

Author: DIRECTOR OF LAW AND DEMOCRATIC SERVICES

Parish / Wards Affected: ALL

Purpose

The purpose of this report is to inform members as to the current position in relation to Deeds of Planning Obligation (i.e. Section 106 Agreement or Section 106 Unilateral Undertaking) authorised by the Council in its role as local planning authority.

Recommendation

Planning Committee is requested to note this report.

1. Reason

To keep members informed as to the current position regarding Deeds of Planning Obligation.

2. Detail

2.1 The attached schedule sets out the current position in relation to Deeds of Planning Obligation.

2.2 Deeds of Planning Obligation are entered into pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) between landowners/developers and local planning authorities which either require the landowner/developer to do something or restricts what can be done with land following the granting of planning permission. These Deeds may:

- Impose restrictions on the land e.g. the surrender of a previous and inconsistent planning consent.
- Impose positive obligations e.g. a Green Travel Plan or the provision of affordable housing.
- Require the land to be used in a particular way e.g. use of part of a housing site for a play area.
- Require money to be paid to the authority e.g. payment for maintenance of play areas or payment of developer contributions towards infrastructure costs.

Further information on the subject of this report can be obtained from Stephen Taylor Director of Law and Democratic Services on Direct Dial No.463012 or Email staylor@swindon.gov.uk.

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- 2.3 Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL) sets out three tests for a planning obligation to form a reason for grant of planning permission:
- 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.
- 2.4 A developer who enters into a Deed of Planning Obligation must have an “interest” in the land. In other words, he must own the freehold of the land, or have a leasehold interest, or some other legal interest in the land. Ideally a mortgagee must also be bound by the Planning Obligation. The Planning Obligation runs with the land. Any subsequent purchaser of the land affected by the Planning Obligation will therefore be bound by its terms.
- 2.5 If a developer is in breach of any of the terms of a Deed of Planning Obligation, he/she is deemed to be in breach of a covenant. The consequence is that the local planning authority may bring proceedings in the County Court for an injunction to compel the developer to perform the particular obligation. In addition, damages may also be sought. A developer may apply for variation or discharge of an obligation. If the local planning authority agrees, then a Deed of Variation will be entered into by the Council and the Developer.
- 2.6 It is in the interest of the Council that Deeds of Planning Obligation are completed without delay so that planning permissions can be issued and development facilitated. This does, however, also require co-operation from the developer and/or their solicitor in order that agreement can be reached on the terms to be included within the legal documentation.
- 2.7 The Director of Law and Democratic Services aims to present a monitoring report to members every six months.

Alternative Options

- None – the report is for information.

Risk Management

Financial and Procurement Implications

- There are no direct financial or procurement implications.

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Legal / Human Rights Implications

- Legal/human rights implications have been considered in detail in the report dealing with the planning application to which the agreement relates.

Links to Corporate Plans and Policies

- No specific link- this report relates to the exercise of the statutory regulatory powers of the Council

Consultees

- The Board Director Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

Background Papers and Appendices

- Appendix – Schedule of Planning Agreements.

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