

PLANNING OBLIGATIONS TOPIC GROUP

Report of the Director of People and Property

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Executive Members: David Beatty and Derrick Ashley

1. Purpose of Report

To advise the Resources and Environment Scrutiny Committees of the work of the Planning Obligations Topic Group and to make recommendations to the Committees on the future management and monitoring of Section 106 Agreements.

2. Summary

The Planning Obligations Topic Group has considered the procedures, timeliness, precision of wording and enforcement of Section 106 Agreements [planning obligations] together with the new guidance on planning obligations to be issued by H M Government as requested by the Resources Scrutiny Committee. It received presentations from staff within Corporate Services and Environment Departments plus District Council officers and was able to question those staff involved with processing and managing Section 106 Agreements.

3. Conclusion

3.1 Having considered the information with which it had been provided, the Topic Group has concluded that:

Member awareness and involvement

3.1.1 **Recommendation 1** - There should be an annual report (perhaps to Transport Panel and Property Panel) to enable members to be better informed about the progress of planning obligations work and the management of resources secured. These reports should feedback about the improvements to processes following the Environment Internal Audit report, and information about the expenditure of contributions. (This is consistent with a request made by the Environment Scrutiny Committee at its meeting on 19 October 2004, for an annual report to be submitted to the Transport Panel on planning obligations.)

3.1.2 **Recommendation 2** - Lists of relevant obligations should be made available to joint member panels showing where financial contributions are available to be spent.

3.1.3 Recommendation 3 - Members should have access to a full list of completed obligations. The list should show the date from which obligations have come into effect and officer contact details so that further details can be easily obtained if required, and a list of developments where planning obligations are being considered or negotiated.

3.1.4 Recommendation 4 - The Topic Group should be reconvened to consider the implications of draft revised guidance on planning obligations, the outcome of the internal audit of Corporate Services planning obligations and the implications of Local Delivery Vehicles for planning obligations. (Draft revised guidance is due to be published before the end of 2004).

Resources

3.1.5 Recommendation 5 – The Topic Group considers it is imperative that additional resources be provided to manage planning obligations work in Corporate Services, to :-

- i) ensure adequate policy input is made into the emerging development plan system;
- ii) minimise the possibility of opportunities for planning obligations being lost;
- iii) assist quicker responses on planning applications and planning obligations issues; - noting that local planning authority timescales for making decisions on applications (which are subject to various ODPM targets) are dependent on planning obligations being completed.
- iv) support greater dialogue with district/borough councils when there is disagreement over proposed planning obligations and implementation matters;
- v) ensure the payment of all planning obligations contributions due; and
- vi) develop improved systems and ensure more effective monitoring of planning obligations.

Relations with districts

3.1.6 Recommendation 6. – The following actions are suggested:-

- i) Members be advised of the new guidance on good practice for planning obligations being developed through the HTCOA Working Group, comprising district and county officers. Relevant members might be those on Transport Panel, Property Panel and Local Panels (together with their lead and liaison officers).
- ii) A joint county and district members seminar be arranged to improve understanding on planning obligations and co-ordination at member and officer level.

PLANNING OBLIGATIONS

Report of the Planning Obligations Topic Group to the Resources and Environment Scrutiny Committees

1 Introduction

1.1 In June 2003, the Resources Scrutiny Committee requested that the Planning Obligations Topic Group consider procedures, timeliness, precision of wording and enforcement of Section 106 agreements (planning obligations), together with the new guidance on planning obligations to be issued by H M Government.

1.2 The Topic Group consisted of the following members:

Bryan Hammond (C) (Chairman), Nigel Brook (C), Roy Clements (C), Nigel Copping (C), Maria Green (LD), Sue Jones (L), Stan Mills (C) and Reg Smith (L), with attendance by substitute members Elam Singam (L), Bill Storey (C) & I Simpson (LD).

The Lead Officer of the Topic Group was Jan Kinsman, the Planning Obligations Manager in Hertfordshire Property, Corporate Services.

Dave Humby, Head of Transportation Planning and Policy, Environment Department has lead on the Environment Department's involvement with planning obligations.

1.3 The Topic Group met on six occasions, between November 2003 and October 2004. The Topic Group have considered a number of officer reports and have gained a much better understanding of the nature and use of planning obligations and related issues.

1.4 The Topic Group have identified a number of key issues and recommend further consideration be given to the implications of these by Scrutiny and the Administration.

