

The Vale of Glamorgan Council

Cabinet 21st September 2015

Report of Cabinet Member for Regeneration

Annual Report - Section 106 Legal Agreements 2014 - 2015

Purpose of the Report

1. The purpose of this report is to inform Cabinet about progress on Section 106 (Planning Obligation) matters that have arisen in the last financial year (April 2014 - March 2015).
2. In response to Member requests, the report outlines the difference between Community Infrastructure Levy (CIL) and Section 106 contributions and provides an update on the Council's progress towards introducing CIL.

Recommendations

1. That Cabinet note the progress made on Section 106 matters between April 2014 and March 2015.
2. That Cabinet refers the report to Planning Committee, Scrutiny Committee (E&E) and Community Liaison Committee for information.

Reasons for the Recommendations

1. To inform Cabinet of the progress made on section 106 matters between April 2014 and March 2015.
2. To inform the Planning Committee, Scrutiny Committee (E&E) and Community Liaison Committee of the progress made on section 106 matters between April 2014 and March 2015.

Background

3. Members will be aware that the Council has the power to enter into legal agreements with developers under Section 106 of the Town and Country Planning Act 1990, to seek contributions from developers to mitigate negative development impacts and facilitate development which might otherwise not occur.

4. In accordance with the Section 106 protocol, this report summarises the Council's progress on negotiating, monitoring and implementing planning obligations through section 106 agreements, for the last financial year.

Relevant Issues and Options

Planning Applications subject to s106 agreements in 2014/15

5. In the 12 months between April 2014 and March 2015, a total of 18 planning permissions have been issued, which have been subject to section 106 legal agreements. A list is attached at Appendix A.
6. The value of the financial contributions in these legal agreements totals £3,876,452.81 and they relate to a range of developments including major residential developments at: Port Road, Wenvoe; Trem Echni, Rhoose; Ardwyn, Dinas Powys; and Plasnewydd Farm, Llantwit Major.
7. The planning obligation requirements secured this year have also included 'in-kind' obligations such as provision of on site affordable housing, on site public open space and public art.
8. The financial contributions secured through these legal agreements will be used to provide or enhance facilities off site, such as sustainable transport services/infrastructure, highway improvements, public open space, community facilities, public art and educational facilities.
9. When such contributions are received consultation is undertaken with all relevant service areas, relevant Cabinet Members and local ward Members, to establish how the contributions can be best spent, in accordance with an established and agreed s106 protocol.

Implementation of Planning Obligations in 2014/15

10. Between April 2014 and March 2015 the Council has received financial and in-kind obligations in respect of a number of previously outstanding planning agreements, including interest payments where applicable.
11. At 31st March 2015, the Council had £4,016,309.46 s106 money available to spend. In addition £246,371.41 was held for ongoing maintenance costs.
12. The Council received financial contributions of £3,401,184.98 between April 2014 and March 2015, including substantial open space, sustainable transport and education contributions from the Penarth Heights development, open space and sustainable transport contributions from the former Theatre Royal development, education and open space contributions from the development at Fferm Goch, affordable housing contributions from Porthkerry Methodist Church, education contributions from Trem Echni, Rhoose and community facilities contributions from Barry Waterfront.
13. A summary of income and spend on each s106 agreement between April 2014 and March 2015 is attached at Appendix B, along with an update on progress since April 2015. Approximately £1.4million has been spent on s106 schemes during 2014/15, in many cases to be used as match funding to leverage additional investment in the Vale of Glamorgan. A number of schemes have been delivered this financial year by

the Council with enhancements to public transport, walking and cycling, provision of public art, new school places, provision of affordable housing, open space enhancements and children's play areas. A summary list is provided below:

Education facilities:

Penarth Learning Community

Sustainable Transport schemes:

Llandough 20mph scheme

New Bus Shelters at Llandough, Bendricks, Barry Island, and Barry Waterfront

Greenlinks / supported services across the Vale of Glamorgan

Zebra crossings on Plassey Street, Penarth

Woodland steps from Paget Road to Penarth Marina

Public Right of Way enhancements at Hensol and Cowbridge

Public Art projects:

Pencoedtre Park Community Centre and Skatepark, Barry

Sully coastal trail

Llantwit Major town trail

St. Athan School project

Affordable Housing:

Arlington Road, Sully

Public Open Space:

Play area enhancements in Barry at Belvedere Crescent, Romily Park, Chickenwood, Batts Field, and Dobbins Road

Belle Vue Park enhancements

Maslin Park enhancement and new changing rooms

14. In addition, the Council used s106 money to provide direct support to third parties to implement projects such as Cowbridge Rugby Club changing rooms, Cowbridge Town Council Twt Play Area upgrade and Barry Watersports Community Facilities. Moreover “in kind” obligations have also been delivered as an integral part of developments, such as affordable housing and public open space.

Changes to s106 legislation and procedures

15. On 6th April 2015, Regulation 123 of the Community Infrastructure Levy (CIL) Regulations 2010 (As Amended) came into effect which restricts the way in which Local Planning Authorities can use section 106 agreements to pool financial contributions to deliver an infrastructure project. The restriction prevents pooling of contributions from 5 or more obligations entered into since 6th April 2010 (Regulation 123 refers). The Council keeps up-to-date detailed records of all section 106 agreements (which can be viewed on the Council’s website) and each time

negotiations are entered into with developers, Officers check that the pooling restriction would not be breached by a proposed development and associated obligations.

