

**SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Cabinet **DATE:** 19<sup>th</sup> January 2009  
**CONTACT OFFICER:** Gerry Wyld, Head of Planning & Strategic Policy  
**(For all enquiries)** (01753) 875845  
**WARD(S):** All  
**PORTFOLIO:** Neighbourhoods and Renewal – Councillor Swindlehurst

**PART I**  
**NON-KEY DECISION**

**SECTION 106 AGREEMENTS AND THE ECONOMIC DOWNTURN**

1 **Purpose of Report**

To advise Members of the implications of the current economic downturn on S.106 contributions linked to planning permissions and to seek an agreed response.

2 **Recommendation(s)/Proposed Action**

The Cabinet is requested to resolve:-

- (a) that the implications of the current position both for the development of the town and for service departments be considered;
- (b) that the proposed response in Appendix A be agreed as the broad basis for responding to requests to vary S.106 requirements.

3 **Community Strategy Priorities**

- **Celebrating Diversity, Enabling inclusion**
- **Adding years to Life and Life to years**
- **Being Safe, Feeling Safe**
- **A Cleaner, Greener place to live, Work and Play**
- **Prosperity for All**

There are potentially negative impacts of the current economic downturn if development schemes do not get built, or if they are started and not completed, particularly in cases where they are key to achieving major regeneration benefits.

There are also potentially adverse implications if agreed S.106 packages are not delivered in full as Service Departments increasingly depend on these monies and other elements for enhancing capital programmes, particularly for social housing, transport infrastructure and school building programmes.

## 4 **Other Implications**

### (a) Financial

Section 106 Agreements currently make a major contribution to the funding of the Council's services and payments are usually "triggered" by key milestones in development, normally commencement, part completion or completion.

Delay or abandonment of development schemes can thus have significant implications for the Council. Similarly, any approach that included renegotiation reduced packages could have major implications.

### (b) Risk Management

#### Risk Management

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
To resolve that the proposed response in Appendix A be agreed as the basis of responding to requests to vary S.106 agreements.	If approach is <u>not</u> adopted key regeneration objectives may be delayed and all S.106 benefits may be lost on certain schemes.  If approach <u>is</u> adopted such schemes may proceed and a package of benefits can still be achieved, albeit potentially reduced.	There is scope for delaying non-essential schemes and/or renegotiating development projects to achieve a different mix.

### (c) Human Rights Act and Other Legal Implications

There are no Human Rights implications resulting from the report. Section 106 obligations are legal documents and any alteration would require a formal deed of variation agreed by both parties.

### (d) Equalities Impact Assessment

From an initial consideration it is not considered that the proposed approach is likely to have an adverse impact on race, gender or disability groups, nor age, religion or sexual orientation. An initial Equalities Impact Assessment Initial Screening is being undertaken. From experience the main impact of schemes so far affected by the economic downturn is likely to be in the area of social housing delivery.

#### Workforce

There are no specific implications arising from the report.

## 5 **Supporting Information**

5.1. Section 106 Agreements are the mechanism by which legitimate community requirements arising from development are achieved. They can relate either to measures required to enable a development to proceed (e.g. a new access road) or measures to achieve broader community benefits (e.g. a new community building). They are signed by the developer and Council prior to

planning permission being granted and become local land charges that run with the land.

- 5.2. The Council has well established procedures and processes for negotiating Section 106 agreements for both major housing and commercial schemes and the recently published SBC “Developers Guide” enables potential applicants to be clear in advance what will be required of them. Government circulars already make it clear that viability can be a material issue.
- 5.3. As a result of the current national economic downturn there has been a general downturn in economic activity and this has been reflected locally in Slough. Although developers appear to be continuing to seek planning permissions for the books in advance of a future upturn, some schemes with planning permission have not started as expected and some others have commenced but then come to a halt. Some developers have already gone into administration. In such cases there is by no means any certainty that any S.106 contributions will be received unless some flexibility is applied.
- 5.4. In respect of both latter set of circumstances a number of enquiries are now being received from developers suggesting that the only way that development can proceed/ be completed is if agreement can be reached on reduced levels of contributions.
- 5.5. As an example I am setting out the case of “Slough Central”, a major scheme involving some 229 flats with ground floor commercial in a prominent location adjacent to Slough Railway Station. Work has stopped halfway through and it is neither fully clad nor watertight. The development company has gone into administration.
- 5.6. The scheme was agreed to help regenerate the area north of the town and a major Section 106 package was agreed, including a very significant financial contribution to off-site social housing provision; plus education, transport and station forecourt improvements.
- 5.7. The Administrator hopes to arrange finance to complete the building ready for sale and is prepared to agree that Section 106 contributions are made before paying creditors. They estimate at current construction costs and sales values, that the Council would get the agreed contributions but if property values drop there may be insufficient funds to pay all, possibly any, contributions. A revised Section 106 agreement would need to reflect this. Any reduced contributions could be prioritised by the Council amongst the areas listed above.
- 5.8. If a request to vary the existing Section 106 requirements was not to be agreed and that results in the unfinished structure staying as it is until the market improves there is a risk of it adversely affecting the image of the town and delay regeneration benefits.
- 5.9. The alternative to a variation of the agreement would be to wait for the market to improve and hope that a future developer completes the building and sells the flats to trigger contribution payments. Such a developer may, of course, still seek a reduced Section 106 package in the future.

