

Agenda

Economy and Environment Overview and Scrutiny Panel

Friday, 1 July 2016, 2.00 pm
County Hall, Worcester

All County Councillors are invited to attend and participate

This document can be made available in other formats (large print, audio tape, computer disk and Braille) on request from Democratic Services on telephone number 01905 728713 or by emailing democraticservices@worcestershire.gov.uk

If you can not understand the contents of this document and do not have access to anyone who can translate it for you, please contact 01905 765765 for help.

বাংলা। আপনি যদি এই দলিলের বিষয়বস্তু বুঝতে না পারেন এবং আপনার জন্য অনুবাদ করার মত পরিচিত কেউ না থাকলে, অনুগ্রহ করে সাহায্যের জন্য 01905 765765 নম্বরে যোগাযোগ করুন। (Bengali)

廣東話。如果您對本文檔內容有任何不解之處並且沒有人能夠對此問題做出解釋，請撥打 01905 765765 尋求幫助。 (Cantonese)

普通话。如果您对本文件内容有任何不解之处并且没有人能够对此问题做出解释，请拨打 01905 765765 寻求帮助。 (Mandarin)

Polski jeżeli nie rozumieją Państwo treści tego dokumentu i nie znają nikogo, kto mógłby go dla Państwa przetłumaczyć, proszę zadzwonić pod numer 01905 765765 w celu uzyskania pomocy. (Polish)

Português. Se não conseguir compreender o conteúdo deste documento e não conhecer ninguém que lho possa traduzir, contacte o 01905 765765 para obter assistência. (Portuguese)

Español. Si no comprende el contenido de este documento ni conoce a nadie que pueda traducírselo, puede solicitar ayuda llamando al teléfono 01905 765765. (Spanish)

Türkçe. Bu dokümanın içeriğini anlayamazsanız veya dokümanı sizin için tercüme edebilecek birisine ulaşamıyorsanız, lütfen yardım için 01905 765765 numaralı telefonu arayınız. (Turkish)

اردو۔ اگر آپ اس دستاویز کی مشمولات کو سمجھنے سے قاصر ہیں اور کسی ایسے شخص تک آپ کی رسائی نہیں ہے جو آپ کے لئے اس کا ترجمہ کر سکے تو، براہ کرم مدد کے لئے 01905 765765 پر رابطہ کریں۔ (Urdu)

کوردی سۆزانی. ننگیر ناتوانی تێبگی له ناوچێزکی نهم بپلگهیه و دهستت به ههچ کس نایگات که و ههیهگێزێتوه بهوت، تکلیه تملظون بکه یو ژماره 01905 765765 و داوای رینۆینی بکه (Kurdish)

ਪੰਜਾਬੀ। ਜੇ ਤੁਸੀਂ ਇਸ ਦਸਤਾਵੇਜ਼ ਦਾ ਸਮਝਣ ਸਮਝ ਨਹੀਂ ਸਕਦੇ ਅਤੇ ਕਿਸੇ ਅਜਿਹੇ ਵਿਅਕਤੀ ਤੱਕ ਪਹੁੰਚ ਨਹੀਂ ਹੈ, ਜੋ ਇਸਦਾ ਤੁਹਾਡੇ ਲਈ ਅਨੁਵਾਦ ਕਰ ਸਕੇ, ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ ਮਦਦ ਲਈ 01905 765765 'ਤੇ ਫ਼ੋਨ ਕਰੋ। (Punjabi)

DISCLOSING INTERESTS

There are now 2 types of interests:
'Disclosable pecuniary interests' and **'other disclosable interests'**

WHAT IS A 'DISCLOSABLE PECUNIARY INTEREST' (DPI)?

- Any **employment**, office, trade or vocation carried on for profit or gain
- **Sponsorship** by a 3rd party of your member or election expenses
- Any **contract** for goods, services or works between the Council and you, a firm where you are a partner/director, or company in which you hold shares
- Interests in **land** in Worcestershire (including licence to occupy for a month or longer)
- **Shares** etc (with either a total nominal value above £25,000 or 1% of the total issued share capital) in companies with a place of business or land in Worcestershire.

NB Your DPIs include the interests of your spouse/partner as well as you

WHAT MUST I DO WITH A DPI?

- **Register** it within 28 days and
- **Declare** it where you have a DPI in a matter at a particular meeting
 - you must **not participate** and you **must withdraw**.