1.5 Appendix 1 to this report gives a brief summary of the reports received by the Topic Group. Appendix 2 (Item 4 to the first meeting) provides a general introduction, whilst Appendix 3 provides answers to some "frequently asked questions", which the Topic Group found helpful in understanding the subject. This report sets out our findings and makes recommendations for further consideration.

2 Overview

2.1 Planning obligations secure additional resources for public services. This can reduce or avoid the need to use normal funding methods. Planning obligations are playing an increasingly important part in the provision of vital services and it is therefore important that opportunities are maximised.

It is also important to appreciate that negotiations for planning obligations are undertaken against a legislative and policy background. Current Government policy states that planning obligations cannot be used to address existing deficiencies in services that a particular development would not exacerbate. The work undertaken by officers to justify and secure planning obligations is of a generally technical nature and as such, elected members have relatively little involvement.

- 2.2 The Topic Group were generally impressed with the work done by officers and the recent improvements to the processes used in the Environment Department. The Topic Group were also impressed by the significant growth in the use of planning obligations and their consequent importance to the development of services to meet additional needs. However, the Topic Group considers that members should be more aware of planning obligations and that additional resources should be made available to support the Corporate Services area of work.

3 The findings of the Topic Group

Background

- 3.1 Within HCC, there are three areas of work that involve planning obligations:
- i) As planning authority HCC may require applicants to enter into planning obligations. In practice, there are a relatively small number of obligations in this area of work, and they are mainly concerned with the restoration of minerals workings. The Topic Group have not considered the issues associated with these obligations.
 - ii) The Environment Department deals with the highways and transportation aspects of development. As local highway authority, HCC is a statutory consultee in certain cases. The work is led by the Transportation Planning and Policy Group and is well established. There are a substantial number of completed planning obligations and these provide for highway works and contributions worth (on average) £5 million per annum. Total contributions in hand amount to about £10 million and over £1.5m is currently being spent per annum. This work was subject to an internal audit in 2003, which has been reported to the Environment Scrutiny Committee and has helped to improve the management of planning obligations.
 - iii) The Planning Obligations Manager in Corporate Services has an overall co-ordination role and deals with other service implications, including requirements for schools, childcare, youth, libraries, the Fire and Rescue Service and special needs housing. HCC is not a statutory consultee but there has been increasing awareness of the implications of development for HCC services in recent years and this is now a very important area of work. The Topic Group noted that the establishment, some years ago, of a dedicated planning obligations officer within Corporate Services to provide co-ordination across a number of services had proved very successful and is an approach being more widely adopted by other authorities. There are now over 80 completed planning obligations for HCC services and these provide for financial contributions worth over £20 million, as well as a number of sites for new schools and other facilities. The number of planning obligations has risen rapidly in recent years, with 12 being completed in 2002 and 23 in 2004. It is expected that the volume of work will continue to increase in the future.

- 3.2 Appendices 2 and 3 provide further background information.
- 3.3 Despite early expectations, H M Government has not yet provided revised guidance concerning planning obligations. It is proposed that revised guidance under the current system will be published this Autumn, in draft form and this could be firmed up within about six months. Proposals for more fundamental change, such as introducing a tariff, are possible within about two years. The Planning and Compulsory Purchase Act 2004 contains powers for such changes to be introduced.
- 3.4 Even without fundamental change to the planning obligations system, changes made to the development plan system in the 2004 Act, with effect from September 2004, will have an impact on the work. The review and development of policy will be required, to support HCC's planning obligation requirements within the local development framework context.

Procedures, timeliness, precision of wording and enforcement

- 3.5 The Topic Group received and discussed reports covering all aspects of the work. This included the various stages and processes between identifying situations where planning obligations might be required, through analysis, negotiation and documentation, to implementation of development, monitoring and discharge of all obligations entered into. There are many more agreements in the Environment Department area of work and some issues have been identified in the procedures used. These have been addressed following an internal audit report, by the introduction of an improved system that will ensure monies are better monitored. The learning points identified in the Environment audit should be used as a check on processes applied to the planning obligations secured by Corporate Services. This will affect the service departments involved, due to the way that financial contributions are held and spent. As these planning obligations are the subject of an internal audit this Autumn, it is likely that any weaknesses will be identified.
- 3.6 Developers are normally keen to secure planning consent as quickly as possible. It is clear that considerable pressure is being placed on local planning authorities to speed up the decision-making process. Coupled with the dramatic increase in workload in planning obligations for HCC services, it is apparent that additional resources will be required to ensure increasingly tight timescales are met and opportunities to secure planning obligations are not missed.
- 3.7 The detailed wording of agreements is largely dependent on legal requirements, and the need for all parties to the agreement to agree the precise terms for the obligations being entered into. The County Council already uses model precedents as a starting point for agreements. Whilst the guidance on use of planning obligations may change in due course, there is a Hertfordshire Technical Chief Officers Association [HTCOA] officer group looking at best practice. This will identify best practice and any opportunities for improvements to the precedents used. Accordingly, the Topic Group is not making any recommendations in respect of this aspect of the work.

