

Information note on Section 106 planning obligations.

Introduction

1. This note sets out information on Section 106 planning obligations and how they are used to provide infrastructure for new development. A S106 obligation is a legal undertaking by the developer or an agreement between the landowner, developer and Council.
2. In this context infrastructure comprises roads, schools, medical facilities, sport and recreational facilities, open spaces, affordable housing, and the other things needed for new development, including infrastructure identified by town and parish councils, such as community buildings.

When are obligations used?

3. Developers enter planning obligations before planning permission is granted for development. At present provision towards infrastructure is usually sought only for major residential developments.
4. Obligations are used when planning permission would not be granted for a development without a commitment being given to provide something essential, for example affordable housing. They are used when we cannot use a planning condition, for example where a financial contribution is involved and/or the infrastructure is off-site. A typical instance would be where a school in the locality of a development has to be expanded for schoolchildren from the development and a financial contribution is needed to pay for the expansion.
5. Planning obligations cannot be used to make up for existing deficiencies in infrastructure. They help to pay the capital costs of infrastructure but not for on-going revenue costs. For example, while developers may be asked to help pay for a community hall they cannot be asked to pay for its continuing upkeep and maintenance after it has been built.

Statutory tests

6. There are strict rules governing the way planning obligations are used. They must pass three legal tests as set out in Circular 05/2005 and more recently in the National Planning Policy Framework. Planning obligations must be:
 - necessary to make a development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
7. What this means in practice is explained in a bit more detail below.

Is the obligation necessary?

8. Firstly there must be a planning policy basis for seeking the planning obligation. For instance we can seek a planning obligation for affordable housing where our planning policies require that this is provided with residential development. We cannot, on the other hand, ask developers to enter a planning obligation to help fund local employment or training initiatives as we do not have planning policies to back this up.
9. In short, planning obligations must have a planning policy justification.

Is the obligation directly related to the development?

10. To pass the second test there must be a direct and obvious connection between a development and the infrastructure required by a planning obligation.
11. What this means is there must be a functional or geographical link between the development and the item being provided. For instance where a development generates additional traffic and the need for a local road improvement, planning permission should not be granted for unless this infrastructure is provided. Another example would be where a developer needs to make a contribution to the provision local sports facilities needed to cater for the increased population resulting from the development.

Is the obligation fair and reasonable?

12. Finally, to pass the third test we must make sure what we require in planning obligations is proportionate to the development which is to be carried-out.
13. To be reasonable we can only expect developers to pay for or contribute to the cost of the additional infrastructure needed for their development. The developer's contribution must be directly related in scale to the impact of its proposed development. In other words we cannot expect developers to provide more infrastructure than their developments generate.

Impending changes to the system

14. The Community Infrastructure Levy will change the way we use planning obligations at the moment. In future we will only be able to use planning obligations to secure on-site local infrastructure needed for a development, such as affordable housing or a site-specific road improvement. It will no longer be possible to use obligations to collect and pool financial contributions for off-site strategic infrastructure such as education, strategic road infrastructure or a new leisure facility as we have done up until now. In future this sort of infrastructure is likely to be funded through the Community Infrastructure Levy.

If you have any questions please contact Brian Crooks Shared Community Infrastructure Officer brian.crooks@southandvale.gov.uk