



Meeting: **POLICY REVIEW COMMITTEE**
Date: **TUESDAY 16 DECEMBER 2014**
Time: **5.00PM**
Venue: **COMMITTEE ROOM**
To: **Councillors M Jordan (Chair), Mrs K McSherry (Vice Chair),
Mrs M Davis, K Ellis, Mrs E Metcalfe, R Musgrave, I Nutt, R
Packham and Mrs A Spetch.**

Agenda

1. Apologies for absence

2. Disclosures of Interest

A copy of the Register of Interest for each Selby District Councillor is available for inspection at www.selby.gov.uk.

Councillors should declare to the meeting any disclosable pecuniary interest in any item of business on this agenda which is not already entered in their Register of Interests.

Councillors should leave the meeting and take no part in the consideration, discussion or vote on any matter in which they have a disclosable pecuniary interest.

Councillors should also declare any other interests. Having made the declaration, provided the other interest is not a disclosable pecuniary interest, the Councillor may stay in the meeting, speak and vote on that item of business.

If in doubt, Councillors are advised to seek advice from the Monitoring Officer.

3. Minutes

To confirm as a correct record the minutes of the proceedings of the meeting of the Policy Review Committee held on 16 September 2014 (pages 1 to 3 attached).

4. Chair's Address to the Policy Review Committee

5. PR/14/5 – Section 106 Agreements

To consider the report from the Solicitor to the Council (pages 4 to 15 attached).

6. Work Programme 2014/15

To consider the current work programme (pages 16 to 17 attached).

Jonathan Lund
Deputy Chief Executive

Next meetings
20 January 2015
17 March 2015 (provisional)
14 April 2015

Enquiries relating to this agenda, please contact Palbinder Mann on:
Tel: 01757 292207 or email: pmann@selby.gov.uk.

Minutes

Policy Review Committee

- Venue: Committee Room
- Date: 16 September 2014
- Present: Councillors M Jordan (Chair), Mrs K McSherry (Vice Chair), K Ellis, D MacKay (substitute for Mrs E Metcalfe) and I Nutt
- Apologies for Absence: Councillors Mrs M Davis, Mrs E Metcalfe (substitute D Mackay), R Musgrave, R Packham and Mrs A Spetch.
- Also Present: Councillor C Lunn, Executive Member for Finance & Resources
- Officers Present: Jonathan Lund, Deputy Chief Executive; Karen Iveson, Executive Director (S151) and Richard Besley, Democratic Services Officer

8. DISCLOSURES OF INTEREST

There were no declarations of interest.

9. MINUTES

RESOLVED:

To receive and approve the minutes of the Policy Review Committee held on 15 July 2014 and they are signed by the Chair.

10. CHAIR'S ADDRESS

The Chair welcomed Councillors and Officers and informed the Committee that he had met with Councillor Crawford, as the Chair of Scrutiny to discuss the Constitutional Review being undertaken by the Audit Committee. It was explained that the review had raised the possibility of merging the Policy Review and Scrutiny Committees. The Committee were informed that both

Chairs had agreed to monitor the review and any submissions to Council on the matter.

11. PR/14/3 – FINANCIAL STRATEGY

The Executive Member, Finance and Resources supported by the Executive Director (s151) presented the Medium Term Financial Strategy.

It was explained that the Strategy had been updated to anticipate further pressure on Local Government finance. The Committee were informed that with a further reduction expected in the Revenue Support Grant, an overall savings target of £1.5m over the next three years was proposed.

Although there was doubt over the long term future of the New Homes Bonus, whilst it remained it could continue to support the Council's Programme for Growth however this was dependent on achieving the savings targets.

The Committee were informed that the Strategy assumed continuation of the Council Tax Support Grant for Parish Councils, however reduced pro rata depending on the level imposed on the Council's settlement funding.

The Deputy Chief Executive reminded the Committee of the significant progress achieved by the Council in delivering over £3m p.a. savings whilst maintaining service performance.