3.8 Monitoring and enforcement of planning obligation requirements is not considered to be a significant problem area at present. However, with increasing numbers of agreements in force, improved liaison with local planning authorities needs to be developed. The Topic Group are anxious that the HCC services area of work should ensure adequate systems are in place to maintain awareness of relevant trigger dates, ensure payments are duly made and monitor the County Council's holding of contributions etc. There will be resources implications to do this.

Other matters

- 3.9 Member involvement in planning obligations is very limited at present and the Topic Group felt strongly that consideration should be given to how members could be better informed and more involved. The expenditure of contributions is, of course, subject to normal financial controls.
- 3.10 In the main, planning applications (and any related requirement for planning obligations) in Hertfordshire are determined by district planning authorities. Good relationships with districts are vital and it is important that county and district authorities each appreciate the issues and concerns of the other in dealing with any planning obligation requirements. In some districts there are formal liaison arrangements and these are clearly very beneficial. In situations where a county recommendation is not accepted there should be further discussion with a view to reaching consensus on the issues.
- 3.11 Changes to the planning system, brought in by the Planning and Compensation Act 2004, involve the replacement of the present development plan system. In the new system there will be no Structure Plan and policy support for planning obligations will need to be secured in the district level documents (i.e. within the Local Development Framework). Districts are likely to push forward with this work once the emerging regional guidance is clear. The regional guidance is likely to require substantial house building in and adjacent to Hertfordshire with commensurate extra pressures on services.
- 3.12 The Topic Group became aware of and commented on the number of developments which, due to limited resources, were not considered in detail and noted in particular the possibility of opportunities for contributions for HCC services being missed. This is a result of the increased number of developments for which it is appropriate to seek planning obligations and the better analysis of pressures on services and articulation of that pressure to intending district councils and developers. For the Corporate Services work the resource has remained unchanged since the appointment of the Planning Obligations Manager in 1997. Prior to that appointment one planning obligation per year was quite normal. This has risen to an average of 15 per year over the last 3 years and is increasing year by year. Changes to the planning system and pressures for significant increases in housebuilding in Hertfordshire, will further add to the volume of work. The Planning Obligations Manager is already overstretched and the Topic Group supports the provision of additional resources for the work. Environment Department resources are also likely to come under additional pressure from the changes in the planning system and housing demand.

3.13 Whether HCC is “doing well” on planning obligations is a question the Topic Group would have liked to see answered. However, it is clear that comparisons are difficult given the different circumstances that will apply to each individual development proposal and the need to provide justification for requirements imposed. Generally, it appears that there is a significant lack of resources in the Corporate Services area that will inevitably be detrimental if not addressed quickly.

4 RECOMMENDATIONS OF THE TOPIC GROUP

4.1 The Topic Group invites the Resources Scrutiny Committee and the Environment Scrutiny Committee to accept its findings and commend the following recommendations to Cabinet as the basis for supporting and developing this important area of work :

Member awareness and involvement

4.2 **Recommendation 1** - There should be an annual report (perhaps to Transport Panel and Property Panel) to enable members to be better informed about the progress of planning obligations work and the management of resources secured. These reports should feedback about the improvements to processes following the Environment Internal Audit report and information about the expenditure of contributions. (This is consistent with a request made by the Environment Scrutiny Committee at its meeting on 19 October 2004, for an annual report to be submitted to the Transport Panel on planning obligations.)

4.3 **Recommendation 2** - Lists of relevant obligations should be made available to joint member panels showing where financial contributions are available to be spent.

