

Planning Committee

15 June 2023

Item

Report of	Karen Syrett, Head of Planning	☎ 506477
Title	Revised procedures for S106 Developer Contributions	
Wards affected	All	

1. Executive Summary

- 1.1 This report seeks approval to formalise the spend release process in relation to S106 agreements and unilateral undertakings.
- 1.2 The report provides some background and procedures for setting section 106 contributions and identifies proposed changes.
- 1.3 A number of changes to procedures have already been implemented and others are proposed.

2. Decision Required

- 2.1 Planning Committee is asked to agree the revised scheme of delegation in relation to the S106 Spend Release Protocol.

3. Reason for Decision

- 3.1 The existing spend release protocol has evolved informally over time and is no longer considered fit for purpose. This is a view shared by external auditors.

4. Alternative Options

- 4.1 The Committee could decide not to change the spend release protocol but this would be contrary to the findings of the audit report and continue the existing system which leads to uncertainty and inconsistency.

5.0 Background Information

- 5.1 Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal. They are also commonly referred to as 'section 106', 's106', as well as 'developer contributions'.
- 5.2 These obligations can be via a planning agreement entered into under section 106 of the Town and Country Planning Act 1990 by a person with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land without the local planning authority being a signatory.
- 5.3 Planning obligations run with the land, are legally binding and enforceable. A unilateral undertaking cannot bind the local planning authority because they are not party to it.
- 5.4 Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 5.5 These tests are set out as statutory tests in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework.
- 5.6 Planning obligations in the form of section 106 or section 278 (highway works) agreements should only be used where it is not possible to address unacceptable impacts through the use of conditions.
- 5.7 It is not appropriate to set out formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these are not subject to examination. Whilst standardised or formulaic evidence may have informed the identification of needs and costs and the setting of plan policies, the decision maker must still ensure that each planning obligation sought meets the statutory tests set out above. This means that planning obligations will only be appropriate for funding a project that is directly related to that specific development. A financial contribution should not be sought just because of the existence of a formula. This is an important point in relation to the spend release process.
- 5.8 Local planning authorities are expected 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 spent.
- 5.9 A number of issues have arisen over the past year in relation to S106 and an internal review of procedures was carried out. Some of the findings have already been addressed and others are in the process of being implemented. More recently there has been an external audit conducted of S106 spend in Stanway which has supported the changes made.

- 5.10 One of the areas of change requires delegated approval from Planning Committee in relation to the Spend Release Protocol. This has been a slow and cumbersome process and has evolved over time without any oversight. Appendix 1 shows the existing spend release process which often requires 9 people to sign each agreement. In the past few years this has included ward councillors but there is no explanation of why this was introduced and what purpose it serves. In many cases specific projects are identified in the legal agreement, there is no flexibility and it should be a very straightforward process to release the money for spend. However, in theory any one of those nine signatories could object to the project or spend and there is no process for resolving this.
- 5.11 The introduction of Councillor involvement early in the process to help identify projects and keep the list up to date, should ensure there are no surprises late in the day and remove the need for so many signatures. In accordance with the recommendations from the external audit, Ward Councillors and parish councils will be advised when spend is taking place. Councillor approval will not be sought other than for spend over £250,000 where Portfolio Holder approval will be required (Planning Portfolio Holder). Appendix 2 shows the revised spend release process.
- 5.12 The procedure notes will also be amended to read as follows;

Scheme of Delegation to the Head of Planning:

That subject to written confirmation from the S151 Officer and the Monitoring Officer, the Head of Planning be authorised to agree the release of funds secured by means of a legal agreement under the Planning Acts for expenditure, for purposes in accordance within the specified legal agreement/unilateral undertaking.

Expenditure for any other purpose which requires a deed of variation to the signed legal agreement, will be referred to Planning Committee to determine whether or not any such changes are appropriate.

Commuted sums received for annual maintenance will be automatically released back to revenue and drawn down periodically by the relevant service manager. There is no requirement to complete a spend release form for this.

Schemes over £250,000 will be approved by the Portfolio Holder for Planning.

6 Equality, Diversity and Human Rights implications

- 6.1 An Equality Impact Assessment has been prepared for the Local Plan, and is available to view by clicking on this link:
[Equality Impact Assessment June 2017.pdf \(windows.net\)](#)

7 Strategic Plan References

- 7.1 The Council's Strategic Plan includes the objective to deliver homes for those most in need and to improve health and wellbeing. Effective use of S106 agreements can help deliver affordable housing and infrastructure to support our communities.

8 Consultation

8.1 N/A

9 Publicity Considerations

9.1 Planning contributions can be controversial so the report could generate publicity for the Council.

10 Financial implications

10.1 An effective system will ensure financial contributions are collected to mitigate the impact of new development.

11 Health, Wellbeing and Community Safety Implications

11.1 An effective system will ensure financial contributions are collected to mitigate the impact of new development and ensure health and wellbeing are planned for.

12 Health and Safety Implications

12.1 N/A

13 Risk Management Implications

13.1 An effective system for collecting S106 contributions should manage the risk of inappropriate development that can place a burden on existing infrastructure.

14. Environmental and Sustainability Implications

14.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives. Sustainable Development is the golden thread running through planning.

Appendix 1 – existing spend release process

Appendix 2 – proposed spend release process