

STRATEGIC PLANNING BOARD

Date of meeting: 27th May 2009
Report of: Head of Planning and Policy
Title: Planning Obligations – Administrative and Procedural
Issues and Options

1.0 Purpose of Report

- 1.1 To present a number of issues and options relating to the harmonisation of the procedural and administrative arrangements for planning obligations negotiated under section 106 of the Town and Country Planning Act 1990 (as amended)

2.0 Decision Required

- 2.1 To indicate the preferred option in respect of each of the issues detailed in the report

3.0 Financial Implications for Transition Costs

- 3.1 The preparation of standard templates for legal agreements and unilateral undertakings will require specialist legal resource

4.0 Legal Implications

- 4.1 See Risk Assessment below

5.0 Risk Assessment

- 5.1 Failure to apply consistent practice in respect of the issues raised in the report will leave the Council open to legal challenge and investigations by the Local Government Ombudsman.

6.0 Background and Issues

- 6.1 In working towards harmonising the procedural and administrative arrangements for planning obligations and their incorporation into a Planning Obligations Protocol, a number of key issues have been identified where differing working practice exists across the former constituent Councils. The Council's approach to these practical issues needs to be resolved so that they can be introduced as working practice at Cheshire East and incorporated into the Planning Obligations Protocol. The issues are:

- Whether commuted sums will be indexed to maintain the value of the commuted sum
 - Whether an interest charge will be applied for the late payment of commuted sums
 - Whether standard templates for legal agreements and unilateral undertakings will be prepared and published on the Council's website
 - Whether a monitoring fee will be applied to enable effective compliance monitoring, reporting and publication of information relating to planning obligations and the benefits secured
- 6.2 Whilst there is some element of consistency between the former constituent Council's in their practices relating to indexation and late payment interest, the only Council that published standard templates and applied a monitoring charge is Macclesfield.
- 6.3 The preparation and publication of standard templates and the introduction of a monitoring charge at Macclesfield coincided with the publication of a Code of Practice on Planning Obligations which was published by the Council in October 2007 and incorporated recognised best practice and the latest relevant Government guidance.
- 6.4 Each of the issues is considered individually below and Members are asked to indicate their preferred option for each one

7.0 The Issues

7.1 Maintaining the Value of Commuted Sums

- 7.1.1 Commuted sums are also known as financial contributions and are paid to the Council in lieu of the developer providing the related physical infrastructure on site e.g. open space, play equipment and affordable housing
- 7.1.2 The amount of a commuted sum is finalised at the time the legal agreement or undertaking is completed, which is usually at the same time the planning permission is issued. The trigger for the developer to pay the commuted sum to the Council is detailed in the legal agreement or undertaking e.g. commencement of development or occupation of the first dwelling. For various reasons, the payment trigger may not occur for several years. This time lag can result in inflationary pressure reducing the value or spending power of the commuted sum. An example of this is as follows.
- 7.1.3 *Example: A commuted sum of £100,000 for open space was contained in a legal agreement dated January 2006, but the trigger for payment meant that the money wasn't payable until January 2009. If a standard Index (e.g. RPIx – All Items Retail Prices Index excluding Mortgage Interest Payments) had been applied to the commuted sum,*

the amount paid in January 2009 would have been £109,500. This demonstrates that without having applied the index to the commuted sum, its value or spending power would have been eroded by £9,500 or 9.5% to the disadvantage of the local community

7.1.4 The provision is clearly detailed in the legal agreement or undertaking and the developer therefore accepts the provision when signing the agreement or undertaking.

7.1.5 Members are invited to indicate which option detailed below is their preferred option for incorporation into the Planning Obligations Protocol and introduction as working practice in Cheshire East.

Options:

(1) Legal agreements and Unilateral Undertakings will contain provision for the indexation of commuted sums using appropriate indices.

(2) Legal agreements and Unilateral Undertakings will not contain any provision for the indexation of commuted sums

It is considered that option (1) would result in the Council adopting working practice that most accurately reflects best practice and Government advice

7.2 Charging Interest for Late Payment of Commuted Sums

7.2.1 The triggers for the payment of commuted sums to the Council are clearly stated in a completed legal agreement or undertaking. However, these triggers can easily be overlooked or forgotten by developers and the monies paid late or not at all. These oversights result in the receipt of monies being delayed and the developer gaining the associated financial benefit.

