

COUNTY COUNCIL MEETING – 14 DECEMBER 2017

Question to Mark Sutton
Cabinet Member for Children and Young People

By Charlotte Atkins

Question

What is the procedure the County Council follows in allocating Section 106 monies? How is the local member involved?

Reply

Section 106 (or S106) of the Town and Country Planning Act 1990 allows for private **agreements to be made between local authorities and developers** to make acceptable development that would otherwise be unacceptable in planning terms. The legislation allows only local authorities to be the recipients of any financial contributions and other government departments (e.g. Highways England) cannot be party to a S106 agreement.

Legislation sets out the **three strict tests that all contributions** (as set out in a planning obligation) **must comply** with, i.e., 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.

All S106s must be agreed by the developer and confirmed by the planning authority that they meet the relevant tests for them to be legitimate. As a result where SCC is party to an agreement **we are bound by the terms to spend the contributions** on what is set out in said agreement **to mitigate the impact of the development**. If the monies are not spent on that scheme then they legally have to be returned to the developer. Often the amount and timing of the contributions are agreed only at the end of protracted negotiations with developers and landowners.

The second test means that a mitigation project, e.g. a new or expanded school, new bus service, pre-identified highway projects, toucan crossings, etc. must have a direct and identifiable link to the development under consideration. Historically, **contributions could be secured towards additional infrastructure within the vicinity** of the development. More recently however, the Community Infrastructure Levy (or CIL) Regulations have tightened considerably the use of S106, which means that **obligations must now be more precise and set out specific infrastructure projects**.

Where the district or borough council has **an up to date local plan, the planning of infrastructure can be less complex**. For example, a [list of potential new schools](#) on large local plan housing sites is published on-line. Nevertheless, even where there is an agreed plan, **unexpected and speculative applications from developers can have a major impact on infrastructure planning**. Such applications provide officers with a matter of days to identify an appropriate project to have any possibility of securing a contribution from developers: in such instances there is little scope for wider discussion.

S106 agreements also set out the **trigger points for when contributions must be paid**. Phased payments assist with viability but mean that the county council often has to wait for the total amount to be paid. It may be perceived that projects are not being delivered even after contributions have been agreed with developers. In some respects this is down to the delay between developers gaining planning consent, the actual commencement of development and when the triggers points are met. Often a project would not start until sufficient funding has been received from developers (contributions from up to five developments can be pooled towards a specific project). Occasionally, a specific project has not been identified for an older style S106 agreement, e.g. where more than one school is capable of expansion in the *vicinity* of the development).

With respect to local members, Development Control officers regularly meet with the Divisional Highway Managers to discuss the highway impacts of planned and speculative development. This opportunity allows any potential projects held on the Members Divisional Highway Programme to be picked up and funded by a contribution from the development but only if it meets the three tests as defined in current legislation. Over recent years, officers from the School Organisation Team have attended meetings with members in most districts and boroughs to discuss school place planning, as well as responding to individual member inquiries. Over the coming year, working with the Community Partnership Officers and Strategic Delivery Managers, officers will use the schedule of Local Priority Meetings to provide members with more regular, scheduled briefings.