
To: Scrutiny Co-ordination Committee

Date: 16th February 2021

Subject: Section 106 Agreements

1 Purpose of the Note

- 1.1 To provide the Committee with an overview of Section 106 agreements and the processes that are involved in drawing them up.

2 Recommendations

- 2.1 Scrutiny Co-ordination Committee are recommended to:
- 1) Note the principles of how a Section 106 agreement works and also the work undertaken on this matter.
 - 2) Identify any recommendations for the Cabinet Member

3 Background and Information

- 3.1 A Section 106 agreement is a legally binding document agreed between the Local Planning Authority (LPA) and the applicant (and also landowners if separate to the applicant), related to planning applications in the city.
- 3.2 The purpose of the agreement is to agree matters that are required to mitigate the impact of the planning application and may include transfers of land and/or money. There are strict rules that set out the threshold requests must meet in order for them to be included in a Section 106 agreement. These are laid out in Regulation 122 of the CIL Regulations 2010, where it states that all requests must be;
- 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*
- 3.3 The normal process for the development of a Section 106 agreement is;
1. Application received, and consultations issued to statutory bodies (such as NHS, Historic England, etc) and internal departments (such as Highways, Housing, etc).
 2. Relevant consultees make their responses and, where necessary make Regulation 122-compliant requests (e.g., NHS contributions or on-site Affordable

Housing), explaining what the impact of the application is, and why the request is appropriate.

3. The Planning Case officer consolidates requests and, with Legal Services, begins to draft Section 106 Agreement.

4. Section 106 negotiated, agreed, signed and sealed. The applicant may

It is common for an application that is going before Planning Committee to have details of the agreed elements of the Section 106 in the Officer Report but with some negotiation outstanding. It is only once the Agreement is complete (Step 4, above) that the decision can be issued.

- 3.4 Recent work by the Planning Policy team has focussed on introducing more standardisation in the drafting of Agreements. Recently consulted upon Supplementary Planning Documents (SPDs) – Affordable Housing and Open Spaces in particular - have included template agreements in their appendices to ensure that the Council's position is clear from the outset
- 3.5 Once an application has been determined and the Section 106 agreement signed it passes to the Planning Policy team who will monitor the agreement and ensure that the contributions within it are claimed appropriately. This involves separating each clause into a monitorable activity, noting the various triggers and then invoicing at the correct times.
- 3.6 Many contributions are reliant upon several phased triggers being met, usually based on percentage of the total being completed. This is useful as it ensures that we receive contributions at the right time whilst also not unduly frontloading the cost of development, potentially preventing it coming forward.
- 3.7 The Council's Monitoring Officer regularly visits sites that have Section 106 agreements to check on progress and ensure that any triggers that have been met are actioned in a timely manner. This data is then also used to inform our overall housing and employment land data, issued in the annual Authorities Monitoring Report (AMR). Invoices are indexed and raised, and chased where necessary, until payment is received. Non-payment of clauses is an enforceable activity with measures such as stop notices available, although these are very rarely required.
- 3.8 Once received, Section 106 monies must be spent within five years of receipt (unless specifically stated otherwise) and must only be spent on the specific purposes expressed in the Section 106. Upon receipt money is nominally allocated to the relevant project but retained in a centralised budget code. This can then only be 'drawn down' by the project lead with Release Form which confirms the nature of the spend and that it matches the purposes expressed in the Section 106 clause.
- 3.9 It is important to note that in the event of a non-compliant spend, or if sums are not spent within the allocated time window, it is possible for developers to reclaim said monies from the Council, including interest.

3.10 The Council publishes a Infrastructure Funding Statement (IFS) each year that details, amongst other things, the Section 106 received and spent each year. It should be noted that due to the five-year period for spending and the multi-year nature of many infrastructure projects that the receipt and spend in each year is not necessarily related to one another, so therefore won't balance within a year.

Notwithstanding this, the headline figures for 2020/21 were:

Total value of agreements entered into: £3,499,877.75

Total amount received: £2,990,315.94

Total amount of Section 106 monies spent: £3,643,133.42

As described in 3.8 above all monies received are automatically allocated to their relevant project upon receipt and so unallocated sums are £0.

3.11 Further improvements with regards to the Section 106 system are underway. As further SPDs come forward (Biodiversity for example) template agreements will continue to be included. Furthermore, the team are about to launch a procurement exercise for a dedicated Section 106 system which will simplify the recording and monitoring of Section 106 clauses, as well as providing a variety of reports on such matters as income received and spent.

4 Health Inequalities Impact

4.1 Section 106 requests are principally based on the content of the Local Plan and its subsequent SPDs, which are all subject to Equalities Impacts, including health inequalities.

Name of Author: David Butler

Job Title: Head of Planning Policy & Environment

Organisation: Coventry City Council

Contact details: David.butler@coventry.gov.uk

024 7697 2343