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4.5 **Recommendation 4** - The Topic Group should be reconvened to consider the implications of draft revised guidance on planning obligations, the outcome of the internal audit of Corporate Services planning obligations and the implications of Local Delivery Vehicles for planning obligations. (Draft revised guidance is due to be published before the end of 2004).

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- 4.6 **Recommendation 5** – The Topic Group considers it is imperative that additional resources be provided to manage planning obligations work in Corporate Services, to :-
- j) ensure adequate policy input is made into the emerging development plan system;
 - vii) minimise the possibility of opportunities for planning obligations being lost;
 - viii) assist quicker responses on planning applications and planning obligations issues; - noting that local planning authority timescales for making decisions on applications (which are subject to various ODPM targets) are dependent on planning obligations being completed.
 - ix) support greater dialogue with district/borough councils when there is disagreement over proposed planning obligations and implementation matters;
 - x) ensure the payment of all planning obligations contributions due; and
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- 4.7 **Recommendation 6.** – The following actions are suggested:-
- i) Members be advised of the new guidance on good practice for planning obligations being developed through the Hertfordshire Technical Chief Officers Association [HTCOA] Working Group, comprising district and county officers. Relevant members might be those on Transport Panel, Property Panel and Local Panels (together with their lead and liaison officers).
 - ii) A joint county and district members seminar be arranged to improve understanding on planning obligations and co-ordination at member and officer level.

Summary of the Planning Obligations Topic Group Meetings

- 1 The Topic Group met on six occasions from November 2003 to October 2004. During the course of its meetings the Topic Group gained a greater understanding of the issues involved and were able to determine a work programme to complete its work
- 2 The Topic Group's work programme included the following reports and issues being considered at the six meetings held:
 - 2.1 Meeting 1 - 27 November 2003
 - Remit of the Topic Group
 - Introduction to Planning Obligations
 - Managing Section 106 Agreements – Environment Department Audit
 - Contributing to Sustainable Communities - A New Approach to Planning Obligations – considering the draft response to be made to HM Government's consultation on revised policy for planning obligations.
 - Work programme proposals
 - 2.2 Meeting 2 - 16 January 2004
 - Role of Planning Obligations Officer Steering Group - presentation by the Planning Obligations Steering Group Chairman, Tony Comer.
 - Lists of Existing Planning Obligations - including information for, and involvement of, members.
 - After viewing the content of a number of Section 106 Agreements it was concluded that there would generally be little benefit in circulating copies of completed Section 106 Agreements to members. However, information on planning obligations should be made available to members, including joint member panels.
 - 2.3 Meeting 3 – 27 May 2004
 - Draft Planning Obligations Property Guidance Note – presentation by the Head of Corporate Estates, Dick Bowler.
 - Criteria used in the selection and negotiation of cases for obligations.
 - Case studies - details of three varied developments were considered :- Herts & Essex Hospital site (Bishop's Stortford); Leavesden Airfield / Park, (Abbots Langley / Watford) and St Albans City Station Car Park site.

2.4 Meeting 4 – 21 July 2004

- Frequently asked questions about planning obligations.
- Procedures - Current planning obligations cases selected for analysis / being negotiated and implementation arrangements.
- Timeliness of process at the differing stages.
- Wording of agreements - trigger points within agreements.
- Wording of agreements – legislation, case law, guidance, precedent documents, standard clauses – presentation by Kali Yau, Solicitor
- Monitoring and enforcement arrangements
- Update on proposed changes to planning obligation legislation and advice

2.5 Meeting 5 – 17 September 2004

- Implications of new planning system - presentation by Jonathan Tiley.
- Consideration of draft final report.
- A Local Planning Authority View – discussion with Hertfordshire district council officers

2.6 Meeting 6 – 20 October 2004

- Obligations involving land transfer – discussion on issue.
No major problems have been experienced and learning points have been used to improve more recent agreements.
- Consideration of final report

Introduction to Planning Obligations

1. Legal Background and Government Guidance

Planning obligations, also known as section 106 agreements, are usually agreements negotiated and entered into between local authorities and developers and landowners in the context of granting planning consent. They provide a means of securing measures to mitigate the impact of development, including in-kind and financial contributions towards the provision of infrastructure and services.

The legal framework for planning obligations is s106 of the Town and Country Planning Act 1990. The use of planning obligations has been challenged through the courts on a number of occasions and this has clarified what is legally possible.

