

Report of	Meeting	Date
Director of Development and Regeneration	Development Control Committee	21 November 2006
	Local Development Framework and Community Strategy Working Group	23 November 2006

UP DATE ON NATIONAL AND LOCAL PLANNING OBLIGATIONS BEST PRACTICE.

PURPOSE OF REPORT

- To up- date members on recent Planning Guidance received from the Department for Communities and Local Government (DCLG) on Planning Obligations (variously known as Planning Gain, S106 agreements or Planning Contributions) and to inform them of work undertaken by the Lancashire Planning Officers' Society on producing the report "Planning Obligations in Lancashire" and how this may be used to negotiate planning contributions related to planning applications in Chorley Borough.

CORPORATE PRIORITIES

- Planning obligations can be used for a wide number of purposes ranging from contributions to open space provision to providing improved pedestrian links to developments. The successful negotiation and subsequent implementation of planning obligations, whether indirectly through developers giving the Council money to act as their agent, or by developers undertaking the work themselves, will have a direct positive impact on Corporate Objectives 2, 4 & 5, namely: *"Reduce pockets of inequality; Improved access to Public Services; and Develop the character and feel of Chorley as a good place to live."*

RISK ISSUES

- The issues raised and recommendations made in this report involve risk considerations in the following categories:

Strategy		Information	
Reputation		Regulatory/Legal	■
Financial	■	Operational	■
People		Other	

- It is important that planning obligations are appropriately negotiated and implemented otherwise there are legal and financial implications.

BACKGROUND

- Planning obligations should only be required of developers if planning permission would not otherwise be given. This is known as the "necessity test" and is one of the five tests that should be considered every time a planning obligation is negotiated. If this is not

done then planning permissions could be challenged in the High Court as being illegal and quashed.

6. Circular 05/05 sets out the five tests as;
 - *Relevant to planning*
 - *Necessary to make the proposed development acceptable in planning terms*
 - *Directly related to the proposed development*
 - *Fairly and reasonably related in scale and kind to the proposed development, and*
 - *Reasonable in all other respects.*
7. As planning obligations often relate to considerable sums of money they are often controversial and may cause suspicion as to why particular developments are granted planning permission and others are not. They are also often considered to hold up the development process as it can take considerable time to negotiate and produce legal agreements which are acceptable to both the Council and the developer.
8. A number of alternatives to planning obligations have been previously consulted upon by the Government including tariffs. Members may be aware that the government is committed to introducing a form of land tax called the Planning Gain Supplement. The earliest it could come in force is 2008. It is as yet unclear how the monies gained would be spent and who at a local level would have the responsibility for spending the money. It is however clear that in some circumstances planning obligations will continue to need to be negotiated. Therefore the Government has recently published "Planning Obligations: Practice Guidance" that sets out best practice.
9. Parallel to this, in accord with the advice set out in the Practice Guidance, the Lancashire Planning Officers (Lancashire Councils' heads of Planning service) commissioned a working party made up of district and County Council officers to produce a document setting out what developers would be expected to contribute for various types of development within the County. This has undergone extensive consultation with utility providers, stakeholders, developers, and the Government Office for the North West. Informal officer comments were also made from the Lancashire Authorities. This policy document has now been adopted by the County Council following extensive internal and external consultation. It has not yet received member endorsement in Chorley.

GOVERNMENT ADVICE

10. The following sets out the key elements of the national Practice Guidance. It fleshes out Circular 5/05 on Planning Obligations. However, it is significant in that it provides good examples of best practice and stresses the need for developers to know in advance what they are likely to be asked to contribute. Ideally, these contributions should be set out in the Local Development Framework, so that they can be challenged if necessary. A Local Development Framework document on Planning Obligations is programmed into Chorley's Local Development Scheme (a time table of when particular planning documents will be produced) but is unlikely to be adopted until 2010.
11. Much of the recent Government advice ensures that the internal procedures for negotiating and implementing Planning Obligations is transparent, contains a clear audit trail, and is professionally executed. Chorley already has an internal officers working group whose remit is to ensure that all contributions can be traced, that the monies are effectively spent and that the Council and people of Chorley are gaining the maximum benefit from negotiated obligations. Therefore much of the advice is current good practice in the authority.
12. However, there is useful detail in the guidance relating to how to ensure that benefits in kind are up to the standard required and how to ensure monies promised keep up with inflation in the building industry. It also sets out when maintenance payments should be

made in perpetuity (when a facility will be for the sole use of the new development) and when they should be used to pump prime particular uses, such as subsidising bus routes to new housing for a fixed period until they become self financing.

