

Report of	Meeting	Date
Director of Development and Regeneration (Introduced by the Executive Member for Economic Development and Regeneration)	Development Control Committee	13 February 2007

CONSULTATION ON CHANGES TO PLANNING OBLIGATIONS- A PLANNING GAIN SUPPLEMENT CONSULTATION.

PURPOSE OF REPORT

1. To inform members of the publication of a further consultation document on Planning Obligations and to agree a response to it.

CORPORATE PRIORITIES

2. The proposals relating to planning obligations could impact on the Council's Strategic Objectives 1, 4 and 5, to *"Put Chorley at the heart of regional economic development in the central Lancashire sub- region"*, *"Improved access to Public Services"* and to *"Develop the character and feel of Chorley as a good place to live."*

RISK ISSUES

3. The issues raised and recommendations made in this report involve no risk considerations

BACKGROUND

4. In 2005, Economist Kate Barker suggested in her Housing Review for the Treasury that a Planning Gain Supplement be introduced. This would be a levy on the development value of land that would be collected on a national basis. Its proceeds were to go towards infrastructure provision. It was envisaged that the use of Planning Obligations, mainly arising from Section 106 of the relevant planning Act, would be reduced to relate solely to site-specific issues such as "direct impact mitigation" and affordable housing. The term Planning Obligation is taken to include the monies required under Section 278 of the Highways Act for road improvements.
5. It had been considered that Planning Obligations (S.106 agreements or planning contributions) were in need of reform as they are often negotiated on an ad hoc basis, there is a suspicion that their use may lead to applications being "bought" through community facilities, or transport improvements, and there was little certainty for developers on the costs that would be involved. This lack of transparency would then result in land values being unclear and schemes becoming unviable.

6. A number of rounds of consultation have taken place on how the Planning Gain Supplement (PGS) would operate. In particular, how it would relate to the continued use of Planning Obligations that were required to mitigate the impacts of development at a site-specific level. Previous consultations raised the spectre of planning authorities not having the mechanisms to control the adverse impacts of developments. An example of which would be the requirement to subsidise a bus service to make the site accessible by transport other than the private car. This would be at too small a scale to be covered by the PGS, and as it was not a physical contribution, could not be the subject of a planning obligation.
7. The purpose of this consultation is to ascertain whether the PGS could be workable, and if it is, to be clear how the use of planning obligations would complement it.
8. The new consultation clarifies that the levy would be applied to virtually all residential and non-residential developments. A total of 70% of the PGS would be returned to the local authority area from which the monies were generated and the rest would go to the region to provide for strategic infrastructure. It is unclear whether the local authority is considered to be the county or district level.

KEY ISSUES

9. The key issue is the balance between the private and public investment in the public realm in its broadest sense ie who should pay for the contributions for schools, roads, community infrastructure, libraries, bus services etc that are required to ensure that new development does not have an adverse impact?
10. It is proposed that the scaled back Planning Obligations should be, *“delivered through other public sector funding mechanisms, including through the use of PGS revenues”*.
11. To clarify what can be negotiated through obligations the government previously consulted on a criteria-based approach that included the provision of affordable housing; direct replacement or substitution of facilities on the site; and development site acceptability issues such as biodiversity. The Government intends to consult further on a detailed criteria based scope to define the scope of Planning Obligations. It has dismissed the list based approach (as recently used in the County’s Planning Obligations document) as being too prescriptive, whilst at the same time running the risk of being likely to miss obligations that could be required depending on specific circumstances.
12. It is intended that facilities for community or public facilities should not be part of any future Planning Obligation agreements; however, it may be possible that the provision of the land could be. The government is seeking guidance as to whether the provision of land should be a legitimate Planning Obligation.
13. The negotiation of agreements for the provision of affordable housing will continue to fall within the remit of Planning Obligations. However, it is suggested that the amount and type of affordable housing required should be defined in a Housing Needs Survey, the conclusions integrated into the Local Development Framework and implemented in response to planning applications. It is envisaged that the developers be responsible for providing the land for the units.
14. Transport is a much more complicated issue as Members are aware from my report, elsewhere on this agenda, referring to the Government’s consultation on Climate Change. The reduction in the use of the private car can be achieved through a number of ways some of which involve demand management such as Travel Plans. The Government considers that as these have a direct link to a site that these should remain within the remit of Planning Obligations.

15. The consultation then asks if obligations should be required to provide access to the nearest transport network and leave any additional capacity requirements to the public sector or whether Planning Obligations can be negotiated so that the appropriate capacity can be added to the transport network. If developers only have to pay for physically accessing the road transport network they have no incentive to manage the capacity demand it generates, whilst if they are required to pay for the demands they place on the transport network it will make for complex negotiations.
16. In relation to the scope for non- car based forms of infrastructure ie buses, trams, cycles etc the Government envisages that Planning Obligations should be restricted to connections to “access points”. This means cycle routes to existing networks, links to bus stops and, in larger schemes, tram stops.
17. It is intended that Planning Obligations should include the highway works previously negotiated under a s278 agreement and that the highway authorities should be party to it.
18. The document also considers whether the existing presumption that Planning Obligations should only be entered into when it was not appropriate to use a planning condition to a permission should continue.

