



Chester-le-Street
District Council

Report to: People and Place Overview and Scrutiny Committee

Date of Meeting: 14 January 2009

Report from: Development & Building Control Manager

Title of Report Position Statement in Regard to Section 106 Agreements Entered into by the Authority Relating to Commuted Sum Payments

Agenda Item Number:

1.0 PURPOSE AND SUMMARY

1.1 The purpose of this report is to advise Members of the present position in relation to financial contributions held by the Authority that have been secured through Section 106 Agreements entered into as part of decisions taken to grant planning permission.

2.0 CONSULTATION

2.1 The intelligence that is required to produce this report is held by the Planning Services Team, as the relevant Service Team that has the responsibility for negotiating on 106 Agreements, and thereafter the presenting of recommendations to the Council's Planning Committee. Accordingly, no consultation has been carried out with other Service Teams.

2.2 Consultation is, however, carried out with Ward Members once Officers have formulated initial proposals for the spend of 106 funds. This is in accordance with the requirements of the Council's Section 106 Agreement Protocol, approved at the Green Communities Overview and Scrutiny Committee meeting in September 2006. Officers from various Service Teams have also been working closely across the last 18 months, under the stewardship of the Assistant Director Development Services, to formulate ideas for the spend of 106 funds.

3.0 TRANSITION PLAN AND PEOPLE AND PLACE PRIORITIES

3.1 It is not considered that the report has any significant impact on Transition Plan or People and Place Priorities.

4.0 IMPLICATIONS

4.1 Financial Implications and Value for Money Statement

4.1.1 Ensuring the proper financial management of 106 Agreements is a vital part of the Authorities wider financial management procedures. It is important that a number of areas associated with 106 Agreement procedural issues are properly monitored and documented. These include:-

- Monitoring development sites to observe when trigger points arise and payments are due;
- Ensuring that the Council resolves to commit 106 monies to a purpose appropriate to the planning reasons for requesting the original Agreement;
- Monitoring Agreements, to be aware of potential refund clauses;
- Ensuring appropriate Member engagement is carried out as per the Council's adopted Protocol.

4.1.2 As will be noted from the attached spreadsheet there are no current Agreements that are nearing their refund date (where applicable). The closest refund date applies to Agreement number 19 and comes into force in August 2010. As such there are not considered to be any adverse financial implications arising from this report.

4.1.3 Indeed 106 Agreements have historically provided many positive financial implications to the Authority. As the attached spreadsheet shows several capital projects have been implemented throughout the District through funds received from 106 Agreements; predominantly in relation to new leisure facilities. Without the availability of 106 funds either further pressure would have had to have been applied to the Authority's capital program, or alternatively some schemes would simply not have been realised.

4.2 Local Government Re-organisation

4.2.1 LGR will invariably present some challenges in relation to 106 Agreements; particularly as research carried out as part of workstream activity by the report Author has revealed some wide ranging differences in approach between the existing County Durham Authorities. These include differences in relation to how elected Members are engaged in decisions to spend 106 monies and differences in how 106 funds are ring fenced (most Authorities ring fence monies to the Ward where the original development occurred, however, some place 106 funds into a District - wide funding pool).

4.2.2 Being mindful of these existing different policy approaches the LGR Planning Workstream have identified the need for a consistent policy on 106 Agreements as an essential 'Must Have' document. A report on this issue will be presented to the relevant decision making Committee of the new Authority in due course.

4.2.3 It is considered that one of the key areas of interest raised by LGR for this Authority is how existing 106 Agreements will be monitored for compliance with the original resolutions made by the Planning Committee of this Authority. In this regard it is Officer's opinion that the new Authority will be bound by the decisions taken by this Authority, and that accordingly monies could not be diverted to other purposes (or geographical areas) other than what was decided by the original Authority.

4.2.4 However, with LGR in mind the Council's 106 Officer Working Group (now chaired by the Assistant Director of Development Services as discussed above at 2.2) has been actively seeking to either spend out existing 106 funds held by this Council, or alternatively if this does not prove possible due to the tight timescales involved, to ensure that monies have been attributed by Elected Ward Members to particular schemes, prior to Vesting Day. As is demonstrated from Section 5 of the report this exercise has ensured the allocation of the majority of existing 106 funds held by this Authority.

4.3 Legal

4.3.1 There are no significant legal implications arising from this report. However it should be noted that in 3 cases the original developers have defaulted on the payment of 106 monies due to the Authority. Officers in the Planning Services Team have been unsuccessful in their attempts to ensure payments are made and as such the Council's Legal Services Team have recently been instructed to pursue these matters.

4.4 Personnel

4.4.1 There are no significant adverse personnel implications arising from this report. The proper administration of matters associated with 106 Agreements can be carried out by the existing staffing establishments from within the Planning Services Team.

4.5 Other Services

4.5.1 The proper financial management of 106 Agreements has implications for many other Service Teams within the Authority. This is reflected in the composition of the 106 Officer Working Group that has representatives from Planning Services; Legal Services; Leisure Services; Environmental Services; Regeneration Services and Finance Services.

4.6 Diversity

4.6.1 There are not considered to be any diversity issues arising from this report.

4.7 Risk

4.7.1 There are not considered to be any risk issues arising from this report. In particular it is noted that there are no refund dates looming in the near future.