The Committee thanked the Executive Director (s151) and the Finance team for their work on the Council's budget and financial strategy.

RESOLVED:

- i) To note the Medium Term Financial Strategy and feedback the above comments to the Executive.**
- ii) To recommend to the Executive that the Council pay Council Tax Support Grant to parishes as proposed in the strategy.**

12. PR/14/4 – SELBY DISTRICT COUNCIL DRAFT HOUSING REVENUE ACCOUNT BUSINESS PLAN REFRESH 2014

The Executive Member, Finance and Resources supported by the Executive Director (s151), presented the draft Housing Revenue Account Business Plan.

It was explained although the HRA Business Plan covered the period 2012-2017, there had been significant government reforms on self-financing and rent convergence and this had allowed the Council the opportunity to be more involved in the development of new affordable housing in the district.

The Executive Member, Finance and Resources confirmed that the current

Plan performing well with excellent services provided and targets and efficiencies met during 2013/14. The Executive Member, Finance and Resources stated that the report set the Council's vision for its housing service to 2017 and beyond.

Concerns were expressed on the current Choice Based Lettings scheme but the Deputy Chief Executive confirmed that the scheme was easier to manage along with it being transparent and less bureaucratic to run. It was explained that concerns expressed that tenants from North Yorkshire were taking up homes in the district were unfounded as tenancy records demonstrated that a number of Selby residents had taken up homes in other districts of North Yorkshire. It was added that the numbers were similar to those who had applied for homes in the district.

RESOLVED:

To endorse the draft Housing Revenue Account Business Plan.

13. WORK PROGRAMME 2014/15

The Democratic Services Officer presented the Committee's Work Programme for the 2014/15 municipal year.

As questions were raised on Section 106 agreements at the last full Council meeting, the Committee agreed to work with officers to consider the matter and it was agreed to place the matter on the Work Programme for the meeting on 18 November 2014.

RESOLVED:

To note the Policy Review Committee Work Programme for 2014/15 with the above amendment.

The meeting closed at 5.58pm.



Report Reference Number: PR/14/5

Agenda Item No: 5

To: Policy Review Committee
Date: 16 December 2014
Author: Gillian Marshall Solicitor to the Council

Title: Section 106 Agreements

Summary:

This report outlines the legal powers, and local policies and procedures for seeking contributions under a section 106 agreement, applicable to Selby District Council, as local planning authority (LPA).

Recommendations:

That Councillors note the content of the report and decide upon the level of further scrutiny required or make recommendations for consideration.

Reasons for recommendation

To allow Policy Review Committee to scrutinise the policies and procedures for seeking contributions under a S106.

1. Introduction and background

1.2 The Solicitor to the Council was asked to report back to Policy Review Committee confirming the current arrangements for entering into S106 agreements, including engaging and reporting the views of Ward Councillors and citizens on the proposed terms of any section 106 agreements and on the allocation of funding.

2. The Report

2.1 Legal Test

2.1.1 Under section 106 of the Town and Country Planning Act 1990 (TCPA 1990), a person with an interest in land can enter into a planning obligation (either by agreement with the Council or through a unilateral undertaking) to mitigate the impacts of a development proposal. The obligation then binds the land and passes with it to future purchasers. In the first 5 years after completion of the agreement any variations (other than for affordable housing) must be with the agreement with the Council. After that time the developer can apply to remove the obligations. For that reason the agreements usually provide that monies not spent within 5 years become repayable. Planning obligations can be enforced by injunction.

2.1.2 A planning obligation must comply with the three legal tests set out in the Community Infrastructure Levy Regulations 2010 (CIL), Regulation 122 provides that an obligation must be:

(1) necessary to make the development acceptable in planning terms;

(2) directly related to the development; and

(3) fairly and reasonably related in scale and kind to the development.

The three tests above are reflected in the National Planning Policy Framework (NPPF) at paragraph 204.

