

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

13 November 2018

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Matters for Information

1 SECTION 106 MONITORING REPORT

Summary

This report provides an overview of planning obligations for the period 2016-2018 under section 106 of the Town and Country Planning Act 1990.

1.1 Introduction

1.1.1 Development Management recently underwent an audit of how section 106 obligations were monitored, the outcomes of which culminated in the creation of a corporate monitoring group and system which has allowed for the recording and monitoring of all new and existing obligations secured.

1.1.2 This has been subject to more recent review, with one outcome being that the Audit Committee received a report concerning the monitoring regime put in place for s106 obligations. Moving forward the committee agreed that 6 monthly reports be taken to this Board outlining the nature of any obligations secured, received and used.

1.2 Relevant statutory and policy framework:

1.2.1 Section 106 agreements, also known as planning obligations or developer contributions, are typically undertakings by developers or agreements between a local planning authority and a developer in the context of granting planning permission. Their function is to make acceptable development which would otherwise be unacceptable in planning terms and they typically involve commitment to provide something in-kind on site in a particular form (e.g. affordable housing, community facilities) or money for the authority to undertake necessary work. Section 106 monies, by their nature, are mostly for capital works as they are for the provision of infrastructure necessary to mitigate the impact of the development (e.g. junction modifications, school extensions).

1.2.2 Planning obligations effectively are used for three main purposes:

- Prescribe the nature of development (for example, requiring a given portion of housing is affordable)

- Compensate for loss or damage created by a development;
 - Mitigate a development's impact.
- 1.2.3 As part of the planning process, a developer may be required to enter into a legal agreement to provide infrastructure and services on or off the development site, acting as a delivery mechanism for the matters that are necessary to make the development acceptable in planning terms
- 1.2.4 Such agreements can cover almost any relevant issue, acting as a main instrument for placing restrictions on developers, often requiring them to minimise the impact on the local community and to carry out tasks which will provide community benefits, and can include the payment of sums of money, which cannot be secured by planning condition.
- 1.2.5 Examples of types of infrastructure or services that planning obligations can include are:
- Transport infrastructure or services, including new or improvements to existing footpaths, cycle ways, roads and bus services and their associated infrastructure, to link development to surrounding areas and ensure it is accessible by all modes of travel;
 - Affordable and special needs housing (where there is a proven local need);
 - Education facilities to meet any expected shortage in school places arising from the development;
 - Community facilities, including buildings and play or open space, where existing provision is inadequate to provide for the new development;
 - Environmental improvements where necessary to mitigate the impact of a development or integrate it with surrounding areas;
 - Restrictions and obligations on the use of land.
- 1.2.6 The Community Infrastructure Regulations 2010 (CIL) that came in to force on 6 April 2010 set out the statutory tests on what can reasonably be sought under S.106 replacing the circular 05/2005 guidance for all developments. Regulation 122 requires that a planning obligation cannot be taken into account in a decision on a planning application unless it is:
- (i) necessary to make the development acceptable in planning terms;
 - (ii) directly related to the development; and
 - (iii) fairly and reasonably related in scale and kind to the development

1.2.7 This report summarises such obligations secured during the period 2016 to 2018. The intention of the report going forward will be to update the Board on rolling basis.

1.3 Summary of section 106 obligations:

1.3.1 Members will be aware that even prior to the more formalised monitoring arrangements being put in place, planning obligations have been successfully secured on many developments to ensure compliance with policy and mitigate impacts. Most notably in recent years this has allowed for the Council to contribute towards the implementation of the domestic violence refuge and purchase our own temporary accommodation for those most directly in need across the Borough as well as complete projects to renovate the Tonbridge Memorial Gardens and the Town Lock enhancement scheme.

1.3.2 **Annex 1** provides a summary of all obligations secured for years 2016, 2017 and 2018 (to date), including details of the site, relevant planning application and nature of the obligation itself.

1.4 Legal Implications

1.4.1 There is a statutory requirement for local planning authorities to use all of the funding received by way of planning obligations, as set out in individual agreements, in order to make development acceptable in planning terms. Agreements should normally include clauses stating when and how the funds will be used by and allow for their return, after an agreed period of time, where they are not.

1.4.2 Furthermore, for sites where the threshold applies, planning obligations should not be sought to contribute to pooled funding 'pots' intended to fund the provision of general infrastructure in the wider area. Of particular importance, Regulation 123 of the CIL Regulations prevents councils from collecting more than five separate planning obligations for a project or type of infrastructure. After 6 April 2015 the use of pooled financial contributions collected through S106 obligations became limited for all authorities. This highlights the importance of effective ongoing monitoring and efficient use of obligations to directly and successfully mitigate impact.

1.4.3 There has been debate about the exact meaning of 'infrastructure projects or types of infrastructure' although the CIL guidance section of NPPG gives the example of five separate planning obligations for a specific item of infrastructure (e.g. a local school). Generic contributions towards 'education' or 'transport' would be calculated in the same way.

1.4.4 Planning permission granted subject to a s.106 agreement which includes planning obligations for a project or type of infrastructure where the pooling restriction has been exceeded, may be unlawful and subject to challenge.

1.5 Financial and Value for Money Considerations

- 1.5.1 Failure to effectively secure planning obligations that successfully mitigate the impact of new development could give rise to unacceptable planning harm arising on an individual or cumulative basis across the Borough.
- 1.5.2 Failure to effectively monitor how and where those planning obligations are secured could give rise to a failure to adhere to the statutory pooling restrictions and could even necessitate the repayment of financial obligations received. Both scenarios would compromise our ability to mitigate impacts in a positive way.

1.6 Risk Assessment

- 1.6.1 It should be recognised that if individual planning permissions are not implemented, then the obligations secured as part of the permission do not come forward. As such, and particularly when linked to the statutory tests that we are required to apply, it is important to understand that planning obligations cannot be seen as a mechanism to fix pre-existing problems or as an opportunity to use developers as an additional revenue stream.
- 1.6.2 Additionally, it should be understood that even once an obligation has been secured through a planning agreement and tied to a permission there is provision within the Act for parties to the agreement to seek formal variations. Commonly this would occur in situations where developers wish to demonstrate that the viability of a scheme has altered over time and we have some limited experience of that happening in certain cases. However, it is equally relevant that in such cases, there would still be a requirement to assess the scheme afresh without the secured obligations and mitigation in place. If it is consequently considered that the impact would be harmful and there was no alternative means of ensuring effective mitigation that could be a justification to refuse to agree a variation.

Background papers:

Nil

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