4.8 Crime and Disorder

4.8.1 There are no direct crime and disorder issues raised by the report. However many 106 funds have been historically used to facilitate the installation of new community recreation and leisure facilities. There is some evidence to suggest that the provision of these new facilities, in central locations with a high degree of natural surveillance, has helped address anti social behavior issues in some communities.

4.9 Data Quality

4.9.1 Every care has been taken in the preparation of this report to ensure that the information and data used is accurate, timely, consistent and comprehensive. In particular the data contained in the spreadsheet attached is accurate; representing an up to date list of all monetary 106 Agreements entered into by the Authority. The Council's Data Quality Policy has been fully complied with in producing this report.

4.10 Other Implications

4.10.1 There are no other implications associated with this report.

5.0 BACKGROUND AND POSITION STATEMENT

5.1 Section 106 of the Town and Country Planning Act (as amended) provides Local Planning Authorities with the power to enter into legal Agreements with landowners and developers as part of their resolutions to grant planning permission for proposals to develop land. Such Agreements can require developers to mitigate against any adverse socio-economic impacts likely to arise as a result of a proposed development and which would otherwise lead to the refusal of planning permission.

5.2 Whilst this can often be achieved through requiring developers to commit to a particular act (such as the construction of a new highway or landscaping scheme) The Courts have also held that such mitigation can legitimately be provided through the payment of a commuted sum to the Authority, in place of any dedicated on site provision. Commuted sums received must then be used by the Authority to carry out capital works to provide facilities in the locality commensurate with the particular impact(s) generated by a particular development.

5.3 The most common form of commuted sum received over the years by this Authority (in common with many other Authorities) has been in relation to leisure space provision as part of new housing developments. Often developers have elected to pay commuted sums of money to the Council in lieu of providing for dedicated on site play provision. These sums have been negotiated having regard to the aims of Policy RL5 of the Council's Local Plan, which seeks to ensure that new housing schemes provide the appropriate amount of recreational and leisure space. Monies have also been received for public artwork having regard to the aims of Policy BE 2 of the Local Plan, which encourages the devotion of 1% of costs for major

development schemes to be attributed to public artwork. Some monies have also been secured, via effective Officer negotiation, for environmental improvement schemes, landscaping schemes, and highway improvement schemes.

- 5.4 As a result of the Authority entering into these Agreements commuted sums to the value of £1,776,541 have been secured since 2000 (when the first such Agreement was entered into) as part of decisions taken by the Planning Committee to grant planning permission. It is worth noting at this juncture that this figure is heavily inflated by one single Agreement authorised at the Planning Committee meeting in June 2006, that required the payment of £1,000,000 towards the installation of highway improvement works on the A690 at the entrance into Drum Industrial Estate.
- 5.5 Out of this £1,776,541 figure a total of £435,750 has to date been spent out on various community infrastructure schemes throughout the District. A further £1,090,424 has been committed to specific projects, which are not yet on site (the majority to the aforementioned Drum Industrial Estate scheme). £50,000 secured as part of the new Chester-le-Street hospital development had to be refunded in 2005 due to the failure to spend the money within the 3 year limit specified in the 106 Agreement. This leaves a figure of £200,367 that has not yet been allocated to specific projects within the District. However it should be noted that out of this available figure developers have defaulted on £34,867 worth of monies. These matters are presently being progressed by Legal Services.
- 5.6 Out of the remaining figure of £165,500 that is presently unallocated the current difficult market conditions indicate that £102,500 worth of funds are most unlikely to be received by the end of the present financial year. This leaves a residual figure of £63,000 that is presently being held by the Authority and has not been allocated to specific schemes.
- 5.7 The £63,000 worth of 106 funds that is presently being held were secured pursuant to the aims of Policy BE 2 of the Local Plan, for public art work purposes. This figure is broken down into £30,000 for the Chester North Ward (secured as part of the decision to grant the Miller Homes development at the Highfield Hospital site in April 2004) and £33,000 for the North Lodge Ward (secured as part of three decisions to grant planning permission for various forms of commercial development on Drum Industrial Estate). The 106 Agreement for the Drum site contains a clause that the Local Authority should use 'best endeavors' to devote the monies to an art work scheme on Drum Industrial Estate.
- 5.8 Bearing in mind the nature of the two 106 Agreements that have unallocated monies attached to them the 106 Officer Working Group anticipate two potential schemes coming forward for Ward Member consideration. These are the installation of a piece(s) of artwork inside Drum Industrial estate, North Lodge Ward (likely to be on land under the control of Durham County Council as the Highways Authority – exact location still to be agreed) and secondly a piece of artwork on the grass verge to the South of the Northlands Roundabout (at the entrance into Chester-le-Street Town from North Lodge) which is also under the control of the County Council. The practicalities of

these proposals are currently being investigated by Officers; with the lead role being taken by the Council's Leisure Services Team.

- 5.9 In addition to the Agreements entered into under Section 106 of the Town and Country Planning Act the Authority has also yet to spend out a sum for £10,500 received direct from Miller Homes as part of a decision to grant planning permission for a development in Pelton Lane Ends in 2003. Discussions as to potential projects that these monies can be directed are continuing with Ward Councilors.

6.0 RECOMMENDATION

- 6.1 That Members note the position in relation to Section 106 Agreements entered into by the Authority as detailed in this report and attachments.

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