2.1.3 A S106 agreement cannot be a list of benefits a community would like to secure. It must be based on policy requirements and mitigation of impacts of a development proposal in accordance with the three legal tests set out above. The Terms of a S106 will depend on the scale, nature and location of a development and any associated impacts.

2.1.4 In determining what is necessary for the development to be acceptable in planning terms the Council must consider its policies contained in the Core Strategy, the Affordable Housing Supplementary Planning Document and the Developer Contributions Supplementary Planning Document setting out a range of matters where a s106 contribution may be sought and any formulas used to identify the level of obligation required from a proposed development.

2.2 Policy Background

2.2.1 Affordable Housing Supplementary Planning Document

The Affordable Housing SPD (AHSPD) sets out the Council's approach to affordable housing in accordance with Selby District Core Strategy Policy SP9 (Affordable Housing), Policy SP10 (Rural Exceptions) and the NPPF.

The provision of affordable housing is a requirement for all housing and mixed use developments. Core Strategy Policy SP9 says that the Council seeks to achieve a 40/60% split between affordable and general market housing in terms of overall housing delivery. In pursuit of this aim the Council will seek to negotiate on site affordable housing of up to 40% on sites of 10 or more units. In exceptional circumstances, commuted sums may be acceptable where there are clear benefits in relocating all or part of the affordable housing. For 1 to 9 dwellings a commuted sum in lieu of on-site provision of affordable housing will be sought; the target contribution is equivalent to up to 10% affordable units.

Affordable housing contributions sought under S106's must only be used for affordable housing within the District.

The actual amount of affordable housing or commuted sum agreed on each application is a matter for negotiation at the time of the application having regard to any abnormal costs, economic viability and other requirements associated with the development.

Recent changes to national guidance on s106 contributions for small developments (10 dwellings or less) are outlined in section 2.5 below

2.2.2 Developer Contributions Supplementary Planning Document 2007 (DCSPD)

Selby District Core Strategy Policy SP12 sets out the Council's requirements for mitigating impacts of new development and delivering sustainable development through planning obligations. A Developer Contributions SPD was approved in 2007. This will be reviewed as part of the review of development management policies in Plan Selby. A summary of what commuted sums that could be collected under this agreement (and therefore what each item of money can be used for) is set out below.

Affordable Housing for Local Needs

This section of the SPD has been superseded by the Affordable Housing SPD.

Recreational Open Space (ROS)

When possible ROS is to be provided on site and often to be owned and managed by the Parish or Town Council or representative of the local community. Monies are also paid for future maintenance of any ROS. Off site ROS commuted sums (if agreed) are generally paid at the start of development and the relevant Parish/Town Council can apply to use the sums for specific locally agreed proposals.

Waste and Recycling Facilities

Contributions for waste and recycling facilities are sought via a S106, and are used for refuse collection, recycling programmes, kerb-side recycling to new residential and in some cases commercial units, within the District.

Education Facilities

North Yorkshire County Council provides a formula for calculating primary and secondary education contributions required as a result of a development. This money is paid directly to the County Council for education purposes.

Primary Health Care Facilities

The North Yorkshire and York Primary Care Trust (the PCT) previously developed a methodology to assess developer contributions for primary health care facilities required to mitigate impacts of development. The monies are paid to the Council and transferred to the relevant clinical commissioning group (CCG).

Community Facilities

Community facilities can include community/village halls, meeting rooms/parish council offices, indoor recreational or sporting facilities and community information points/boards/systems. Any contributions could be used for new build/provision and improvements requiring capital expenditure, but not repairs, maintenance and other revenue expenditure. The preference is for on-site provision but there is scope for off-site provision if this can be demonstrated to be clearly preferable.

Currently contributions not currently sought for community facilities. To request such contributions the Council requires a method of demonstration of need which directly relates to the impacts of the new development.

