Section 106 Report May 2005
to Planning Committee

Appendix 2
Planning obligations context and management within Oldham MBC

1 What is a Section 106 – why do we have them?

1.1 In considering an application for planning permission, the Council may seek to secure benefits to an area or restrict uses or activities related to a proposed development through the negotiation of a ‘planning obligation’ with the developer. Such obligations, authorised by section 106 of the Town and Country Planning Act 1990 (hence the name), generally either improve the quality of the development, or overcome difficulties which would otherwise result in planning permission being refused.

Examples of the use of planning obligations

- Provision of affordable housing;
- Improved community facilities - Public open space / play areas, educational facilities;
- Improved transport facilities - contributions have previously been used towards Oldham Bus station, park and ride and provision of cycle lanes;
- Public art;
- Renewable energy measures;
- Specific measures to mitigate impact on a local area - parking restrictions, landscaping or noise insulation;
- Restrictions and obligations on the use of land.

This list is not exhaustive. Each planning application and section 106 obligation is dealt with individually on its merits and restrictions and requirements not on this list may also be needed.

1.2 A fundamental principle when negotiating s.106s is that planning permission cannot be bought or sold, and so obligations have to be fair, open and reasonable. They must also relate to the proposed development. A s.106 must meet five tests, as laid down by the Government (in Circular 1/97). These are that the contents and purpose of the Obligation must be:

- Necessary;
- Relevant to planning;
- Directly related to the proposed development;
- Fairly and reasonably related in scale and kind to the proposed development; and
- Reasonable in all other respects.
1.3 A vital test of proposed planning obligations is that they must be necessary to make a proposal satisfactory in land use planning terms. They ought not be sought where the connection does not exist or is too remote.

1.4 The Oldham Unitary Development Plan (UDP) and the Replacement UDP (RUDP) contain a number of policies, which may require the negotiation of a planning obligation. When considering an application, the Council has to have regard to the policies within the development plan.

1.5 An alternative to the above is for the developer to offer a ‘unilateral undertaking’ at the time the application is submitted. This is generally in situations where a developer knows a s.106 will be required and is an attempt to speed up the decision making process by offering perhaps a commuted sum for public open space improvements. However, notwithstanding the contents of such an offer, the Council will request changes where necessary to ensure that the unilateral undertaking complies with the minimum requirements of the relevant UDP policies and the 5 tests.

2 Management of the Section 106 system in Oldham

2.1 The procedure for dealing with s.106s in Oldham, was introduced after the Council’s external auditors, KPMG, conducted a ‘review of probity in planning’ in 1999. The report offered an opportunity for the Council to improve the way it handled all aspects of the planning process including planning obligations. The previous system was considered to lack transparency, and public access to details of individual s.106 was difficult.

2.2 The Council now operates the following:

- A S.106 Liaison Group meets to ensure a joined-up approach in the procurement and implementation of s.106s across Council departments;

- A ‘Section 106 Good Practice Guide’ for applicants, developers and the wider public was published and adopted as Council policy in 1999. This is currently being reviewed in light of changing Government policy and the need to ensure that the level of contributions sought are reviewed on an annual basis so that they more realistic;
The s.106 database enables the monitoring and management of s.106 obligations, particularly the recording and tracking of areas of spend and forms the basis of the details available;

A six monthly update report is taken to the Planning Committee and then rolled out to the Area Committees for information. These reports are subsequently made publicly available on the Council’s website:

www.oldham.gov.uk/living/planbuildmatters/plandev_home/section-106.htm

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