IMPACTS ON CHORLEY

19. Some major projects could be adversely affected such as a development funded railway station, which may not be possible under a Planning Obligation if the PGS came into force. Fortunately the completion of the Buckshaw railway station is already committed so that the proposal would not impact on this infrastructure provision. However, if the twin approach of a scaled back planning obligation system and the proposed Planning Gain Supplement were to come into force in 2009 it would restrict how your Officers could negotiate on applications.

CONCLUSION

20. The Council has already improved the speed, transparency and the negotiation of Planning Obligations. The new “scaled back and simplified system” is likely to cause additional confusion as to when a Planning Obligation is legitimate. This in turn will cause uncertainty and delay in the delivery of the development in the Borough. Moreover, it will be difficult to ensure that the various public sector agencies actually have sufficient funding to ensure developments are acceptable. It is also unclear whether the public sector spending priorities will allow monies to be spent at the level required and to whom the public sector agencies will be accountable.
21. However the approach set out in relation to the provision of affordable housing is to be welcomed.

COMMENTS OF THE HEAD OF HUMAN RESOURCES

22. There are no human resources implications to this report.

COMMENTS OF THE DIRECTOR OF FINANCE

23. The changes proposed would affect the amount of S106 money the Council would receive in any negotiations and whilst there would be some benefit at a regional level, it would restrict the level of community benefits the Council is able to achieve through the S106 process.

RECOMMENDATION

24. To note the report and to forward the attached responses to the Department of Communities and Local Government.

JANE E MEEK
DIRECTOR OF DEVELOPMENT AND REGENERATION

Background Papers			
Document	Date	File	Place of Inspection
Consultation- Changes to Planning Obligations	December 2006		Gillibrand Street Offices
Report Author	Ext	Date	Doc ID
Louise Nurser	5281	25 January 2007	

APPENDIX A: Consultation Questions

1. Do you agree that a criteria-based approach to defining the scope of planning obligations is the best way forward? If not, what approach would you recommend?

No. It will lead to argument and ambiguity. Better to scrap the concept of the PGS and to continue with list approach exemplified as best practice, bearing in mind that there will always be the possibility of unforeseen additional requirements.

2. Do you agree that the scaling back of planning obligations will not undermine the operation of EIAs (Environmental Impact Assessments) for the reasons set out above?

Yes

3. Do you think that land for public or community facilities on large sites should be included in the scope of planning obligations in future, or excluded? How should "large" sites be defined?

Should be included irrespective of their size and should not just be restricted to land ie facilities should be part of negotiations.

4. Do you agree with the proposals to establish a clear statutory and policy basis for affordable housing contributions?

Yes

5. Do you agree with the proposals to establish a common quantum for such contributions?

Yes, providing funding is also available to cover the cost of the housing itself and not just the land.

6. Can you envisage any unintended consequences of the above approach?

No, subject to the above.

7. What common quantum would you recommend? What would be the impact of this option on a) development viability and b) affordable housing delivery?

This would all depend on what the costs are applicable at the time.

8. Do you agree that measures to implement Travel Plans and demand management measures directly related to the environment of the development site should remain within the scope of planning obligations?

Yes

9. Which of the above options for developer contributions to transport infrastructure should the Government pursue in order best to balance the objectives of; managing demand for road transport; the need to ensure network improvements are provided in a timely manner; the need for transport impacts to be dealt with on a cumulative and strategic basis alongside other forms of infrastructure; and the need to create a scope for planning obligations which is sensible and consistent and does not lead to delay? Any there any other options?

The negative impacts of both options will result in increases in carbon emissions contrary to the draft Planning Policy Statement on Climate change. It is not acceptable to operate a system where there is no guarantee that the negative impacts will be ameliorated when the

existing system works on the premise that permission will only be granted if the impacts are not so substantial as to justify refusal.

10. Do you agree with the proposal to define the new scope for planning obligations for non-road infrastructure as described above ie those contributions required to allow “accessibility to access points”, but to exclude more strategic contributions or those which are better dealt with on a cumulative basis?

No- for the reasons set out above.

11. Do you agree that in future all planning obligation contributions, includes towards highways works, should if possible, be made under a single agreement, to which highways authorities would also be parties where relevant? Do you see any downsides to this approach?

In theory a good idea, but how will it work in lower tier authorities? It may lead to delay.

12. Do you agree with the proposal to reinforce the current policy presumption that planning obligations should only be used where it is not possible to use a planning condition, but not to provide for this in legislation

Yes.