NB It is a criminal offence to participate in matters in which you have a DPI

WHAT ABOUT 'OTHER DISCLOSABLE INTERESTS'?

- No need to register them but
- You must **declare** them at a particular meeting where:
You/your family/person or body with whom you are associated have a **pecuniary interest** in or **close connection** with the matter under discussion.

WHAT ABOUT MEMBERSHIP OF ANOTHER AUTHORITY OR PUBLIC BODY?

You will not normally even need to declare this as an interest. The only exception is where the conflict of interest is so significant it is seen as likely to prejudice your judgement of the public interest.

DO I HAVE TO WITHDRAW IF I HAVE A DISCLOSABLE INTEREST WHICH ISN'T A DPI?

Not normally. You must withdraw only if it:

- affects your **pecuniary interests OR** relates to a **planning or regulatory** matter
- **AND** it is seen as likely to **prejudice your judgement** of the public interest.

DON'T FORGET

- If you have a disclosable interest at a meeting you must **disclose both its existence and nature** – 'as noted/recorded' is insufficient
- **Declarations must relate to specific business** on the agenda
 - General scattergun declarations are not needed and achieve little
- Breaches of most of the **DPI provisions** are now **criminal offences** which may be referred to the police which can on conviction by a court lead to fines up to £5,000 and disqualification up to 5 years
- Formal **dispensation** in respect of interests can be sought in appropriate cases.

Economy and Environment Overview and Scrutiny Panel Friday, 1 July 2016, 2.00 pm, County Hall, Worcester

Membership

Councillors:

Mr P A Tuthill (Chairman), Mr G J Vickery (Vice Chairman), Mr A T Amos, Mr A A J Adams, Ms P Agar, Mr W P Gretton, Mr M E Jenkins, Mr T A Muir and Mr J W R Thomas

Agenda

Item No	Subject	Page No
1	Apologies and Welcome	
2	Declarations of Interest and of any Party Whip	
3	Public Participation Members of the public wishing to take part should notify the Head of Legal and Democratic Services in writing or by email indicating the nature and content of their proposed participation no later than 9.00am on the working day before the meeting (in this case 30 June). Enquiries can be made through the telephone number/email address below.	
4	Confirmation of the Minutes of the previous meeting Previously circulated.	
5	Highways Development Management Processes - Section 278 and 106	1 - 10

Agenda produced and published by the Head of Legal and Democratic Services, County Hall, Spetchley Road, Worcester WR5 2NP. For general enquiries: 01905 763763 Worcestershire Hub (01905) 765765
Email: worcestershirehub@worcestershire.gov.uk

To obtain further information or hard copies of this agenda, please contact Emma James/Jo Weston
telephone: Worcester (01905) 844964, email: scrutiny@worcestershire.gov.uk

All the above reports and supporting information can be accessed via the Council's website at
http://www.worcestershire.gov.uk/info/20013/councillors_and_committees

This page is intentionally left blank

ECONOMY AND ENVIRONMENT OVERVIEW AND SCRUTINY PANEL 1 July 2016

HIGHWAYS DEVELOPMENT MANAGEMENT PROCESSES – SECTION 278 AND 106

Summary

1. The Economy and Environment Overview and Scrutiny Panel will receive an overview on the Council's highways development management processes, which is part of the Panel's work programme, as requested at the Panel's last meeting.
2. The Head of Strategic Infrastructure and Economy and the Cabinet Members for Highways, and for Economy, Skills and Infrastructure have been invited to the meeting.

Background

3. The overview will include:
 - explanation of the Council's role and statutory obligations under the relevant planning legislation
 - the sectional agreement process – including explanation of Section 278 and 106 processes and examples
 - the Council's highways development management processes relating to Section 106 – types of schemes and negotiation involved
 - involvement of councillors as schemes are developed
 - the new approach for emerging work
4. The Council's highways development management processes is an area of work carried forward from the Panel's 2015/16 work programme. As discussed at the recent 18 May meeting, in particular, panel members are keen to understand processes and obstacles around more efficient use of funding received from developers for infrastructure development.
5. Appendix 1 provides an overview of Section 106 obligations, and further information will be provided through a presentation at the meeting.

Section 278 agreements

6. A section 278 agreement allows private developers to either fund or complete works to public highways outside or beyond the development site itself, such as traffic calming and capacity improvements, as part of the Highways Act 1980.

