

WILTSHIRE COUNCIL

AGENDA ITEM NO. 08

SOUTHERN WILTSHIRE AREA BOARD
16 December 2010

**SECTION 106 DEVELOPER CONTRIBUTIONS
FOR OFF SITE INFRASTRUCTURE – KNOWN AS R2**

Executive Summary

The report outlines the circumstances in which section 106 developer contributions are taken, the types of contribution that may be available and some of the restrictions on how these contributions may be spent.

Proposal

Area Board to note the reports contents.

Reason for Proposal

The Area Board requested a briefing on Section 106 developer contributions.

IAN BROWN

Service Head, Amenities and Fleet

**SECTION 106 DEVELOPER CONTRIBUTIONS
FOR OFF SITE INFRASTRUCTURE – KNOWN AS R2**

Purpose of Report

The report outlines the circumstances in which section 106 developer contributions are taken, the types of contribution that may be available and some of the restrictions on how these contributions may be spent.

Background

Any development increases or creates new demand for infrastructure.

There is a general preference for developers to cater for this demand by providing the new infrastructure on the new development.

Planning Documents set the standards of infrastructure provision required.

It is not always practical for a developer to provide the new infrastructure on their development.

Section 106 of the Town and Country Planning Act 1990 allows the planning authority to take contributions from developers towards the provision of off site infrastructure not provided on the development.

There are a series of legal tests which can be summarised as follows:

- The demand for the infrastructure must have been created by the site
- The site must benefit directly from the new infrastructure
- The contribution must be relevant, proportional, reasonable and needed to make the development acceptable in planning terms.

Following negotiation and agreement between the developer, planners and infrastructure providers a legal agreement is prepared which is referred to as the Section 106 Agreement. The agreement sets out what the developer will contribute and what the Council will specifically spend the developer's contribution on. Also the Agreement may specify time scales and geographic limit for the provision of the new infrastructure.

The Council is required to keep a robust audit trail and the developer can at any future date request information on what the Council has spent their contribution on. If the Council is unable to demonstrate the contribution was correctly spent the developer could be entitled to reclaim their contribution.

Contributions generally cannot be spent on:

- Employing a person
- Funding a project team
- Maintenance (except where the infrastructure is purely used by the development)
- In contravention of the legal tests
- On infrastructure other than as set out in the Section 106

Main Considerations

1. Contributions are collected for a variety of infrastructure projects including Education, Highways, Health, Sport, Amenity Land, Children's Play, Art, Community Facilities etc
2. The Technical Section primarily administers the process of adopting Amenity Land and Children's Play from developers into either the ownership of Wiltshire Council or relevant Parish Council.
3. The provision of Amenity Land and Children's Play is covered by clause R2 of the Salisbury District Plan 2011. R2 requires all development to make provision for amenity land and children's play regardless of the size of the development.
4. Smaller developments usually cannot provide a meaningful provision on site and therefore make financial contributions for the provision of outdoor recreation facilities for youth/adult and another for children's play both to be provided within the locality/parish/village/parish/town/city or other specified location. It should be noted that distance restrictions may also apply to these funds limiting further their use within a Parish.
5. The contribution for these smaller developments is taken using a standard Section 106 Agreement with a set tariff based on the cost of providing the required area of land for adult/youth outdoor facilities and land for children's play for that size of development.
6. Generally Parish Councils when they are applying for R2 funds are requesting the contributions generated by these smaller developments and can only be expended on outdoor facilities for adult/youth or children's play.
7. For larger developments where the amenity land and children's play is provided on the development these facilities may then be adopted by Wiltshire Council or Parish Council and in this instance there may be a contribution from the developer for the future maintenance of the facilities to be adopted. This contribution or its remainder will be passed with the land to whoever takes ownership of the land.
8. As maintenance money is taken under the Local Plan clause R2 this has caused some confusion about the use of the offsite provision contributions from smaller sites described above.
9. Larger developments may also make off site contributions for Community Facilities and Sports Facilities which are also administered by the Technical Section. These contributions are taken under different Local Plan clauses R4 etc.

10. The use of contributions from larger sites is usually specific and only available for the facilities/projects named in the Section 106 Agreement.
11. These contributions are fewer in number and do not warrant their own administration system. Historically they have been administered using the same system as the R2 funds thereby adding to the confusion as to what R2 funds from small developments can be spent on.
12. Parish Councils may apply for funds from developments in their area by following the procedure on the form in annex A.
13. Community Groups can also apply for funds with the support of the Parish Council.
14. Parish Councils are strongly advised to check with the Technical Team as to the status of funds available and any restrictions that may apply to them.
15. Parish Councils are advised to seek the advice of the Technical Team before making applications. The wording will often make the difference between a project being acceptable within the terms of the section 106 agreement or not.
16. The Technical Team will visit Parish Councils to discuss funds and look at possible future projects.
17. Annex B contains further advice for Parish Councils.

Environmental Impact of the Proposal

18. Not applicable.

Equalities Impact of the Proposal

19. Not applicable.

Risk Assessment

20. Not applicable.

Financial Implications

21. The developers contributions are held in a ring fenced account and the release of the money will have no effect on the Councils revenue or capital budgets.

Legal Implications

22. Release of the developer contributions must comply with the legal tests and the terms of the Section 106 Agreement.

Options Considered

23. Not applicable.

Recommendation

The area board note the contents of the report.

IAN BROWN

Service Head, Amenities and Fleet

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Date of report: 8th September 2010

The following unpublished documents have been relied on in the preparation of this report:

None

Appendices:

Annex A: Application form for R2 funds.

Annex B: Policy Notes for R2: Guidance Notes for Parish Councils