



South
Cambridgeshire
District Council

Section 106 agreements

Parish Planning Forum
14 October 2015



SI06 Agreements - Background

- SI06 of the Town and Country Planning Act 1990 allows a Local Planning Authority (LPA) to enter into a legally-binding agreement or planning obligation with a landowner in association with the granting of planning permission.
- The obligation is termed a Section 106 Agreement.
- Such an agreement is a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms.



SI06 Agreements – Fundamental Principles

- Two quotes from Annex B from the Planning Obligations Circular of 05/2005 but which remain equally applicable today
 - (B6) The use of planning obligations must be governed by the fundamental principle that planning permission **may not be bought or sold**. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms.
 - (B7) Similarly, planning obligations should never be used purely as a means of securing for the local community a share in the profits of development, i.e. as a means of securing a “betterment levy”.
 - Although B.6 did not use the following wording the circular could, in my view, have easily done so: -
 - It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements secured from a developer (even though not initially offered by the developer) which are not necessary to make the development acceptable in planning terms.



How can “Planning Gain” be achieved?

Planning Gain can be achieved by an Agreement under S.106 of the Town and Country Planning Act 1990 by

- (a) restricting the development or use of the land in a specified way;
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;
- (c) requiring the land to be used in any specified way; or
- (d) requiring a sum or sums to be paid to the authority



What is usually money secured for?

Parish Councils	County Council	Other
Sports sites	Early years	Primary healthcare
Children's play sites	Primary schools	Drainage
Village halls	Secondary schools	
Allotments	Libraries	
Community support	Household recycling centres	
	Highways	
	Public transport	



Current restrictions

- 10 Dwellings or less – no pooled s106 contributions (WMS 28 November 2014)*

* JR decision abolished statement. However Government have permission to challenge JR.

- CIL Regulation 122 – Strict tests to satisfy whether a contribution/obligation may be secured
 - (i) Necessary to make the development acceptable in planning terms
 - (ii) Directly related to the development
 - (iii) Fairly and reasonably related in scale and kind to the development
- CIL Regulation 123 – No pooling from 5 or more developments towards a piece or type of infrastructure



Key Points going Forward

- A.1 - Is the Site large enough to justify an on site provision of matters such as:
- Open Space
- Community Facilities
- A.1.1 - No (go to Section B)
- A.1.2 - Yes – go to the 3 CIL Reg. 122 tests
- A.a – Necessary to make the development acceptable in planning terms
- a.a.1 No - go to Section B
- a.a.2 Yes – look at A.b and A.c
- A.b – directly related to the development
- No – go to section B
- Yes – go to A.c
- A.c – fairly and reasonably related in scale and kind to the development
- No – go to Section B
- Yes
- How do you test a “Yes” under A.a, A.b and A.c above?
- Would you risk monies on a Planning Appeal?



- B Parties are agreed the Site is not large enough to justify an on-site provision
- B.1 Has an off-site scheme been specifically identified?
 - B.1.1 No –
 - THEN no S.106 Agreement to be required
 - B.1.2 Yes
 - B.1.2.1 What is the specific scheme?
 - B.1.2.2 What is the evidence to show that the specific scheme so necessary in relation to the proposed development that the permission should otherwise be refused?
 - B.1.2.3 What is the evidence to show the scheme is directly related to the development?
 - B.1.2.4 What is the evidence to show the scheme is fairly and reasonably related in scale and kind to the development?
- How to test a “Yes” and/or strength of evidence?
- Ask the question would you risk monies on a Planning Appeal?



Planning appeal examples

- **Planning appeal example 1**
- **Appeal Ref: APP/PI615/A/14/2228466**
Land off Chartist Way, Staunton, Gloucestershire
- The Inspector held that whilst the proposed financial contribution to local library services would provide some benefit to the general public it was not clear why such a contribution was necessary to make the development acceptable in planning terms.
- On the evidence presented, the Inspector held that he was not convinced that in the absence of this contribution the development would cause such harm to the provision of library services as to justify withholding planning permission on this ground and he found the libraries contribution to be unnecessary, contrary to CIL Regulation 122 and the NPPF's tests for obligations.
- **Planning appeal example 2**
- **Appeal Ref B: APP/X1545/W/15/3004973**
Land south of New Moor Farm and east of North End, Southminster
- The Inspector said that having taken into account the lack of direction/details from NHS England in respect of the development of health provision in Southminster and the immediate locality, he had heard nothing that gave him confidence that the contribution requested was likely to be spent in accordance with the relevant tests. For this reason he said that he did not consider it reasonable to take this aspect of the UUs into account.
- **Planning appeal example 3**
- **Appeal Ref: APP/Y2620/W/14/3000517**
Land south of Lodge Close, Holt, Norfolk NR25 6BZ
- A potential shortage of school places was held by the Inspector not to be a reason for refusing the appeal.