Transport/Highways Infrastructure and Facilities and Drainage Infrastructure

Contributions may be sought under a S106 for basic physical infrastructure for highway, drainage provision and improvements, public transport facilities i.e. bus stops/shelters, parking and passenger facilities at nearby railway and bus stations, new bus routes and Travel Plans.

The County Council will advise what contributions they require as the Highway Authority as a result of development and this will be paid directly to them.

Local Employment Skills Training and Enhancement of the Public Realm

Contributions for Local Employment Skills Training and Enhancement of the Public Realm may be sought. In practice this rarely occurs except in very large developments, where a special justification is agreed between the Council and developer.

There is no specific local formula or approach for seeking these contributions. However, a key principle in considering and seeking developer contributions will be that there is a functional and/or geographical link between the development and the feature, project or programme that contributions will support.

2.3 Procedures

This section describes the current process for planning applications and the allocation of funds including local consultation. It is important to note that there is a balance required between effective local involvement and the need for timely and efficient decision making.

Pre-Application Stage

Pre-application meetings are often held between the applicant and officers. The level of detail required will depend on the type and size of the proposed development. When there is a pre-application meeting, this often includes discussions about the s106. The contents of pre-application advice given to the applicant should be kept confidential.

Community engagement is not mandatory and the Council can only suggest pre-application involvement with local communities not insist on it. However the NPPF and National Planning Practice Guidance encourage pre-application engagement with the community where it will add value to the process and the outcome. Most major developments will include an element of local consultation.

Currently the planning officer will liaise with the Parish or Town Council regarding ROS and whether an off-site contribution should be sought i.e. whether if it sought there is a project or projects that it would be used for.

Formal application stage

Not all applicants seek pre-application discussions but instead go straight to formal submission.

Once a planning application has been validated it is put on the planning portal which can be accessed by members of the public via the Council's website. Ward Councillors are informed via a weekly list.

After submission there are target timescales for determining the application which are 13 weeks in the case of a 'major' application (national target) and 10 weeks in the case of a minor application (local target in the Access Selby SLA applying where the decision is made under an officer's delegated powers).

Where a local planning authority fails to determine a specified proportion of major applications within that target deadline, the Secretary of State may designate the authority as under-performing. In that case developers may opt to submit applications directly to the Secretary of State rather than to the Council. Designation is currently possible for any LPA which determines less than 40% of major applications 'within time'.

2.4 Community Infrastructure Levy (CIL)

CIL is a financial charge which LPAs are entitled (but not obliged) to charge on development in their area. Liability is calculated by reference to the time when planning permission first permits development (CIL payments becomes liable upon the commencement of development in line with the councils instalments policy). The money raised is to be spent on local infrastructure, (it doesn't actually have to be spent locally and is for strategic infrastructure) such as roads and other transport facilities, flood defences, schools, medical facilities and open spaces.

Where an LPA elects to charge CIL, it can still ask for a s 106 agreement (if it is required to make the application acceptable in planning terms.) However, to prevent double charging for infrastructure, the agreement must be 'scaled back' dealing only with affordable housing and 'on-site' matters, including the direct replacement of facilities or amenities required as a result of the development. S106 agreements should not be used for matters which are set out in regulation 123 of the CIL Regulations (a list of those projects or types of infrastructure that the charging authority intends to fund through CIL).

Selby District Council is currently consulting on charging CIL. The election and charging schedule will be subject to an examination in public and a decision on whether to submit proposals for examination is expected to be made in June 2015.

The Regulations go on to provide that from 6 April 2015 if no CIL charging schedule is in place, a s106 obligation cannot be taken into account as a reason for granting consent if:

1. the obligation provides for the funding or provision of any infrastructure but no Reg 123 list has been published;
2. the obligation requires an agreement under s278 Highways Act to be entered into but no Reg 123 list has been published; or
3. the obligation provides for the funding or provision of an infrastructure project or type of infrastructure and 5 or more obligations for development in that area which also provide for the funding or provision of the same project or type of infrastructure have been entered into on or after 6 April 2010.