16. In most cases, s106 obligations are site-specific and relate to the immediate locality of the development site, meaning that the pooling restriction is unlikely to take effect. However, a key area where this issue is relevant is education contributions, as there are already incidences where several different developments feed into the same school. In particular, the catchment areas for secondary schools, welsh medium schools and denominational schools are quite wide and therefore contributions to provide additional school places in these cases are very likely in the short to medium term to be restricted under CIL Reg 123. The Council is keeping this under close review and will endeavour to minimise risk through careful consideration of new development proposals.

Community Infrastructure Levy (CIL) and Section 106

17. Members have sought further advice on the difference between Community Infrastructure Levy (CIL) and Section 106 contributions, as the time draws closer to the implementation of CIL for the Vale of Glamorgan. This report aims to outline the main differences and provide an update on the Council's progress towards introducing CIL.
18. The Planning Act 2008 makes provision for local authorities to prepare a Community Infrastructure Levy for their own areas, which has been supplemented by the CIL Regulations. CIL is a new charging system that can be applied to most forms of development to fund relevant infrastructure, that is, infrastructure improvements that support the development of the authority area in accordance with the Local Development Plan. The preparation of CIL is not mandatory; however, the CIL Regulations have deliberately restricted the use of Section 106 planning obligations in order to encourage Local Authorities to adopt a Community Infrastructure Levy (CIL).
19. The CIL is a mechanism for charging developers a set fee to provide infrastructure (such as roads, schools, open spaces etc) in the local authority area. The CIL schedule is prepared and set by the local authority. In setting the charging system the Council will need to consider the total costs of infrastructure provision resulting from development within the Vale of Glamorgan (as set out or permitted in the LDP) against existing funding streams and the viability of that development. CIL will also rationalise the land uses that will be subject to the charge, with all land uses being potentially liable. It should be noted that the CIL would not be a standardised charge paid by all types of development. The CIL will be a schedule setting out differential rates (per sqm) reflecting the size, nature and viability of land uses within the area. It can be set at different rates in different areas (depending on development viability).
20. Having regard to the type and location of development identified in the deposit LDP, it is most likely that CIL in the Vale of Glamorgan will be used for strategic infrastructure such as transport improvements along core routes and key junctions, national cycle network links, education facilities such as new or extended schools, strategic open space (e.g. playing fields), new community facilities, strategic waste facilities etc. CIL will differ from section 106 funding insofar as it can be pooled to

deliver an infrastructure project that does not necessarily directly relate to the development from which it was sourced.

21. Finally, it is relevant to note that the Government has reformed the levy through the Localism Act which introduced new powers to require a meaningful proportion of CIL receipts be passed to the Town and Community Councils where development takes place (15% of CIL receipts in Wales). How this is delivered in practice will be considered further, in consultation with those Town and Community Councils in the Vale of Glamorgan.
22. The main way in which s106 obligations differ from CIL receipts is that (under CIL Reg 122) they can only be sought where they are:
 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
23. CIL is not intended to replace S106 agreements. It will subsume a lot of the matters and issues that are currently addressed through S106 agreements. S106 agreements, however, will remain in force and will deliver site specific and local matters that cannot otherwise be realised through the CIL. The principal uses for S106 agreements would be the delivery of affordable housing (which is expressly omitted from the definition of infrastructure in the CIL Regulations) and the mitigation of the direct effects of proposed development. S106 matters will continue to be a matter for negotiation as part of the planning application process, whereas CIL will be a fixed charge on developments (save for the exemptions specified in the regulations such as affordable housing).
24. In terms of progress, on 21st February 2011 Cabinet resolved to commence work on preparing a Community Infrastructure Levy for the Vale of Glamorgan. This has been done in tandem with the preparation of the Local Development Plan (LDP) which was submitted to the Welsh Government in August 2015, with an anticipated adoption date of Autumn 2016. The Council now intends to take immediate steps to finalise the evidence necessary to establish a draft charging schedule for CIL for the Vale of Glamorgan, with a view to adopting it as soon as possible.

Resource Implications (Financial and Employment)

25. The contributions paid by Developers under the planning obligations system have a wide impact on many of the Council's functions including education, community facilities, highways and public transport. The CIL, if implemented, will have similar impacts and provide an alternative source of funding for infrastructure projects.
26. The report and appendices set out in detail the financial receipts and spends in respect of s106 agreements for 2014/15.

Sustainability and Climate Change Implications

27. The planning obligations sought through Section 106 Legal Agreements are an important mechanism to mitigate against the impacts of new developments. In terms of sustainability, contributions can assist in allowing for the needs of walking and cycling as well as enhancements to public transport all of which can contribute to a reduction in the carbon footprint.

Legal Implications (to Include Human Rights Implications)

28. The planning obligations and CIL systems are covered by Section 106 of the Town and Country Planning Act 1990 (as amended), The Community Infrastructure Levy Regulations 2010 (as amended) and the Localism Act 2011.

Crime and Disorder Implications

29. None arising out of this report, although planning obligations can be related to crime and disorder matters given that such matters are material considerations in the planning process.

Equal Opportunities Implications (to include Welsh Language issues)

30. None arising out of this report, although contributions to various community enhancements and public transport services do improve accessibility to such persons and other services for the benefit of those who otherwise do not have access to facilities.

Corporate/Service Objectives

31. The contributions paid by Developers under the planning obligations system have a wide impact on many of the Council's functions including education, community facilities, highways and public transport.

Policy Framework and Budget

32. This report is a matter for Executive decision.

Consultation (including Ward Member Consultation)

33. No Ward Member consultation has been undertaken as the report has implications for the Vale as a whole rather than specific wards. Consultation has been undertaken with the representatives of the relevant service areas.

Relevant Scrutiny Committee

34. Economy and Environment.

Background Papers

Town and Country Planning Act 1990
The Community Infrastructure Levy Regulations 2010
Planning Obligations SPG

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Officers Consulted

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