7. Following the issue of planning consent for a new development, either by the District Planning Committee or the Planning Inspector at a Planning Appeal, the junctions required to connect the development to the existing highway network, as well as other off-site alterations and improvements to the highway deemed necessary to ensure the efficient and safe operation of the highway network are pursued by the developer through their consultants and contractors.

8. As neither the developer nor their contractors have the right to work on public highway, they are required to enter into legal agreement through Section 278 of the Highways Act 1980 (Sec. 278) with Worcestershire County Council (the Council), which enables the developer and their contractors to undertake works on the highway.

9. The Council, in its role as Local highway Authority (LHA) check the detailed design and inspect the construction of these works on the existing highway. It is important that the design and construction complies with the appropriate national and local design standards to ensure safety, accessibility, minimal impact on the current highway network and durability.

10. The design is checked against current national and local standards as indicated in our Highway Design Guide, (N.B. this is currently being updated to ensure it is in line with the latest available guidance). Once the design is approved the legal agreement is pursued by legal together with a bond for the works. Construction on the public highway can be booked once this agreement is in place, whilst construction off the public highway can commence with inspections as soon as technical approval of the design is given. Construction is regularly inspected to ensure adherence to both the specification and the approved design drawings.

11. When the works are substantially complete a certificate is issued and the bond reduced. After 12 months the road is re-inspected and once any remedial work has been completed satisfactorily the road is adopted.

12. In terms of workload between April 2013 and April 2016 – the Council

- received 70 new Sec. 278 submissions
- technically approved 65 Sec. 278 schemes
- completed 68 Sec. 278 legal agreements
- issued 29 Provisional Certificates of Completion (PCC), which enabled the scheme to commence its maintenance period
- issued 44 Final Certificates of Completion (FCC), which enabled the scheme to be adopted.

13. The scale of the Sec. 278 schemes can vary greatly; from relatively minor scheme which involve the creation of the site access junction, to complex scheme that involve the construction of new bridges, roundabout and traffic signals, with overall scheme value in excess of £5m.

14. In terms of issues affecting the Sec. 278 process, these can differ considerably, but some of the more common issues consist of:

- Although Sec. 278 schemes mainly involve works to the existing highway, there can be new areas of highway to be adopted as part of the process. The adoption process requires the owner of the land over which the new highway passes, to surrender their rights to this land. Obviously, if the developer doesn't control all of the land required to deliver the scheme, this represents a major barrier to the adoption of the scheme. This situation can occur when additional land is required to deliver satisfactory highway works which weren't considered at the planning stage when the preliminary design was agreed i.e. adequate visibility splays for the speed of traffic.
- The developer may be required to complete additional legal agreements with third parties, in order to be able complete the legal agreement with the Council. For example, the Council require that all highway drainage discharges into a drainage system which is controlled and maintained by a statutory body and in order to achieve this, the developer will need to enter into an agreement under Sec. 104 or 106 of the Water Industry Act 1991 with Severn Trent Water (STW) in order to get the drainage infrastructure for the scheme adopted. The time taken to complete this additional agreement often delays the overall Sec. 278 process.

Developer Contributions - Section 106 agreements

15. Section 106 agreements are drafted when it is considered that a development will have significant impacts on the local area that cannot be moderated by means of conditions attached to a planning decision. For example, a new residential development can place extra pressure on the social, physical and economic infrastructure which already exists in a certain area.

16. Section 106 agreements were introduced as part of the Town and Country Planning Act, 1990 and secure contributions to offset the impact of development. These agreements can be secured against any development type, although they are most frequently secured against housing development.

17. For the County Council, the majority of section 106 agreements include capital sums for transport and education; contributions for other matters are rarely requested. Districts, as Local Planning Authorities, may secure contributions for other matters such as open space, sport and recreation and affordable housing. They are legal agreement, which once signed can only be used in accordance with the matters stated on the agreement.

18. Prior to the post 2008 recession many housing developers were content to pay all reasonable section 106 requests, with the rising housing market ensuring that properties would sell, and that schemes were viable. Post 2008, section 106 contributions have been under greater scrutiny both from developers and from Government.

19. The Principle concerns are:

- Transparency; lack of clarity as to how and when contributions were being spent by local authorities.
- Use of tariff based contributions; difficult to relate to the direct impact of an individual site
- Relationship between the site and contributions requested unclear
- A more challenging economic environment resulting in developments becoming unviable and no longer able to support the level of section 106 contributions requested.

