

Committee: Scrutiny

Agenda Item

Date: 15 March 2016

10

Title: Planning Obligations

Author: Roger Harborough, Director of Public Services, 01799 510457

Item for information

Summary

1. The report seeks to explain the alternative ways of funding the infrastructure needed to support development and the council's systems for monitoring and enforcing planning obligations, which are the current mechanism it uses.

Recommendations

2. The report is for information

Financial Implications

3. None

Background Papers

4. .None

Impact

- 5.

Communication/Consultation	
Community Safety	
Equalities	
Health and Safety	
Human Rights/Legal Implications	
Sustainability	
Ward-specific impacts	
Workforce/Workplace	Revenue budgets include the resources for monitoring obligations

General overview of ways of funding the infrastructure necessary to support development

6. Planning Policy Guidance published on line by the Government includes advice on planning obligations (reproduced at Appendix A):

<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/>

- The principle of entering into an obligation is to mitigate the impact of unacceptable development to make it acceptable in planning terms. Obligations must meet the following tests:
- They are necessary to make the development acceptable in planning terms
- They must be directly related to the development
- They must be fairly and reasonably related in scale and kind.

Planning obligations are one of several ways in which contributions can be sought from developers. They can, for example, be asked to enter into agreements under S278 of the Highways Acts. Such agreements will be made between the developers and the highways authority. Planning authorities can also propose to put in place a Community Infrastructure Levy. Planning Policy Guidance on CIL is set out here (reproduced at Appendix B):

<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/>

7. Regulations came into force in 2010 relating to CIL. They also cover planning obligations. Besides setting out the tests in para 7 above, they prevent the pooling of funding for a particular infrastructure scheme or type of scheme secured from six or more planning obligations.
8. Where a local authority has adopted a CIL, a levy will be payable on development which creates net additional floor space, where the gross internal area of new build exceeds 100 square metres. That limit does not apply to new houses or flats, and a charge can be levied on a single house or flat of any size, unless it is built by a 'self builder'. There are several categories of development which are exempt. These are prescribed in national regulations. One of these categories, though, is specified types of development which local authorities have decided should be subject to a 'zero' rate and specified as such in their charging schedules.
9. The purposes on which CIL can be spent are defined in national regulations. The definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. This flexibility gives local areas the opportunity to choose what infrastructure they need to deliver their development plan. Charging authorities may not use the levy to fund affordable housing.

Local authorities must spend the levy on infrastructure which they determine is necessary to support the development of their area. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development.

Local authorities must allocate at least 15% of levy receipts to spend on priorities that should be agreed with the local community in areas where development is taking place. This can increase to a minimum of 25% where levy receipts arise from development in an area with an adopted neighbourhood plan. The neighbourhood portion of the levy can be spent on a wider range of things than the rest of the levy, provided that it meets the requirement to 'support the development of the area'.

Regulations prevent section 106 planning obligations being used in relation to those things that are intended to be funded through the Levy by the charging authority. While Parish, Town and Community Councils are not required to spend their neighbourhood funding in accordance with the charging authority's priorities, the government expects Parish and Town Councils to work closely with the charging authority to agree priorities for spending the neighbourhood funding element.

Section 106 agreements, Section 278 agreements and CIL can be used in combination to deliver the infrastructure necessary to support development. However, the NPPF requires that the combined total impact of such requests does not threaten the viability of the sites and scale of development identified in the development plan.

Whereas S106 obligations and S278 agreements can be sought on the basis of non site specific policies in up to date local plans or the NPPF to secure infrastructure necessary to support the development of a particular scheme, or site specific policies, the adoption of CIL requires an assessment of infrastructure needs across the proposed charging area and the preparation of charging schedules allocating the total costs by types of liable development and rates per square metre of additional floorspace. The charging authority is required to draw on the infrastructure planning evidence that underpins the development strategy for their area. Charging authorities then need to use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential impact upon the economic viability of development across their area.

10. Part of the process in preparing a local plan is to carry out an assessment of the supporting infrastructure needed to deliver the local plan proposals. Once this infrastructure delivery plan has been determined an assessment can then be made as to whether or not a CIL is appropriate to local circumstances and, if so, charging schedules devised. The principle of adopting a CIL and the proposed charging schedules are subject to a public examination process.

UDC systems for monitoring and enforcing obligations

11. S106 agreements to which the council is a party are monitored through a specific module within the Uniform software supplied by Idox plc which council uses to support various regulatory services including planning. When agreement is sealed its obligations are separately entered into the monitoring module. Where a financial contribution is required, the entry will include any index linking agreed to maintain the value of the funding. Trigger points for contributions will also be entered which will be used to generate reminders to the monitoring officer at future dates.
12. Most contributions will not be triggered by dates but by particular stages in a development being reached, such as a start on site or occupation of the nth house. The system generated reminder will prompt a check on other modules monitoring development progress. There is an annual audit survey on site of development progress, which can be supplemented by checks with the building inspectors, submission of details following outline planning applications, the council tax team or if necessary a check on site by the monitoring officer. Obligations place the onus on the developer to serve notices on the council that a trigger point will be reached. The monitoring officer, however, does not rely on such notices being provided.
13. Where an obligation has not been delivered, an enforcement process begins. This will start with a reminder, but could ultimately involve court action. Where the obligation involves a financial contribution, the monitoring officer will ensure that a capital receipt is correctly linked to the relevant obligation, and checks will be made to ensure that the appropriate indexation has been applied.
14. Obligations will include a time frame within which any financial contribution must be used. Such clauses are also actively monitored to avoid money having to be paid back to the developer.
15. To save on drafting time, Essex County Council (ECC) is not now a co-signatory to agreements that involve only the payment of contributions towards education and highways. As a result, UDC collects these contributions on ECC's behalf and forwards the money when received. Similarly, UDC collects and forwards money due to other organisations, such as the NHS. In older agreements (pre-2011) ECC was a co-signatory in all cases and remains responsible for collecting its own contributions.

The monitoring procedure received a "substantial" outcome in a recent internal audit inspection.

16. A monitoring update is given to Planning Committee each year, usually in June or July. The 2015 report was tabled at the meeting held on 29 July 2015. The report item 5 and its appendix are attached at Appendix C.