- 5.10. There are other cases arising, both of developers of half finished developments going into administration and of schemes with planning permission not being started.
- 5.11. Essentially the present circumstances raise two sets of questions:-
- (a) does the Council wish to see particular schemes developed/ completed now or is it prepared to let them lay fallow and await the economic upturn?
  - (b) If it wishes to encourage early development/completion what approach needs to be put in place to facilitate this?
- 5.12. Appendix A to this report sets out a suggested approach for the Cabinet's consideration. This is based on an initial assessment of examples of ideas developing elsewhere in Berkshire and beyond. An initial policy steer only is sought at this stage. Further detailed work would be needed and any formal requests to vary Section 106's agreements would require a Planning Committee decision.
- 5.13. It is suggested that a "criteria" based approach be adopted against which individual cases can be judged. Approaches to relax S.106 contributions should only be considered by exception where schemes are half-built, where sites are currently an eyesore and where there are key regeneration benefits involved. The approach would seek to facilitate essential development rather than to give general assistance to developers who find themselves in financial difficulties. In other cases it will be appropriate to consider alternative development options for sites or wait for the upturn.
- 5.14. Any requests for relaxations will need to be accompanied by open-book financial viability statements, either from the developer or the administrator and these will need to be independently assessed on behalf of the Council.
- 5.15. In cases where it is considered that some relaxation should be agreed to it is important that these should be strictly time limited, so as to avoid situations where developers hold on to reduced packages and then reap the benefit at some future date.
- 5.16. There may be a range of different ways of agreeing and managing reduced contributions, such as:
- splitting payments over time
  - deferring payments to a later date, e.g. when units are sold
  - SBC considering taking an investment stake in developments
  - linking contributions to sale values above agreed levels
  - taking ownership of units rather than cash payments.
- 5.17. In cases where reduced or deferred payments were to be negotiated mechanisms would need to be put in place corporately to decide how these would be "shared out" between service areas. This could, for example, be deciding which areas should be given priority or by allocating monies gained on a "pro rata" basis.

5.18. Consultations are taking place with Service Departments and further views will be reported at the meeting. Housing Services have already expressed concerns in respect of the Slough Central case and Economic Development would support the renegotiation of current schemes that are in mid-development. Any revisions should be subject to an incentive to complete within a two year period after which any agreement would lapse.

6 **Comments of Other Committees**

It will be a matter for Planning Committee to take decisions on any formal requests for variations to existing S.106 agreements. In the short term these are likely to relate to schemes under construction that are now in the hands of administrators.

7 **Conclusion**

The economic downturn is leading to a reduction in development activities and a general policy steer is needed to respond to requests to renegotiate S.106 agreements to facilitate schemes going ahead/being completed.

8 **Appendices Attached**

'A' - S.106 Agreements – suggested approach to requests to Renegotiate in Economic Downturn.

9 **Background Papers**

None other than referred to above.

**S.106 AGREEMENTS – SUGGESTED APPROACH TO REQUESTS  
TO RENEGOTIATE IN ECONOMIC DOWNTURN**

1. In general, matters relating to S.106 agreements should continue to be handled in line with the provision of the “Developers Guide Part 2 – Developer Contributions and Affordable Housing (Section 106)”, which provides for exceptions to be dealt with via a viability study.
2. By exception requests to renegotiate existing S.106 agreements may be considered where all of the following circumstances apply:
  - where schemes are left half-built and subject to Administration.
  - where lack of progress is hindering regeneration objectives;
  - where lack of progress is leading to damaging “eyesores”
3. In all other cases existing agreements should be left in place to await the upturn or suitable alternative development packages considered, unless it is considered key regeneration objectives are threatened.
4. Any requests for renegotiating S.106 agreements will need to be accompanied by “open book” viability appraisals in an appropriate form to be independently assessed on behalf of the Council.
5. Any “relaxation” of existing provisions will be strictly time limited, with a return to the original provisions if development does not take place before the upturn.
6. Areas to explore to achieve a satisfactory relaxation can include the following:
  - splitting payments over time
  - deferring payments to a later date, e.g. when units are sold
  - SBC considering taking an investment stake in developments
  - linking contributions to sale values above agreed levels
  - taking ownership of units rather than cash payments.
7. Corporate mechanisms will need to be put in place to agree distribution of any revised contributions between service areas, either on a priority basis or “pro-rata”. Some kind of Internal Board may be required.
8. Any proposals to reissue existing Section 106 agreements may be subject to an Equalities Impact Assessment screening exercise.