

HERTFORDSHIRE COUNTY COUNCIL

**ENVIRONMENT
SCRUTINY COMMITTEE**

TUESDAY, 18 MARCH 2003 AT 10.30 AM

Agenda Item No.

4

MANAGING S106 AGREEMENTS

Report of the Director of Environment

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Executive Member: Iris Tarry

1. Purpose of the Report

1.1 This report has been requested by the Chairman to inform the Scrutiny Committee of the County Council's arrangements for managing Section 106 Agreements covering highways and transportation matters and consider whether they should be the subject of further scrutiny by the Committee.

2. Summary

2.1 The County Council's approach to securing planning obligations set out in the County Structure Plan and Local Transport Plan is consistent with Section 106 of the Town and Country Planning Act and government guidance in Circular 1/97.

2.2 Departmental procedures are in place to guide the processes for negotiating, securing, and implementing developer contributions under these agreements. These processes have been approved through Internal Audit.

3. Conclusions

3.1 Having considered the information contained in this report, the Committee will need to decide how further scrutiny of this issue should be undertaken.

4. Background

4.1 Legal Framework

Section 106 of the Town and Country Planning Act (1990) provides the powers for Local Planning Authorities to enter into agreements with prospective developers of land for the purpose of regulating or restricting the use of that land.

4.2 Negotiations for planning obligations are conducted against the background of the law, which defines what obligations may include, and the Government's policy and guidance on their use. The latter is especially important if there is any dispute between the parties, and is set out in DoE Circular 1/97. Circular 1/97 states that planning obligations should only be sought where they are:

- i) necessary
- ii) relevant to planning
- iii) directly related to the proposed development
- iv) fairly and reasonably related in scale and kind to the proposed development; and
- v) reasonable in all other respects.

A S106 Agreement is binding on successive owners of the land. Agreements are created by deed and are public documents entered into the local land charges register.

4.3 In March 2002 the Government sought views on a consultation document, "Reforming Planning Obligations", setting out alternative approaches for securing planning obligations including the concept of a tariff-based approach. Revised government guidance is still awaited.

4.4 County Council Policy

The requirements for planning obligations are set out in Policy 2 of the adopted County Structure Plan. Developers will be required to provide or to finance the cost of all such provision which is fairly and reasonably related in scale and kind in order to manage the input of the proposed development, including off-site works.

Planning obligations will be sought prior to the issue of planning permission. Provisions will be those necessary to serve the development, to mitigate its impact or to offset the loss of or impact on an existing resource, or otherwise are necessary in the interests of comprehensive planning and sustainable development.

4.5 The Local Transport Plan (July 2000) sets out the County Council's approach to dealing with the transportation implications of development control.

Wherever possible, improvements to mitigate the effects of the movements generated by development will be sought from the promoters. In negotiations the County Council will seek to obtain the maximum private sector contribution compatible with Guidance and the County Council's transportation objectives.

5. Procedures for managing S106 Agreements

- 5.1 Negotiations are carried out by officers to secure works and financial contributions from proposed development. Acceptable development should never be refused because an applicant is unwilling or unable to offer benefits. Equally unacceptable development should never be permitted because of unnecessary or unrelated benefits offered by the applicant.
- 5.2 Details of the works and financial contributions are secured in Legal Agreements drawn up by the County Council's solicitors. The wording of agreements covering financial contributions is generalised whenever possible to give flexibility in implementation, whilst still complying with Circular 1/97. The staff costs in drawing up the Agreements are recovered from the applicant.
- 5.3 Details of Section 106 Legal Agreements are held in the Transportation Planning and Policy Unit and copies provided to the appropriate area office. A schedule of agreements and financial contributions is maintained. The schedule of available funds is circulated to the area offices on a regular basis and provided to Members on request.
- 5.4 Responsibility for the management of a developer contribution is assigned to the designated Fund Manager, who is the Business Unit Manager whose section originally negotiated the terms of the legal agreement. The Fund Manager will only consider the funding of the scheme as set out in the legal agreement. Before committing expenditure from a contribution, agreement in writing is obtained from the Fund Manager, who is responsible for confirming that the proposed expenditure is in accordance with the terms of the agreement. The spending unit must keep the Fund Manager informed of expenditure on the works as they proceed.
- 5.5 The integrity of the systems and controls surrounding the setting up and monitoring of Section 106 Agreements on transportation matters was considered by Internal Audit in May 1997. Their report said the process for negotiating the agreements and of collecting contributions appears to be satisfactory, as does the accounting of monies received and allocated out to projects. The procedures for collecting agreement costs was also considered to be sound. A number of improvements to procedures were recommended, some of which have been implemented and others are still being investigated.

6. Financial Implications

- 6.1 Legal agreements for works and financial contributions valued on average at £3.5-4.0m are signed annually, although major developments can significantly increase this figure. In the last two years over £0.7m per annum has been released from financial contributions for expenditure on transportation works and services across the County. Currently the account stands at £8.7 million.

Background papers used by the author in compiling this report:

Town and Country Planning Act (1990)

Department of Environment Circular 1/97, Planning Obligations

Hertfordshire County Structure Plan Review 1991-2011 Adopted April 1998

Hertfordshire's Local Transport Plan 2001/02 – 2005/06, July 2000