7.2.2 The application of a rate of interest for late payment encourages developers to ensure that commuted sums are paid on time. A commonly accepted rate is 3% or 4% above the Bank of England's Bank Rate (formerly known as the Base Rate) or that of the Bank used by the Council. The provision is clearly detailed in the legal agreement or undertaking and the developer therefore accepts the provision when signing the agreement or undertaking.

7.2.3 Members are invited to indicate which option detailed below is their preferred option for incorporation into the Planning Obligations Protocol and introduction as working practice in Cheshire East.

Options:

(1) Legal agreements and Unilateral Undertakings will contain provision for the application of late payment interest at an appropriate

percentage above the Bank of England's Bank Rate or the base rate of the Co-operative Bank (the Council's Bankers)

- (2) Legal agreements and Unilateral Undertakings will not contain any provision for the application of late payment interest

It is considered that option (1) would result in the Council adopting working practice that most accurately reflects best practice and Government advice

7.3 Preparing and Publishing Standard Templates for Legal Agreements and Unilateral Undertakings

- 7.3.1 ODPM Circular 05/2005: *Planning Obligations* encourages Local Planning Authorities to use and publish standard heads of terms, legal agreements/undertakings or model clauses in the interest of speeding up the negotiation and completion of planning obligations. Their availability enhances transparency and predictability for developers and enables them to prepare draft legal agreements and undertakings for submission with their planning applications. This 'front loading' simplifies and speeds up the decision making process.

- 7.3.2 Members are invited to indicate which option detailed below is their preferred option for incorporation into the Planning Obligations Protocol and introduction as working practice in Cheshire East.

Options:

- (1) Standard templates for Legal agreements and Unilateral Undertakings will be prepared and published on the Council's website
- (2) Standard templates for Legal agreements and Unilateral Undertakings will not be prepared

It is considered that option (1) would result in the Council adopting working practice that most accurately reflects best practice and Government advice

7.4 Introducing a Fee to enable the Monitoring of Planning Obligations

- 7.4.1 Once planning obligations have been agreed, it is important that they are implemented and enforced in an efficient and transparent way in order to ensure that financial contributions are spent on their intended purpose, non financial (physical) benefits are delivered and that restrictions on uses and occupation are adhered to. This involves detailed monitoring and requires standardised systems which include IT databases to ensure that information on the implementation of planning obligations is readily available.

- 7.4.2 An effective monitoring system should support:

- Responding to enquiries about the current status of obligations
- Providing information on the types and amounts of agreed obligations compared to what has been implemented and what still needs to be implemented
- Input of new details about obligations where changes occur over time
- Input of information by staff from different areas of the Council
- Electronic storage and access to all documents relating to and including the planning obligations themselves
- Providing alerts to relevant staff regarding any upcoming deadlines, events, commitments etc.; and
- Generation of reports to provide updates on planning obligations for various different audiences

7.4.3 Many Councils, including Macclesfield, have introduced monitoring systems within recent years and applied an associated fee to all relevant legal agreements and undertakings to fund the cost of providing the resources required to set up and operate an effective monitoring system. In some cases, the fee also either subsidises or fully funds the provision of a dedicated Officer.

7.4.4 Members are invited to signify whether or not they support the introduction of a charge to allow the setting up and operation of a system to monitor compliance with planning obligations and the delivery of benefits they secure, by selecting which option detailed below is their preferred option

Options:

- (1) The introduction of a monitoring charge is supported in principle, although a detailed report setting out how such a charge could be formulated and introduced should be prepared and submitted to Members for consideration
- (2) The introduction of a monitoring charge is not supported at this time, although the issue should be reconsidered in 6 months
- (3) The introduction of a monitoring charge is not supported

It is considered that option (1) would result in the Council taking a positive step towards adopting working practice that most accurately reflects best practice and Government advice

8.0 Reasons for Recommendation

8.1 To define consistent working practices in relation to the administrative and procedural aspects of planning obligations and permit their incorporation into the Planning Obligations Protocol

9.0 Equality Impact Assessment

- 9.1 An Equality Impact Assessment has been undertaken and it is not felt that the issues raised would result in an adverse impact on any group or individual. A copy of the assessment is available for inspection on request.

For further information:

Portfolio Holder: Jamie Macrae

Officer: John Knight

Tel No: 01625 504601

Email: john.knight@cheshireeast.gov.uk