13. The Guidance sets out how to overcome the criticisms of planning obligations through improvements in speed, predictability, transparency and accountability. To do this there may be a tension between the test of an obligation to be directly related to a specific development and the need for infrastructure provision that builds up over time following a number of permissions. In Chorley it is unlikely in the foreseeable future that the majority of permissions will be at a large scale, like Buckshaw Village, where it was possible to negotiate successfully for benefits that were very clearly related to the needs of the development.
14. Instead, “pooled” contributions may be most suitable. The Government guidance accepts the legitimacy of this approach. These contributions can be individually negotiated or where there are accepted formulae and standard charges for particular types of development these may be used.
15. The existing procedures set up by the internal working group have overcome any problems of accountability as any monies received can be traced and if they are not spent within a certain time frame are returnable to the developer. Monies or commitments in kind are recorded on a public register. Transparency would be improved if there was a clear link between a Local Development Framework document, or other guidance and the negotiation of a planning obligation.
16. The Government advice recommends that standard legal documents are used wherever possible and it contains a standard legal agreement that is currently being considered by officers in the Customer, Democratic and Legal Services Directorate. It also recommends that time could be saved if draft planning agreements were submitted with planning applications. Where it is evident that it will not be able to negotiate an agreement third parties should be used and any costs met by the applicants.

LANCASHIRE PLANNING OBLIGATIONS POLICY PAPER

17. This is already adopted by the County Council and is to be used internally by them when calculating what levels of planning obligations should be negotiated in relation to County provided services. It is also intended for it to be able to be used as a resource by districts as a basis for negotiation, or integrated into their Local Development Framework.
18. It provides guidance as to when planning obligations will be negotiated and what level of financial contribution would be required, depending on the type, amount and location of the development. The document relates to planning obligations that would be required by both the County Council, such as transport and education, and by the districts. A consistent and transparent document, with an interactive web site hosted by the County, would help developers be aware of potential requirements. These could then be factored into any financial appraisal of the viability of proposals PRIOR to purchasing land. This approach where formulae and standard charges are set out is recommended in the Planning Obligations Practice Guidance.
19. Preston City Council is intending to use the County’s work as the basis of an interim planning statement on planning obligations.
20. Accompanying the paper is a draft County District Protocol whereby the County sets out the procedures for consulting it on applications that may result in planning obligations being negotiated. A Planning Obligations Officer has recently been appointed by the County Council to act as the first point of contact between districts and developers in relation to County functions. It is intended that the County will speed up their internal

procedures and guarantee a prompt response. Their officer will also be available to help undertake complex negotiations to maximise any planning obligations negotiated both for the district and county council. This protocol is potentially controversial and will be subject to close scrutiny by your officers in the coming months.

CONCLUSIONS

21. Clear advice in the form of the Government's Practice Guidance will improve the quality and speed of negotiated S106 agreements. However, much of the advice is already good practice in Chorley.
22. The use of the County's Planning Obligations in Lancashire Policy Paper as a working document could be a useful development control tool but would not compromise the Director of Development and Regeneration's discretion in negotiating agreements for the proper planning of the Borough.

COMMENTS OF THE DIRECTOR OF HUMAN RESOURCES

23. This report has no apparent Human Resources implications.

COMMENTS OF THE DIRECTOR OF FINANCE

24. There are no immediate financial implications associated with the report. However planning obligation money can represent a significant resource that allows for investment that may otherwise not take place. Any guidance that ensures consistency and structure to negotiation is welcomed and should ensure further transparency in the process.

RECOMMENDATION

25. That the report is noted in relation to the Planning Obligations Practice Guidance and that the County's Planning Obligations in Lancashire Policy Paper be used as a working document by Borough Council officers and be available on the Council's Planning web sites. This would leave considerable discretion to your officers in negotiating obligations but would provide a useful starting point, as well as an element of certainty to developers as to what they might be expected to contribute.
26. The Protocol should not be entered into until the Director of Development and Regeneration is satisfied that it would be of positive benefit to Chorley Council and would not fetter her discretion in undertaking negotiations.

JANE E MEEK
DIRECTOR OF DEVELOPMENT AND REGENERATION

Background Papers			
Document	Date	File	Place of Inspection
Planning Obligations in Lancashire: Working Group of the Planning Officers Planning Obligations: Practice Guidance: DCLG	July 2006		Gillibrand Street Office*

Report Author	Ext	Date	Doc ID
Louise Nurser	5281	8 November 2006	