These provisions present a real and significant restriction on the use of s106 agreements from April 2015 to secure infrastructure payments or provision, and therefore a risk of funding gaps becoming an issue in relation to the pooling provisions as the Council will need to look back to all planning obligations given since 2010.

2.5 Amendments to National Planning Practice Guidance for small developments – November 2014

In March 2014 Government consulted on its intention to prevent local planning authorities levying financial obligations in respect of affordable housing for proposals of 10 residential units or less. On 29th November 2014 Government revised the National Planning Practice Guidance to the effect that affordable housing and tariff style contributions on such sites should not be sought.

The new guidance states that, outside of national parks and AONBs contributions for affordable housing and tariff-style planning obligations should not be sought from developments of 10 units or less, and which have a maximum combined gross floor space of no more than 1000sq m.

For sites where the threshold applies, planning obligations should not be sought to contribute to pooled funding pots intended to fund provision of general infrastructure in the wider area.

Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable housing contributions would be required for any increase in floor space

The new guidance does not alter the status of the development plan as the starting point for determinations. However it does constitute a material consideration of substantial weight that is likely to affect the outcome of applications and appeal decisions. The Council may need to adjust its approach as a result and this is currently being considered.

2.6 Current levels of contributions held

Appendix A lists the current balances of s106 monies held by the Council broken down by settlement. Information is provided on the closing balances in 2013/14 and the current balance if different.

This information should be treated with caution as it does not detail the purpose for which the money is held. It may therefore include amounts held for education or waste and recycling which would therefore not be available to spend on other items. The balances also do not reflect current commitments, monies which have been promised to Parishes for ongoing projects but not yet invoiced.

Larger agreements often provide for staged payments and therefore it is likely that some areas are due to receive additional sums at further stages of development. These are not reflected in the totals.

The Council recently appointed to a temporary s106 and CIL monitoring officer post. This officer is engaged in a project to improve the way we collect and spend s106 monies. As part of that she will be reviewing all current s106 agreements to ensure that information on balances and the purposes for which the money may be spent is up to date.

2.7 Identifying local need and liaison with Parishes on spending

Policy team carry out a regular Parish Services Survey to inform the preparation of local plan documents.

Planning Officers liaise directly with Parishes on ROS requirements. The approach to requesting ROS contributions is also informed by the approved Countryside and Greenspace Strategy 2013.

Parishes have previously received letters informing them of the levels of contributions currently held and the purposes for which they can be used. As part of the ongoing s106 improvement project officers are reviewing the information given to Parishes and the frequency with which it is given. It is also intended to publish updated details of the process by which parishes may apply to release the funds.

2.8 Viability

A developer can raise the issue of viability of the development where planning obligations are requested. Paragraph 173 of the NPPF provides that Local authorities should ensure that the combined total impact of such requests (CIL s106, s278 and conditions) does not threaten the viability of the sites and scale of development identified in the development plan.

There are other policy costs to development. For example a policy promoting use of previously developed land can lead to higher site remediation costs. Policies relating to design, materials and energy efficiency can impact on build costs.

The NPPF para 205 also states that planning obligations should take into account changes in market conditions over time and, where appropriate, be flexible to prevent development stalling.

Affordable housing policy contributions in our plan are specifically linked to viability. In some circumstances where the contributions requested make the scheme unviable not all the S106 contributions can be sought.

The NPPF states that local planning authorities must ensure realistic decisions are made to support development and promote economic growth. Where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.

3. Legal/Financial Controls and other Policy matters

3.1 Legal Issues

There are no legal implications for the Council arising from the contents of this report.

3.2 Financial Issues

There are no financial implications arising from the contents of this report.

4. Conclusion

This report outlines the powers to enter into a S106 agreement.