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 – currently found in DOE Circular 1/97. This circular is especially important if there is any dispute between the parties, particularly if the planning decision is subject to an appeal. 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

2. Current Processes

Except where the County Council is the planning authority, it is involved in planning obligations as highway authority or service provider. Its views are sought by district councils, as part of the development control process. Sometimes there is a specific statutory requirement for consultation, but more usually the consultation is as a result of local planning authorities being aware of the County Council's interests.

As well as through formal consultation, the County Council may be involved at pre-application stage, sometimes as a result of direct contact by a developer. The process of determining appropriate planning obligations can be detailed and time consuming, and it should be recognised that attitudes of landowners, developers, and local authorities, to the County Council's involvement in planning obligations does vary.

The costs of planning obligations can be substantial. Developers or landowners being asked to bear such costs require full justification before entering into obligations. Where a district council is the planning authority, it will also need to be satisfied that any obligations are acceptable. This work is of a detailed technical nature, often involving the use of expert consultants on the developers part.

The County Council's current arrangements are overseen by the Planning Obligations Steering Group. This is a corporate group, chaired by the County Property Officer, which works to agreed Terms of Reference and co-ordinates all the County Council's interests. Arrangements and procedures are kept under review by this group.

Good liaison arrangements are in place with some local planning authorities, and HTCOA Planning Committee has recently established a s106 working group. This group has a remit to explore best practice in planning obligations, with the aim of producing a best practice guide for county-wide use. It may also be noted that regional inter-authority liaison arrangements exist for highways/transportation and for education services.

3. Dimensions

The County Council uses planning obligations to secure a wide range of provisions for services namely: highways and transportation, libraries, emergency services, social services, environmental improvements and education (including childcare and youth aspects). Provisions can include works, land, restrictions on use and financial contributions. However, it will be appreciated that an obligation will only arise where development is proposed and circumstances are such that provisions can be justified.

In its role as planning authority, planning obligations are most often used for securing matters such as restoration and aftercare schemes and environmental enhancements. The number of agreements is relatively small – about 20 over a 15-year period. Planning obligations for highway improvements have been well established and widely used for many years, and there are now over 200 obligations dealing with highway-related matters.

The number and value of obligations has increased significantly over recent years, as is the scope of provisions. This can be illustrated by the number of agreements covering non-highways and transportation matters, such as education and libraries. In the 10 years following the completion of an agreement for a reserved school site in May 1987, 12 obligations were signed. Just over six years later, over 70 obligations have been completed, almost half in the last two years.

Planning obligations can provide entirely new resources for public services that can reduce or avoid the need to use normal funding methods. As such they play an increasingly important part in the provision of vital services and the value of agreements being completed is several million pounds per year. However, planning obligations cannot be used to address existing deficiencies in services, that the particular development would not exacerbate.

Jan Kinsman – Planning Obligations Manager, Corporate Services

November 2003

PLANNING OBLIGATIONS – “FREQUENTLY ASKED QUESTIONS”

The following questions and answers aim to assist in understanding the nature, role and use of planning obligations.

1. What triggers the need for a planning obligation?

Usually a planning application for which, to enable consent to be granted, provisions are required which need to be secured in a planning obligation (rather than by condition or some other means). Provisions can cover a wide range of matters including affordable housing, highway improvements, land and financial contributions to services such as education.

2. How do they become effective, once completed?

Planning obligations are legal documents. They effectively are attached to the legal title to the land in question and bind successors in title (i.e. subsequent owners), from the date the document is completed. However, specific provisions (for example, to provide affordable housing or make financial contributions) are usually triggered by particular actions arising from the carrying out of development in accordance with the planning consent granted.

3. Who controls the process for the County Council?

- i) for “county matters” - the County Development Unit in the Environment Department;
- ii) for highway and transportation aspects – the Transportation Planning and Policy Unit in the Environment Department; and
- iii) for other HCC services including Community Information, Children, Schools and Families, Adult Care Services and the Fire and Rescue Service – the Planning Obligations Manager in Corporate Services.

In the latter category financial contributions received are placed in accounts controlled by the various service departments. In all cases, the expenditure of contributions is subject to the terms of the particular planning obligation and normal financial / budgetary controls.

4. Who monitors them?

There are often a number of different interests affected by one agreement. For example, district affordable housing and open space; county highway and education. The triggers may well be different for the various provisions. Each interest will have its own monitoring arrangements. For the County, staff within Environment Department and the Planning Obligations Manager in Corporate Services deal with separate aspects. Some districts have enforcement officers who liaise with county officers on the progress of developments. This is becoming more common and districts are also asking to be informed about progress on expenditure of contributions.

