

REPORT FOR WASHINGTON AREA COMMITTEE 5th November 2009

JOINT REPORT OF DEPUTY CHIEF EXECUTIVE AND EXECUTIVE DIRECTOR OF CITY SERVICES

SECTION 106 AGREEMENTS AND PLAYSPACE PROVISION

1.0 PURPOSE OF THE REPORT

- 1.1 The purpose of the report is to advise members of the use of section 106 agreements by Sunderland City Council in the town planning process (particularly in relation to the provision of children's play space; to consider existing adopted Council policy on children's play space and how this determines the selection of sites to be funded by section 106 contributions; and finally to provide information on section 106 contributions received and spent in Washington over the last 3 years.

2.0 BACKGROUND

- 2.1 In reaching a decision on any planning application the Local Planning Authority (LPA) is required to take into account all material considerations, giving them varying degrees of weight, and reach a decision based on the law, the development plan and these considerations. The starting point in this is the adopted Development Plan, which has a very high weight being adopted local planning policy which has been through a process of public participation. In the case of the City of Sunderland the adopted development plan is the Unitary Development Plan (UDP) adopted in 1998 and the Regional Spatial Strategy for the North East adopted in 2008. Eventually the UDP will be replaced by the emerging Local Development Framework (LDF), but for the present most of the policies in the UDP have been "saved" and are material in determining planning applications, losing weight in the future as LDF policies become adopted.

The Role of Section 106 Planning Obligations in the Planning System

- 2.2 Section 106 of the Town and Country Planning Act 1990 allows planning obligations to be entered into by an applicant for planning permission which are used to overcome some issue or issues related to the proposal which cannot be covered by planning conditions and without which, planning permission cannot be granted. An obligation may be entered into by the applicant with the LPA ("a planning agreement") or by the applicant only ("a unilateral undertaking"). This latter format is required where for some reason the LPA cannot or is unwilling to enter into an agreement, but these are not as common as the agreement format. The most common reason for using a section 106 agreement is where the LPA requires the applicant to pay money to make a financial contribution towards improving some social or economic infrastructure required by the new development. This situation cannot be covered by planning conditions as conditions cannot be used to raise capital for the LPA. More generally section 106 agreements are used where planning conditions would fail any of the six tests set down for them by Government in an advisory Circular on the matter (Circular 11/95 The Use of Conditions in Planning Permissions).

Necessary
Reasonable in all other respects
Relevant to planning
Relevant to the development permitted
Enforceable
Precise

2.3 Planning agreements can be attached to all types of planning permission, but considering those covering residential development the most common types of infrastructure problems which section 106 agreements can be used to address are as follows:

- Where the LPA can demonstrate through, for example, a Traffic Impact Assessment submitted in support of a planning application that the traffic generated by residents and service vehicles could not be accommodated on critical parts of the highway system such as narrow roads or road junctions near to their capacity, it would be appropriate to enter into an agreement to require the developer to pay for improvements to the highway in the interests of highway safety.
- Where the LPA can demonstrate through education planning models that the number of children of school age generated by proposed housing would be too large for existing schools in the area, it would be appropriate for the developer to enter into an agreement to pay for extensions to schools or in some cases a new school.
- Where the adopted Development Plan contains a policy requiring residential developments to provide on-site children's play space (in Sunderland's case policy H21 of the UDP). Since the UDP was adopted a number of problems have been encountered with play space constructed within residential areas as the children get older. A section 106 agreement can be used so that the applicant can fund alternative play provision in an adjacent local park, that is off the application site.

2.4 In recent years in Sunderland the latter is the most common use of section 106 agreements in accordance with policies H21 and R3 of the UDP. The rest of this report concentrate on the use of agreements to provide play space. The agreements relate to a tariff system, currently £701 per 2 bed roomed house on sites of a least 10 houses. Although the application of the tariff on proposed developments rises annually through inflation the developer is clear in advance what the cost will be and includes it in his development appraisal at the outset.

2.5 The later parts of this report also consider the Council's adopted policies on play provision, the selection of sites and the maximum distances such sites should be from the housing development it is to serve. Provided the section 106 agreements meets the planning tests set out below they can provide a financial vehicle to implement those policies.

2.6 Government Circular 5/05 states that planning obligations (i.e. agreements and unilateral undertakings under section 106) should only be sought where they are:

- Relevant to planning;
- Necessary to make the proposal acceptable in planning terms;
- Directly related to the proposed development;

- Fairly and reasonably related in scale and kind to the proposed development; and
 - Reasonable in all other aspects.
- 2.7 Section 106 agreements contain heads of terms and critical dates/events by which money should be paid to the LPA. In turn the LPA covenants to complete the play area by a particular date, such as 2 years after the completion of the development permitted. This means that the LPA should pay back the money (with interest) if it has not been spent in time.
- 2.8 Section 106 contributions can be pooled but the facilities provided must be accessible to and serve each of the contributing housing schemes.
- 2.9 From the foregoing it is clear that, if there have been no planning applications granted permission for some time in a particular area, there is unlikely to be any section 106 contributions left for the LPA to spend in that area on play provision. Furthermore it would not be lawful for the LPA to spend such money in that area if it was generated from housing permissions so far away as to not be accessible to the developments they were intended to serve. Indeed section 106 agreements for play space entered into by Sunderland City Council usually stipulate just 2 parks/playing fields at which the money can be spent.
- 2.10 Section 106 agreements take some time to complete as they have to be signed not only by the Council and the applicant but also any other party with an interest in the site, such as a mortgage lender. In order to avoid a delay to cause the Council not to determine the application within the government target period of 13 weeks for major applications, applications which are the subject of section 106 agreements are usually reported to the appropriate Development Control Area Sub-Committee with a dual recommendation.
- 2.11 This allows the Sub-Committee to delegate the decision back to the Deputy Chief Executive to:
- (i) Grant Permission subject to the following conditions and subject to completion of a Section 106 agreement by an agreed date, or such other date as is agreed by the Director of Development and Regeneration.
 - (ii) Refuse permission should the legal agreement not be completed by an agreed date, or such other date as is agreed by the Director of Development and Regeneration.
- 2.12 The date referred to above is the last day of the thirteen week period and allows the decision notice to be issued within that period. If the application is refused the applicant can reapply (without paying a further planning fee), usually with the agreement already completed.
- 2.13 Appendix 1 provides details of all section 106 agreements entered into by the City of Sunderland in Washington over the last 3 years 2006/07, 2007/08 and 2008/09.

