

Report of the Strategic Director of Regeneration to the meeting of the Area Planning Panel (Keighley) to be held on 27 October 2011.

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Subject:

Planning Agreements Annual Monitoring report

Summary statement:

Bi-annual monitoring report to inform members of progress on Section 106 Agreements for the financial year 2010/2011.

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Assistant Director (Planning,
Transportation and Highways)

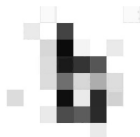
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Portfolio:

Environment and Culture

Improvement Area:

Regeneration and Economy



2006-2007
Improving Rural Services
Empowering Communities



INVESTOR IN PEOPLE

Suzan Hemingway, Assistant Director Corporate Services (City Solicitor)



1.0 SUMMARY

- 1.1 The Area Planning Panel (Keighley) is requested to note the contents of this report.
- 1.2 This bi - annual monitoring report provides an assessment of the Agreements signed for the financial year 2010/2011 and for the income received since the appointment of the Planning Obligations Monitoring Officer.
- 1.3 This report also provides an update on the establishment of the planning service Section 106 monitoring system.

2.0 BACKGROUND

- 2.1 Section 106 Agreements or Planning Obligations are normally entered into in connection with the grant of planning permission. The Council has the power to enter into a legal agreement with a developer under Section 106 of the Town & Country Planning Act 1990, to make acceptable development which might otherwise be unacceptable in planning terms.
- 2.2 Planning Agreements can be used to prescribe mitigate and compensate for the impact that a development may cause by:
 - Restricting the development or use of land referred to in the Agreement in any way
 - Requiring specific operations or activities to be carried out on the land referred to in the Agreement
 - Requiring the land to be used in a particular way
 - Requiring a financial contribution to be made to the Local Planning Authority on a specified date or dates, or periodically
- 2.3 The majority of Agreements relate to major developments and can cover may issues including:
 - The provision of an element of affordable housing and phasing the release of properties
 - Rules governing the management arrangements for affordable housing and the method of discount to be applied to dwellings to ensure they are genuinely affordable.
 - Commuted sums for the provision of off site affordable housing
 - Contributions towards off site highway improvement works such as junction improvements or traffic calming
 - Details relating to green travel plans to be implemented in order to minimise impacts on the highway network and improve sustainability
 - Landscape management plans/payment to secure appropriate long term management of open areas, landscaping or wildlife areas
 - The provision of play/recreation facilities or equipment or commuted sums. These could relate to on or off site facilities
- 2.4 Copies of planning Agreements are currently available to view on the Council's website and it is also proposed to publish details of live Agreements on the

website together with this bi-annual progress report. Work is also being undertaken to create a separate "Section 106 Agreement" area on the Council's website. This area will include summaries of monies received and where spent.

3.0 DEFINITIONS

3.1 Members are advised that there are a number of definitions used in connection with Section 106 Agreements. For ease of reference the following shall apply in this report:

- A clause: part of an Agreement detailing the obligations which can be a financial commitment or agreement to do works or even the revocation of a previous planning permission.
- Trigger point: within an Agreement, this clearly specifies the point in time when the developer needs to carry out work or make a payment. For example, a payment of £10,000.00 is to be paid upon occupation of the 25th dwelling unit.

4.0 AGREEMENTS SIGNED

4.1 58 Section 106 Agreements were completed between 1 April 2010 and 31 March 2011. The majority of these Agreements contained multiple numbers of clauses. In comparison, 36 Agreements were signed during the whole of 2009/2010.

4.2 Three of the 58 Agreements were Deed of Variations to original Agreements. Two of these altered the trigger points for when the payment of monies is due and the other was to acknowledge a change in ownership of the application site.

4.3 The majority of clauses contained financial requirements for example the provision of improved recreation facilities.

4.4 There were 185 clauses in total, of which 123 had a financial obligation. The value of all financial obligations is £8,264,774.30. Compared to the previous year 2009/2010 where there was a total of 57 financial clauses totalling £4,277,114.00.

4.5 Of the 62 non financial clauses, 21 were for the transfer of dwellings to a Registered Social Landlord (RSL).

4.6 Appendix 1 details all the new Agreements signed by ward, obligation type and obligation value.

4.7 Table 1 below shows the number and value of clauses requiring financial contributions by type.

Table 1: Number and value of obligations by clause type

Obligation type	No of clauses	Total value of clauses
Recreation Open Space	35	£1,515,734.00
Education	28	£2,459,588.00
Affordable housing commuted sums	6	£2,326,848.00
Highways, physical infrastructure and travel	30	£733,300.00
Metro commuted sums	17	£648,504.32
Works to trees	3	£12,800.00
Cycle path works	2	£43,000.00
Environmental Improvements	1	£30,000.00
Public Realm	1	£495,000.00
Total	123	£8,264,774.30

4.8 Table 2 below shows the number of non financial contribution clauses by type.

Table 2: Number of non financial obligations by clause type

Obligation type	No of clauses
Affordable housing – transfer of dwellings to RSL	21
Highway works (on and off site)	13
Metro	4
Other	24
Total	62

4.9 Education contributions accounted for the greatest financial value of obligations negotiated. Open space, sport and recreation account for the greatest number of clauses as the thresholds for the requirement for open space contributions are much lower than for other contribution types.

