

Briefing Note

S106 Planning Obligations

Feb 2020

Stephen Alexander (Head of City Planning)

Purpose

To provide a summary of how we collect S106 contributions from developers and allocate the money to be spent on capital projects, as well as how Councillors are involved in the decision-making process.

Overview

S106 obligations mostly relate to the payment of contributions for open space enhancement and the provision of affordable housing as part of a planning application for a major residential development.

In the financial year (2017/18) S106 contributions received amounted to £1.2M. For example, this included £109,000 from the developer of new housing on the Warstones Inn site, to be spent on Windsor Avenue Playing Fields and £100,000 for the Danesmore School site, to be spent on Ashmore Park.

Background and context

The following paragraphs explain the legal and policy constraints, as well as the process by which Councillors are involved in the decision-making process.

Regulations

The Community Infrastructure Levy Regulations 2010 (CIL Regs) require obligations attached to a planning permission to meet three key tests:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development;
- Fairly and reasonably related in scale and kind to the development.

This means that S106 obligations can only be required when justified by planning policy, on a case by case basis. For example, a public open space contribution could only be required where a housing development would be for more than 10 dwellings, where it can be demonstrated that there is a need for improved open space in the area and where the sum required would be proportionate to the scale of development proposed.

To meet the three key tests the S106 obligation needs to specify as precisely as possible which project S106 contributions are to be spent on. For example, the Danesmore School contribution must be spent on “the enhancement, maintenance and management of Ashmore Park public open space”.

Financial Viability

Local planning authorities are required by national planning policy to ensure that S106 obligations must not threaten the financial viability of developments. Where it can be demonstrated that the full S106 obligations would threaten viability, the obligations must be reduced to a level which would not undermine viability. Given that financial viability can vary over time a reduction on viability is usually time limited.

Planning Applications

When a planning application is received there is a public consultation exercise. Councillors are welcome to comment on any planning application in the city. Councillors can receive notifications on all applications in their ward (or any wards they are interested in) by e-mail via Planning Online.

By the time a planning application is presented to Planning Committee, the need for a S106 agreement will have been considered and included in the committee report with a recommendation for a decision by members of the Planning Committee.

Public Open Space Contributions

Many S106 obligations relate to public open space. The Open Space Strategy and Action Plan (OSSAP) sets out priorities for spending on public open space. Every two years the OSSAP is reviewed and following consultation with all Councillors and Neighbourhood Plan groups is subject to Cabinet approval. The OSSAP is used as a guide in deciding whether an open space contribution is required and what such a contribution would be spent on. The OSSAP was reviewed in Spring 2018 and approved by Cabinet in July 2018.

Collecting S106 Contributions

A S106 obligation will specify a trigger point for making any contributions which are required. For example, it may specify that an open space contribution must be paid before more than 50% of the houses are occupied. It is the responsibility of the developer to pay S106 contributions, as required by the S106 obligation.

Spending S106 Contributions

Once the money has been received by the Council, the spending of S106 contributions is enacted by the spending services. For example, Environmental Services spends public open space contributions (see attached tables for further information about these). Contributions can only be spent for the purpose specified in the S106 obligation.

On receipt, the spending service identifies the detail of how the contribution will be spent and a timescale for delivery. This will take account of the requirements of the S106 (and in

the case of open space, on the priorities in the OSSAP). Before the contribution can be spent, approval is required from Cabinet (Resources) Panel. Once approved, the contribution is included in the Capital Programme ready to spend.

Process followed by the spending service:

- Public consultation including Ward Councillors;
- Design work;
- Tender the work and appoint contractor;
- Secure other funds (e.g. match funding).

For example, public consultation was carried out before the enhancement of the children's playground in Castlecroft Avenue. The enhancement was paid for using the contribution that was received by the developer of the adjacent doctors' surgery. Environmental Services worked with the Finchfield and Castlecroft Residents Group, to survey the views of existing users and the local school. Letters were sent to neighbouring residents, at the outset and again prior to installation works. Ward Councillors were involved and updated at key points throughout the process.

Summary

- S106 obligations must comply with the CIL Regs.
- S106 obligations must take account of financial viability.
- Spending on public open space is guided by the OSSAP.
- Spending must be in accordance with the S106 agreement.

There are opportunities throughout for Councillor involvement. Specifically:

- When a planning application is received;
- When the OSSAP is reviewed;
- Before the contribution is spent.