Planning appeal examples

- **Planning appeal example 4**
- **Appeal Ref: APP/G1630/W/15/3002522**
Land at Moat Farm, Malleson Road, Gotherington, Gloucs GL52 9ET
- The Inspector held that whilst in the case of the contributions to dog bins, recycling and signage these items might be desirable, the Council had not been able to show that they would be necessary to make the development acceptable in planning terms. The Inspector held that these contributions therefore did not meet the tests in regulation 122, and accordingly those contributions were given no weight in reaching the appeal decision.
- **Planning appeal example 5**
- **Appeal Ref: APP/A0665/A/14/2226994**
Land at Fountain Lane, Davenham, Cheshire
- The appeal was for residential development of up to 70 dwellings.
- Although an obligation had been presented which would ensure that an area of the site would be made available for the provision of a new scout hut the Inspector held such an obligation was not necessary to make the housing development acceptable in planning terms and it therefore failed to meet one of the necessary tests.
- A financial contribution of £46,900 to improve children's play facilities at the nearby Butchers Stiles Field in lieu of any on site formal play space was offered by the Developer. The Inspector held that the requirements of CIL regulation 123 had been met.
- A financial contribution of £14,507 towards funding the provision of a 3G sports pitch at Moss Farm, Hartford was also offered by the Developer. Again the Inspector held that he was satisfied that all of the necessary tests were met.



Planning appeal example 1

- **Appeal Ref: APP/P1615/A/14/2228466**
Land off Chartist Way, Staunton, Gloucestershire
- 63. The proposed financial contribution to local services would provide some benefit to the general public. It was is not clear why such a contribution is necessary to make the development acceptable in planning terms. Any development would add to the demand for library services, but equally it would provide the Council with an increase in income, through Council Tax and the New Homes Bonus.. The undertaking states that the contribution is to be used for the new computers, stock, furniture, increased opening hours, or capital works.
- In the main, these items are normally covered out of revenue, and there is no reason to think that the Council Tax receipts from this development would not be proportionate to the level of increased usage.
- It was admitted that there are no proposals for any capital works, nor is there any identified deficiency that would require such works.
- Consequently, on the evidence presented I am not convinced that in the absence of this contribution, the development would cause such harm to the provision of library services as to justify withholding planning permission on this ground.
- I find the libraries contribution to be unnecessary, contrary to CIL Regulation 122 and the NPPF's tests for obligations. Accordingly, I give no weight to any benefit arising from this contribution.



Planning Appeal Example 2

- **Appeal Ref B: APP/X1545/W/15/3004973**
Land south of New Moor Farm and east of North End, Southminster
- 55. The appeal proposals would generate additional residents who, quite reasonably, could expect to access local health provision.
- 56. The evidence, on behalf of the Council, was that with no health facility in place to ensure access to health provision for the future residents of the development, permission should be withheld until such time as an appropriate medical facility was provided, ideally before the new houses were occupied.
- 57. However, the provision of a new medical centre to serve not only the future residents of the proposed developments but also the rest of the village, would be a disproportionate and unjustified response, out of scale and kind to the development proposed, which would place an onerous burden on the appellant company.
- Moreover, a Council imposed embargo on development would frustrate development and would not further Government aims to boost the supply of housing.
- 58. The appellant company agree to a health care contribution as promoted by NHS England paid through the terms of the UUs.
- No evidence was provided, of a specified project or area of service improvement which has been identified which could be considered to be directly related to the development, other than a general capacity issue.
- 59. From the evidence I heard, it seems to me that the proposed development would generate a need for additional local health services. However, whilst I heard anecdotally that existing facilities were stretched and would continue to be so possibly to a point of closing the practice to new patients, the response of the responsible body was that an appropriate financial contribution would mitigate the effect of the appeal proposals on health care services.
- 60. In closing the Council highlighted that in their view no solution to this problem had been identified and that this was not an acceptable state of affairs. I agree. The stifling of development due to a perceived capacity issue would stifle the provision of much needed housing, including affordable housing in the District. However, the appellant company has complied with the request from NHS England to provide a healthcare contribution and that is all that has been asked of them by the relevant provider of that service.
- 62. Taking into account the lack of direction/details from NHS England in respect of the development of health provision in Southminster and the immediate locality, I heard nothing that gave me confidence that the contribution requested was likely to be spent in accordance with the relevant tests. For this reason I do not consider it reasonable to take this aspect of the Uus into account. The lack of a NHS plan where the available funding would be appropriately targeted is a serious flaw which undermines any justification for the contribution.