5. What happens to financial contributions that have not been utilised for the originally specified purpose? Can they be switched to other schemes?

Sometimes the purposes to which contributions may be put are very specific; in other cases there is more flexibility within specific terms for their use. The wording of the particular agreement will set out the position. If it were considered appropriate to spend a contribution in a different way, it would be necessary to seek the consent of the parties to a variation to the planning obligation. Almost all agreements require unspent monies to be returned after an agreed period of time.

6. How are planning obligations enforced and who does this work?

See question 4. Only a planning authority can take enforcement action and the planning obligation may specify which provisions can be enforced by the county and which by the district. For efficiency, in case any formal action needs to be taken, the preferred arrangement is for county and district to be able to enforce each others matters. In practice it is very rare for any formal enforcement to be required. Usually, outstanding matters can be resolved by sending a letter requesting the obligation to be complied with. In just one case it has been necessary to instigate legal proceedings, to prevent further occupation of a development until highway works were carried out.

7. Are Section 106 agreements and the associated financial contributions time limited?

Agreements are not time limited as such, but normally have no further effect if the related planning consent expires. This is a very unusual occurrence. Financial contributions are normally index-linked to prevent their value being eroded by inflation. Once received, contributions are normally time-limited and returned with interest if unspent.

8. Is there a specific sum of money for each development?

Yes. Each development is considered on its own merits and provisions may include works and financial contributions – but not necessarily either. Contributions are assessed on an individual site by site basis, taking into account the nature of the development and service needs.

9. What action can be taken if the local planning authority spurns advice on the need for a planning obligation?

This is relatively unusual but if it does happen immediate options include:

- i) a separate agreement between the county and other parties (but excluding the LPA), and
- ii) making a legal challenge

The former has been done. The latter would obviously be a very serious step to take.

On less important issues action would normally be taken to try to ensure a better understanding between the authorities. It may sometimes be appropriate for members to be involved.

10. Is there a need to distinguish between Section 106 agreements entered into by District / Borough Councils and the County Council?

No, although the County Council does not normally have an interest in any agreements it is not party to. Where County Council services are involved the County Council is always a party and it is normal for the district/borough also to be a party) although this is not a legal requirement).

When there are Section 106 agreements to cover only highway matters, it is always common practice that the local planning authority is party to the agreement.

11. What happens if a developer / land owner does not accept the need for the planning obligation being sought?

Planning obligations are normally negotiated rather than imposed. On larger schemes a considerable amount of time may be spent investigating the impact of development and agreeing what is appropriate for the planning obligation. The developer / owner may employ specialist advice and negotiations should result in all parties being satisfied with what is to be included. However, the ultimate position is that planning consent can be refused and the applicant can appeal the decision. In such cases the applicant may offer a unilateral obligation (i.e. the local authorities are not party to the obligation). An inspector, or sometimes the First Secretary of State, will then decide whether to grant consent on the basis of what is being offered by the appellant.

12. Are Section 106 agreements entered into in respect of County Council developments?

There are two categories. For planning applications for its own use (a school for example) where the county is the planning authority formal Section 106 agreements are not usually appropriate, but works or contributions will still be undertaken or made. Where planning consent is sought from another planning authority, for example to establish the possible use of a site to be disposed, then Section 106 agreements are entered into and the County Council is treated in the same way as any another landowners

13. Who pays the County Council's costs in preparing Section 106 agreements?

The developer or landowner is asked to pay and is required to give an undertaking that the costs of work done will be met even if the agreement is never completed.

14. What happens if a developer pulls out after the agreement is complete?

This is unusual. Because the agreement binds the land and future owners, it is not necessarily a problem if the developer changes. However, a new developer may want a different form of development and so a new agreement may be needed.

15. What is a Section 278 agreement?

When works are required to be undertaken to the public highway, consent is needed to be given by the highways authority. This can be achieved under Section 278 of the Highways Act 1980. A Section 278 legal agreement is where the developer enters into an agreement with the highway authority to carry out works on public highways under the supervision of the highway authority. The highway works must be undertaken by a contractor approved by the highway authority. It is possible for an applicant to enter into a combined Section 106 / Section 278 agreement.

Jan Kinsman – Planning Obligations Manager, Corporate Services