20. To address this, a new approach has been introduced, the Community Infrastructures Levy, and new rules introduced for section 106 contributions.

The Future of Section 106 Contribution

21. As from 1 April 2015, the use of section 106 agreements will be restricted and they will be required to meet three statutory tests:

- Necessary (to the planning application)
- Directly related (to the development)
- Fairly and reasonably related in scale and kind (to the planning application)

22. The pooling rule will apply which means that a maximum of 5 obligations can be secured for one type / piece of infrastructure (backdated to 2010)¹

23. Section 106 contributions must, therefore be directly linked to the development. They cannot be used to address existing problems, although where a development exacerbates an existing problem, a section 106 contribution can be sought to address the additional impacts which arise from the development.

24. There are no such restrictions on s278 agreements.

Evidence Base

25. The adopted and emerging district local plans are all supported by Infrastructure Development Plans which set out the all the infrastructure required as a result of the development identified in the local plan. These form a part of the evidence base for contributions and identify the schemes which we will be bringing forward to offset the impact of development.

26. Districts are also working on Developer Contributions Supplementary Planning documents, to outline how and when developer contributions will be sought from developers.

Viability

27. In seeking section 106 agreements, Worcestershire County Council will consider its evidence bases, including the Infrastructure Development Plan, traffic modelling data, Local Transport Plan etc. This will form the basis for the section 106 request which subject to complying with the three tests outlined above will be submitted to developer and the districts with negotiations following.

¹ Paragraph: 099 Reference ID: 25-099-20140612 (nPPG)

28. Viability is paramount in these discussions, and the sums requested by the Council are frequently reduced as a result of individual sites restricted viability, and the combination of requests from WCC and the districts.

Purpose of the Meeting

29. Following the discussion, the Economy and Environment Overview and Scrutiny Panel is asked to agree whether any further information or scrutiny work is required.

Supporting Information

Appendix 1 - S106 Overview from the Planning Advisory Service

Contact Points

County Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

Email: worcestershirehub@worcestershire.gov.uk

Specific Contact Points for this report

Emma James / Jo Weston, Overview and Scrutiny Officers, Tel: 01905 844964 / 844965

Email: scrutiny@worcestershire.gov.uk

Background Information

In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) the following are the background papers relating to the subject matter of this report:

- Agenda and Minutes of the Economy and Environment Panel on 18 May 2016, available on the website [here](#)

This page is intentionally left blank

S106 Obligations Overview

(www.pas.gov.uk)

Legislation

Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development. S106 agreements are often referred to as 'developer contributions' along with highway contributions and the Community Infrastructure Levy.

<http://www.legislation.gov.uk/ukpga/1990/8/section/106>

The common uses of planning obligations are to secure affordable housing, and to specify the type and timing of this housing; and to secure financial contributions to provide infrastructure or affordable housing. However these are not the only uses for a s106 obligation. A s106 obligation can:

1. restrict the development or use of the land in any specified way
2. require specified operations or activities to be carried out in, on, under or over the land
3. require the land to be used in any specified way; or
4. require a sum or sums to be paid to the authority (or, to the Greater London Authority) on a specified date or dates or periodically.

A planning obligation can be subject to conditions, it can specify restrictions definitely or indefinitely, and in terms of payments the timing of these can be specified in the obligation.

If the s106 is not complied with, it is enforceable against the person that entered into the obligation and any subsequent owner. The s106 can be enforced by injunction.

In case of a breach of the obligation the authority can take direct action and recover expenses.

The planning obligation is a formal document, a deed, which states that it is an obligation for planning purposes, identifies the relevant land, the person entering the obligation and their interest and the relevant local authority that would enforce the obligation. The obligation can be a unitary obligation or multi party agreement.

The obligation becomes a land charge.

The legal tests for when you can use a s106 agreement are set out in regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 as amended. Click here to go to our [CIL legislation page](#).

The tests are:

1. necessary to make the development acceptable in planning terms
2. directly related to the development; and
3. fairly and reasonably related in scale and kind to the development.

National Planning Policy Framework (NPPF) – Policy Tests

As well as the legal tests, the policy tests are contained in the National Planning Policy Framework (NPPF):

"203. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

204. Planning obligations should only be sought where they meet all of the following tests:

- *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."*

National Planning Policy Framework (NPPF)- Local authorities' policy consideration

Over the last few years there has been growing concern about delivery of development and development viability. This is reflected in the NPPF:

"205. Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled."