Planning Appeal Example 3

- **Appeal Ref: APP/Y2620/W/14/3000517**
Land south of Lodge Close, Holt, Norfolk NR25 6BZ
- 46. The LEA's preference is to examine future needs in Holt in tandem with the District Council's local plan review as this would provide a better basis for a long term education strategy. Nevertheless, as it acknowledged it has a statutory duty to provide school places and accepted it would have to work within existing constraints to provide places should the appeal be allowed.
- 48. I appreciate the difficulties involved in school expansion but I am not convinced that additional children would create a short term issue which the LEA would be unable to resolve.
- 50. I am not convinced the development would add significant numbers of pupils until 2018/19. The lead-in time therefore provides an opportunity for the LEA to consider its future education strategy for Holt while also having regard to planned development coming through the LP review.
- 51. I therefore find a potential shortage of school places is not a reason for refusing the appeal.



Planning Appeal Example 4

- **Appeal Ref: APP/G1630/W/15/3002522**

Land at Moat Farm, Malleson Road, Gotherington, Gloucs GL52 9ET

- Planning obligations and the CIL Regulations
- 70. As well as the affordable housing, the legal undertaking provides for contributions to dog bins, education, libraries, off-site open space, play facilities, playing pitches, recycling, road safety, signage and sports facilities.
- 71. In the case of the contributions to dog bins, recycling and signage, although these items might be desirable, the Council was not able to show that they would be necessary to make the development acceptable in planning terms, and none of these are related in any way to the refusal reasons. These contributions therefore do not meet the tests in regulation 122, and accordingly I have given them no weight in reaching my decision.
- 72. In the case of all the other contributions and obligations, in the light of the evidence provided, I am satisfied that these are necessary, and directly related to the development, and fair and reasonable in scale and kind, in accordance with regulation 122, and that none would exceed the pooling requirements of regulation 123. However, the justification for the obligations is to mitigate the development's own impacts, and there is no evidence that any of them, apart from the affordable housing, would have any benefits over and above that purpose. Accordingly, they count as neutral in the planning balance.
- 78. The starting point for the balancing exercise is the development plan. In this case, the proposed development would be mostly outside the village boundary, conflicting with adopted Policies HOU3 and HOU4, and would cause harm to the character and appearance of the SLA, contrary to Policies LND2 and LND4. Even though the Council is willing to concede that all of these policies carry reduced weight, or less, the fact remains that, taking the development plan as a whole, the development now proposed is clearly in conflict.
- 79. In terms of the NPPF presumption, the development now proposed would not constitute sustainable development.
- 80. In these circumstances, the other material considerations do not outweigh the conflict with the development plan. Having taken account of all the other matters raised, I find nothing else to change this conclusion.
- 81. I therefore conclude that the appeal should be dismissed.



Planning Example 5

- **Appeal Ref: APP/A0665/A/14/2226994**

Land at Fountain Lane, Davenham, Cheshire

- 1. The appeal is for residential development of up to 70 dwellings.
- 36. A financial contribution of £46,900 would be provided to improve children's play facilities at the nearby Butchers Stiles Field. This would be in lieu of any on site formal play space. Given this, and because the facilities would be likely to be used regularly by future residents, I am satisfied that all of the necessary tests are met. Only one other financial contribution has been made by way of a planning obligation for these play facilities and therefore the requirements of CIL regulation 123 are met.
- 37. A financial contribution of £14,507 would be used by the Council towards funding the provision of a 3G sports pitch at Moss Farm, Hartford. This would be in lieu of any on site formal sports provision, and in accordance with VRBLP policy RT3 and SPD3. Whilst Moss Farm is not the closest playing field to the appeal site, it is within 4 miles and the new 3G facility could, therefore, be used by future residents participating in formal sporting activities. The Council has advised that the provision of a 3G pitch in this location is part of its Playing Pitch Strategy and Action Plan 2012, that part funding is already committed by the Football Association, and that a 3G pitch could not be accommodated any nearer to the appeal site. On this basis, and because no other planning obligations include provision for this type of infrastructure at Moss Farm, Hartford, I am satisfied that all of the necessary tests are met.
- 38. A financial contribution of £4,500 would be made towards the implementation of a 20 miles per hour scheme in the village which would slow vehicles entering and leaving the site and through the existing residential area until it reaches London Road. This is part of a package of mitigation measures that is required to ensure that the proposal would not have an unacceptable impact on highway safety. Whilst two local Councillors suggested at the Inquiry that funding was already in place for this scheme, the highway authority advises that the necessary funding is not secured. On this basis, I consider the proposed financial contribution to be required, and as only one other contribution has been made by way of a planning obligation for this type of infrastructure in the village, I am satisfied that all of the necessary legal tests are met.
- 39. Finally, an obligation would ensure that an area of the site would be made available for the provision of a new scout hut. This was included in the legal agreement at a late stage in response to representations made shortly before the Inquiry. However is not necessary to make the housing development acceptable in planning terms. It therefore fails to meet one of the necessary tests.