4.10 It should be noted that the benefits associated with an Agreement cannot be secured until the planning permission is implemented. Given that permissions are normally valid for three years this creates uncertainty about when and if contributions will be received. Once the permission has lapsed the ability to receive such benefits is lost.

4.11 It should also be noted that due to the economic downturn the number of developments commencing is significantly reduced compared to previous years. To date only 15 of the 58 permissions granted subject to a Section 106 Agreement have commenced.

4.12 Of the 15 developments which have commenced, 7 have met trigger points and a total of £111,363.90 has been paid in Section 106 contributions as trigger

points have been met. The remaining 8 have not yet met their trigger points or have no financial contributions to pay.

5.0 PAYMENTS RECEIVED

- 5.1 Financial contributions will normally be received when a particular trigger point has been reached. This is normally prior to the commencement of development and/or for large scale developments at another pre agreed stage in the construction work.
- 5.2 Since the 1st January 2009 to the present day the total amount of Section 106 monies received is £3,003,445.31.
- 5.3 Table 3 shows the area breakdown of money received by obligation type.

Table 3: Money received per area by obligation type

	Bradford East	Bradford West	Bradford South	Shipley	Keighley	Total
Recreation open space	£69,200	£10,500.00	£352,274.51	£144,836.20	£36,202.85	£613,013.56
Affordable housing		£179,300.00	£267,326.73	£125,000.00		£571,626.73
Education			£303,897.03	£96,667.00		£400,564.03
Highways		£5,030.00	£320,000.00	£56,252.00	£19,408.00	£400,690.00
Metro		£101,313.00		£29,016.45	£821,971.54	£952,300.99
Trees and Landscaping			£65,250.00			£65,250.00
Total	£69,200.00	£296,143.00	£1,308,748.20	£451,771.65	£877,582.39	£3,003,445.10

- 5.4 Appendix 2 gives a breakdown of the monies received by Ward and obligation type.

6.0 BANKRUPT DEVELOPERS

- 6.1 Given the unstable financial climate some Developers are no longer trading and have been, or are in the process of being declared bankrupt. Where these developers owe the Council monies as a result of a Section 106 Agreement, the Council's Debt Recovery team have been engaged to resolve the matter and hopefully secure some of the outstanding monies.

7.0 DEED OF VARIATION AGREEMENTS

- 7.1 Members will be aware that the Assistant Director (Planning) presented a report to the Regulatory and Appeals Committee on the 7th December 2009. This report concerned the provisions to be implemented in the case of Developers who were not in a financial position to pay monies owed or to agree to full contributions.
- 7.2 In the case of new proposals where Developers demonstrate that they cannot agree to full contributions the Planning Service will ask for a full Financial Viability Statement to be submitted. This document is then assessed and the findings considered. If the Council believe that it is important to promote a

development proposal despite the developer contributions not being met in full, one of four routes will be adhered to. These routes are:

- An agreement to accept reduced payments or contributions
- Deferred payments whereby the obligations will be met but payment will be phased
- An overage agreement will be drawn up where Developers agree to pay contributions if profits from the development exceed a minimum level
- A hybrid agreement to require specified key contributions (for example highway works) are met early by the Developer and then the remainder of the contributions being met through an overage agreement or through deferred payments. This route is normally only used if the Development would not be acceptable in principle without the key contributions being met initially

7.3 Where Developers have an extant planning permission and have met their trigger point for payment of Section 106 monies, Assistant Director (Planning) may agree on revised trigger points and a new payment schedule. For example, on a large housing scheme monies could be made on a staged payment basis of occupation of every 25th dwelling as opposed to the whole sum being paid on commencement of development. This results in a Deed of Variation being completed. Members are advised that in such circumstances the original sums of money are achieved by the end of the development.

8.0 FINANCIAL AND RESOURCE APPRAISAL

8.1 The monitoring of Section 106 Agreements involves one full-time post within the Planning Service. Significant benefits have already been shown by the introduction of this post with previous unpaid developer contributions being highlighted, pursued and secured.

8.2 A monitoring fee of £350.00 per clause was introduced on 1st April 2011 to fund the monitoring post. The fee is payable within 28 days of the Agreement being completed and is non refundable should the development not commence.

9.0 LEGAL APPRAISAL

9.1 Planning Obligations are controlled by Section 106 of the Town & Country Planning Act 1990, Section 46 of the Planning and Compulsory Purchase Act 2004 and ODPM Circular 05/05 Planning Obligations.

10.0 OTHER IMPLICATIONS

10.1 Equal Rights

There are no equal rights implications arising from this report.

10.2 Sustainability implications

There are no direct sustainability implications arising from this report.

10.3 Community safety implications

There are no direct community safety implications arising from this report.

10.4 Human Rights Act

There are no direct human rights implications arising from this report.

10.5 Trade Union

There are no trade union implications arising from this report.

10.6 Not for publication documents

None

11.0 RECOMMENDATIONS

11.1 It is recommended that the contents of this report be noted.

12.0 APPENDICES

12.1 Appendix 1 - New Agreements signed by ward, obligation type and obligation value.

12.2 Appendix 2 – Breakdown of Section 106 monies received since January 2009 to present day by Ward and Area.

13.0 BACKGROUND DOCUMENTS

13.1 None