3.0 SUNDERLAND CITY PLAY POLICY

- 3.1 With regard to children's play facilities, the decision as to how play space should best be provided for the community, is based on an established framework and 'Pathfinder' status.
- 3.2 Elected members may be aware that play was the subject of the first ever scrutiny review by Culture and Leisure Review Committee in 2003/4. 'Planning for Play' identified the need to ensure that new developments contributed to or developed high quality, meaningful play spaces which provided for the full age ranges.
- 3.2.1 Small, poorly located play spaces located in small to medium housing estates (singular wooden pigs or isolated toddlers areas) with poor play value for the full community, have and continue to cause, challenges to residents and children.
- 3.2.2 Fewer, but better equipped play spaces in the right location for children and young people are essential. The initial capital outlay of such sites may be greater, but their use, enjoyment, informal oversight and sustainability significantly greater.
- 3.2.3 The 'Planning for Play' Review was therefore followed by the first ever Play and Urban Games Strategy (2004-2014), which sought to apply the principles of Planning for Play, and was endorsed by Cabinet in 2004. In 2007, the Strategy was subsequently reviewed to consider Government guidance and the city is currently working towards delivering the aspirations of the Play and Urban Games Strategy (2007-2012) which was endorsed by Cabinet, Children's Trust and the LSP in 2007.
- 3.2.4 The Strategy identifies that regular enjoyment of time, space and opportunity to play is an essential part of the lives of children and young people. Through play children develop physically, intellectually, emotionally, spiritually and socially. Children and young people playing signify a healthy community and a public realm that is meeting the needs of its people.
- 3.2.5 The Strategy considered the quality and quantity of current provision on an area basis with ongoing feedback from children and young people themselves, land availability citywide and forthcoming renewal opportunities, all helps to re-shape our neighbourhoods and improve local settings. The revised Strategy reinforced the local play standard, which was to ensure that every child has access to high quality play provision within 1km from their doorstep.
- 3.2.6 In order to ensure funding opportunities of all types are directed towards the priorities, the Strategy sets out specific sites which are the prioritised destinations for external funds and indeed developer 106 contributions within an approximate 1km radius of the development(s), wherever possible.
- 3.2.7 Exceptions to this are where there is a new large housing development which clearly warrants onsite provision, as the number of young people would place too greater burden on the other sites nearby. This is also the case where new developments take place in very urban areas where no current provision exists, or open space to support the play offer. Therefore it is important to ensure that new green spaces are created which are supporting play opportunities.

- 3.2.8 The Strategy has enabled clear priorities for investment which has helped to focus funds and ensure that a greater percentage of children and young people citywide have access to larger and higher quality play spaces. The Strategy also prevents small and low play value sites being built with fragmented funds, or 'ad hoc' developer build sites which could drain resources in terms of maintenance and community safety issues.
- 3.3 Because of such demands and the problems which City Services have encountered in maintaining the smaller play areas, the general preference is for off-site provision. This allows for a wider range of equipment to be provided serving different age groups albeit on fewer sites. It also allows the children in the area to be consulted on the type of provision required in the area.
- 3.4 When considering a planning proposal for residential development be it at pre-application or application stage, City Services are consulted for advice on the most appropriate form of provision ie. 'on site' or 'off site'. The principles and clearly identified priorities in the Strategy guide the preferred options. As previously mentioned, such a decision will take into account the size of the residential development and the level of provision in the general area. As a general rule, the smaller the residential development the less likely it is that on-site provision will be made. Busy roads and rail lines are more likely to determine how a young person accesses play space.
- 3.5 Where an onsite development is the required provision, increased emphasis is being placed on ensuring the agreed quality and location of the play space is submitted prior to planning approval enabling full engagement of the planning committee's before approvals are sought. This removes the possibility of developers building facilities of poor quality or failing to deliver the planning condition.
- 3.6 In 2007, when the strategy was reviewed just 15% children and young people had access to high quality play spaces 1km from their door. The successful strategic allocation of developer contributions and other external funds, resulted in access increasing to 25% by mid 2008, 45% by March 2009 and following the Play Pathfinder programme in March 2010 the figure will rise to over 60%.
- 3.7 As Play Pathfinder moves to completion in 2010, planning for the next set of play priorities will be established and Area Committees will be kept fully advised of this process. Recommendations will be made on a ward basis and each development will be prioritised by its impact on the numbers of young people it reaches.
- 3.8 In Washington by the end of the Play Pathfinder Programme (March 2010), this approach will ensure that section 106 funds have been fully utilised, with £310,000 being invested since 2004, together with £407,000 of internal and external investment, improving the quality of 9 play sites. Using a mix of Government funding, Council resources and section 106 money, Washington has seen a great improvement in the quality of play facilities since 2004.

4.0 RECOMMENDATION

- 4.1 The Committee is recommended to note the content of this report.

APPENDIX SECTION 106 AGREEMENTS IN WASHINGTON 2006/07, 2007/08, 2008/09