisation(s) - **Yes Opportunity Peterborough**

GPP or Key Partnership Board

Trades Unions

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)

- i. July S106 Planning Obligation Implementation Scheme Report to Planning Committee
- ii. Letters from GVA Grimley dated 21 December 2007, 11th January 2008 to the S106 Officer
- iii. Impact report Geoff Sutton
- iv. Chelmsford BC S106 SPD 2007