Contributions sought are based on policy requirements and mitigation of impacts of development in accordance with the legal tests set out in CIL and the NPPF and national Guidance.

Under the Affordable Housing Supplementary Planning Document, Developer Contributions Supplementary Planning Document and Selby District Core Strategy, the Council can request contributions for:

- Affordable housing
- Recreational Open Space
- Waste and recycling facilities
- Education facilities
- Primary health care facilities
- Community facilities
- Transport/Highways
- Local employment skills training and Enhancement of public realm

The contributions sought must be used for the agreed purpose contained in the S106.

At present the Council do not generally seek contributions for community facilities. Policy requires a demonstration of need which directly relates to impacts of new development. Similarly, contributions are rarely sought under enhancement of the public realm. There is no specific local formula or approach for seeking contributions for enhancement of public realm.

Discussions between the officer and applicant can take place if the applicant seeks pre-application advice. However this depends on the nature and size of the development, and pre-application advice is not mandatory. Some applicants go straight to formal submission.

Where the contributions requested make the proposed scheme unviable, not all contributions requested can be sought.

Councillors are requested to consider the information provided and determine whether to engage in further scrutiny or to make recommendations.

5. Background Documents

- Affordable Housing Supplementary Planning Document
- Developer Contributions Supplementary Planning Document 2007
- National Planning Policy Framework
- National Planning policy Guidance
- Selby District Core Strategy Local Plan

Contact Officer:

Gillian Marshall – Solicitor to the Council

Appendices:

Appendix A - s106 settlement balances as at November 2014

S106 Balances as at November 2014

Settlement	13/14 balance	Current balance (if different)
Appleton Roebuck	14 510	8132
Barlby	2973	
Barlow	0	
Brayton	7225	
Brotherton	92	
Burn	0	
Camblesforth	102	
Carlton	30 755	
Cawood	17 932	13 623
Church Fenton	0	
Cliffe	13 062	
Eggborough	2449	
Escrick	604	
Fairburn	0	
Great Heck	6876	
Hambleton	39 145	
Hemingbrough	1379	
Hensall	0	
Kellfield	0	
Monk Fryston	0	
Newton Kyme	0	
North Duffield	0	
Riccall	10 563	
Saxton	0	
Selby	137 548	227 490
Sherburn	104 728	103 535
South Milford	83 865	78 848
Stillingfleet	748	
Tadcaster	0	
Thorpe Willoughby	7599	
Ulleskelf	0	
West Haddlesey	0	
Whitley	0	
Wistow	1617	
Womersley	7655	

Policy Review Committee Work Programme 2014/15

Date of Meeting	Topic	Action Required
15 July 2014	Time of Meetings	To agree a start time for meetings for 2014/15
	Work Programme	To agree the Committee's Work Programme for 2014/15
	<u>Budget and Policy Framework</u> The State of Area Address	To consider the Leader's State of the Area Address.
	<u>Committee Requested Item</u> Welfare Reform	To consider the findings of the Task & Finish Group
16 September 2014	<u>Budget and Policy Framework</u> Financial Strategy	To consider the Executive's proposals for the Council's long term (10 year), resource and spending framework in which the budget strategy and three year financial plan will be developed.
	<u>Budget and Policy Framework</u> Draft HRA Business Plan	To consider the Business Plan and offer amendments to the Executive

16 December 2014	<u>Council Requested Item</u> Section 106 Agreements	Following a request from Council to review the Council's procedures relating to S106 agreements
20 January 2015	<u>Budget and Policy Framework</u> Draft Budget and Medium Term Financial Plan	To consider the Executive's proposals for revenue budgets and the capital programme for 2015/2016.
	<u>Committee Requested Item</u> Welfare Reform	To receive a six month update from the Lead Officer
	Work Programme 2015/16	To consider the Committee's Work Programme for 2015/16
14 April 2015	Approve Policy Review Annual Report & Work Programme 2015/16	To consider the Committee's Annual Report