

INFORMATION ITEM

REPORT OF	MEETING	DATE	ITEM NO
OFFICE OF THE CHIEF EXECUTIVE	OPERATIONAL MANAGEMENT COMMITTEE	14 NOVEMBER 2017	9
SECTION 106 PAYMENT PROCESS			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY OF INFORMATION

In response to a recommendation from the Finance and Democracy Committee the report outlines the payment procedures for Section 106 funds and provides a link to the current Section 106 payments which is available on the Fylde website.

Section 106 agreements are drafted when it is considered that a development will have significant impact on the local area that cannot be moderated by means of conditions attached to a planning permission. Such agreements may only constitute a reason for granting planning permission if they meet the legislative tests that they are:

- necessary to make the development acceptable in planning terms,
- directly related to the development, and
- fairly and reasonably related in scale and kind.

In order to meet these tests it is normally expected that each requirement in an agreement is supported by national and/or local policy and clear evidence of need.

Accordingly, some planning permissions granted by the council are subject to obligations set out in a Section 106 agreement that require the developer to 'contribute' (in cash or construction) towards community infrastructure or assets that facilitate integration of the development into the community or meet council objectives / community need e.g. affordable housing, parks, playgrounds, bus shelters, crossings, community centres etc.

The council has three model agreements to accommodate different types and sizes of development which can be viewed [at this link](#), and electronic copies of completed planning obligations can be found by searching for the relevant planning application on [the planning application search page](#).

Some contributions are by way of financial payments made to Fylde, Lancashire County Council (LCC) or other designated organisations whilst some require the developer to build affordable homes or deliver public open space. Where there is a financial contribution it is clearly stated in the agreement what the contribution is for, whether it should be spent in a designated geographical area, when it will be paid and, in most cases but not all, when the money must be spent by.

Major developments can have several different contributions ranging from the construction of affordable homes to the provision of bus shelters, the former often provided by the developer and the latter a payment made to the organisation responsible for bus shelters. The details of what is included in the agreement are negotiated between the developer and the local authorities, Fylde and LCC, who will identify the need for various facilities e.g. crossings, highway improvements or parks.

The Operational Management committee approved a scheme at the meeting on May 23rd 2017 for bus service

enhancements and a dial a ride service, financial approval to release the funds for the scheme was given by the Finance and Democracy committee on June 17th 2017, during the discussion on the item concern was expressed that the original planning application that the funds related to was dated 2007. A recommendation was approved for *'Operational Management Committee to explore the reasons for the time delay in this and other S106 agreements, and explore if there is any monitoring in place to ensure that services are carried out in line with S106 agreements.'*

In respect to the Section 106 funding reported to committee in May 2017 the time frame between the application and the expenditure of the funds was almost 10 years but there was no significant delay in delivering the intended community benefit. The Section 106 agreement approved for expenditure earlier this year was the last element for the agreement at Nine Acre Nursery Warton and in accordance with the agreement was only released after the development was complete. In this case the payment was for support to bus services and LCC was given a period of time in the agreement to identify a suitable scheme in the right location. The time taken for LCC to identify and agree an appropriate scheme that matched the requirements of the agreement was much longer than anticipated. The team responsible for the project at LCC experienced a number of personnel changes as a result of ongoing restructure and downsizing which contributed to the delay. The officer at Fylde responsible for monitoring Section 106 funds was in regular dialogue with LCC to ensure the funds were allocated. Where funds are allocated for highway, transport and education purposes the responsibility for identifying the schemes lies with LCC though in many cases the schemes are identified at the planning application stage so the funds are ring fenced in the agreement to specific schemes. When the actual scheme needs to be re-negotiated with a different team at LCC who will deliver the scheme, this can add delays, as the other sections seem to be unaware this has been required.

It is not unusual for Section 106 agreements to have payments made at different stages of development (trigger points based on build out rates) with many transferring funds at the end of construction after the local authority has adopted new highways or open spaces, for major developments this could be several years after the application with a further time period i.e. 10 years in which to identify and deliver a project. Allocations for generic services such as transport, public realm and community facilities may not have a specific scheme / project identified at the time the Section 106 is agreed but instead set out certain criteria within which the funds must be spent, this then requires work to identify and develop an appropriate scheme, all of which takes time. Change of circumstances over time can require a reallocation of Section 106 spend e.g. funds allocated for a bus route that is subsequently stopped before the payment is made would require time to identify another appropriate use.

A Section 106 agreement is a legal document that is completed before the grant of planning permission, but it is not uncommon for Section 106 agreements to take time to agree after approval in principle by the Planning Committee. For major developments, that often require the agreement of a number of parties or where a prospective developer has not been identified, it can be two to three years. The time frame between the approval of an application and allocation of Section 106 funds can also be extended by developers slowing down build out rates in response to market demand, not starting on site for several years and / or to delay the requirement to make the payment at a certain trigger point.

Fylde has an officer responsible for monitoring Section 106 funds and the Fylde [web page has an excel spreadsheet](#) which provides details of all current Section 106 funds and what the funds are allocated for, this spreadsheet is regularly updated. There has never been a delay in spending the money that has led to a deadline being exceeded and funds returned. An overview of the Section 106 process for preparing, delivering and monitoring community infrastructure is attached at appendix 1.

For further information on completed planning obligations members can contact Karen Hodgkiss karenh@fylde.gov.uk or telephone 01253 658515.

SOURCE OF INFORMATION

Section 106 Agreements & Fylde website

LINK TO INFORMATION

<http://www.fylde.gov.uk/business/planning/advice/planning-legal-agreements/>

WHY IS THIS INFORMATION BEING GIVEN TO THE COMMITTEE?

Concern was expressed by members of the Finance and Democracy about the amount of time that it takes for some Section 106 funds to be released, many of the agreements are time bound and any delays could require the payments to be returned or never made if deadlines are not achieved. The report confirms that whilst there are different arrangements pertinent to individual agreements the council has never had to return or failed to receive payment as a result of delays.

FURTHER INFORMATION

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