Planning Practice Guidance (PPG) - amended March 2015

The Government in response to its consultation on on measures to speed up the negotiation and agreement of S106; and on affordable housing contributions and student accommodation has made significant changes to the Planning Policy Guidance (PPG) particularly the **S106 section** but also related areas including the **viability guidance**.

The PPG changes emphasise the S106 legal and policy tests and relationship with the development plan (including neighbourhood plans). In terms of the process- the changes focus on early engagement by the Local Planning Authority (LPA) with applicants and infrastructure providers and S106 being part of the pre-application process. There are also a number of suggested improvement to the way LPAs approach S106 e.g. standard templates, and working with other authorities to pool expertise, There is a greater emphasis on public access to information and the S106 being available as part of the planning register. Further guidance has been provided on the operation of the vacant building credit.

In addition, following the ministerial statement on **starter homes**, the guidance states that LPAs should not seek section 106 affordable housing contributions from developments of **starter homes** (but can still seek s106 that mitigates the development impacts).

S106 - Amendments and Modifications – changes

Under the Planning Act s106 (A) a person bound by the obligation can seek to have the obligation modified or discharged after five years.

The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 set out the procedure for making an application to amend planning obligations, including standard forms. The principles for modifying an obligation are that it *"no longer serve a useful purpose"* or *"continues to serve a useful purpose equally well"*

<http://www.legislation.gov.uk/ukSI/1992/2832/contents/made>

There has been an amendment (28th Feb 2013) to the 1992 regulation and it is now possible to apply to amend any planning obligations entered into between 28 March 2008 and before 6 April 2010. Therefore obligations that were entered into 3 years ago can now be appealed. This amendment will become irrelevant after 6 April 2015.

<http://www.legislation.gov.uk/ukSI/2013/147/contents/made>

Growth and Infrastructure Act (26 April 2013) – Affordable Housing Modification

<http://www.legislation.gov.uk/ukpga/2013/27/contents/enacted>

The Growth and Infrastructure Act (clause 7) inserts new clauses into s106 of the 1990 Town and Country Planning Act that introduces a new application and appeal procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing. The changes require a council to assess the viability arguments, to renegotiate previously agreed affordable housing levels in a S106, and change the affordable housing requirement or face an appeal.

An appeal can be made if the authority does not modify the planning obligation as requested, or fails to make a determination within a specified time. Obligations which include a "requirement relating to the provision of

housing that is, or is to be made available, for people whose needs are not adequately served by the commercial housing market" are within scope of this new procedure.

The application and appeal procedure will assess the viability of affordable housing requirements only. It will not reopen any other planning policy considerations or review the merits of the permitted scheme.

These new application and appeal procedures don't replace existing powers to renegotiate Section 106 agreements on a voluntary basis. In addition, this provision related to affordable housing does not replace the provisions to modify an obligation set out in the 1992 regulations and updated by the 2013 regulations (see above).

Section 106 affordable housing requirements - Review and appeal

DCLG have issued a guidance document to support the changes in the Growth and Infrastructure Act 2013 that provides more detailed information on what is required to modify, and assess requests to modify, the affordable housing provision in a section 106 obligations. This is guidance on the format of the application, appeal and evidence; particularly what viability evidence will be required and how it should be assessed:

<https://www.gov.uk/government/publications/section-106-affordable-housing-requirements-review-and-appeal>

S106 Agreements and CIL

The Government viewed S106 as providing only partial and variable response to capturing funding contributions for infrastructure. As such, provision for the Community Infrastructure Levy (CIL) is now in place in the 2008 Planning Act.

In terms of developer contributions, the Community Infrastructure Levy (CIL) has not replaced Section 106 agreements, the introduction of CIL resulted in a tightening up of the s 106 tests. S106 agreements, in terms of developer contributions, should be focused on addressing the specific mitigation required by a new development. CIL has been developed to address the broader impacts of development. There should be no circumstances where a developer is paying CIL and S106 for the same infrastructure in relation to the same development.

The balance between the use of S106 and CIL will be different depending on the nature of the area and the type of development being undertaken. There is further guidance on the balance between s106 and CIL set out in the CIL Guidance April 2014:

<https://www.gov.uk/government/publications/community-infrastructure-levy>

This page is intentionally left blank