

City Management Plan workshop briefing notes

Planning Obligations (Section 106)

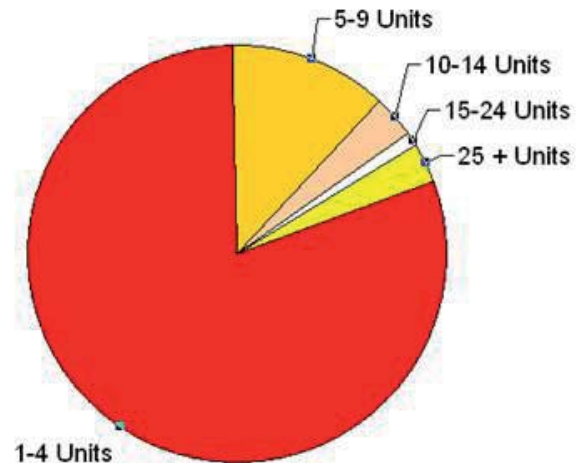
What are the issues?

Planning obligations are one mechanism for ensuring development in Westminster is sustainable. They can be “in kind” benefits, financial contributions, or other controls or restrictions on the way land is developed. Planning obligations are secured through legal agreement between the council and developers when conditions attached to a planning permission will not suffice. Central government guidance on planning obligations is set out in ODPM Circular 05/05; this states that planning obligations must always meet the following five ‘tests’, which are to be:

- relevant to planning
- necessary to make the proposed development 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 respects.

ODPM Circular 05/05 Planning Obligations

Planning obligations are used to mitigate the social, economic and environmental impacts of development. This can include the impact on supporting infrastructure such as transport, community, health and education facilities, utilities and waste facilities. Development in Westminster does not tend to be constrained by infrastructure needs in the same way as many other parts of the country. This is because schemes are ‘inserted’ into a developed city where there are existing infrastructure networks and facilities. However, this infrastructure is of varied quality and is often under considerable pressure from the resident community and the visitor and worker population which expand Westminster’s population to over 1 million every day.



Total number of schemes = 442

Growth is planned in the Opportunity Areas identified in the London Plan (Victoria, Paddington and Tottenham Court Road). In addition, significant development is also anticipated at the core of the Central Activities Zone. This pattern of growth is reflected in the emerging Core Strategy. Major development schemes are also likely to come forward outside of these Opportunity Areas. In addition, incremental smaller scale development is anticipated throughout the city. In recent years a significant quantum of growth in the city has been accounted for by relatively small scale schemes. For example, between January 2006 and September 2008, 442 private led schemes were given permission for 1 or more additional residential unit; 93% of these schemes were less than 10 units. This growth will lead to increased infrastructure demands and the spatial strategy for meeting this demand is set out in the emerging Core Strategy.

6pm to 9 pm, 21st July 2009

17th floor City Hall - Committee Rooms 6 & 7



City of Westminster

PLANNING & CITY DEVELOPMENT



Cumulatively all development, including relatively small scale schemes, put pressure on infrastructure and should contribute to funding the additional demand generated. Currently, planning obligations are the only mechanism by which these contributions are sought. However, Part 11 of the Planning Act 2008 provides the legislative basis for the council to introduce a charge on developments to fund supporting infrastructure. This is called a Community Infrastructure Levy, or CIL. If CIL were to be introduced planning obligations would be scaled back (possibly to just site specific matters and affordable housing). CIL cannot be introduced until April 2010 and the precise way CIL will operate will be set out in detailed regulations which will be consulted on in late 2009. The council is assessing the potential for introducing CIL, but the council has not made a decision on whether it will be introduced at this stage.

Planning obligations can be used to compensate for a loss caused by the development, for example, loss of open space. They may also be used to prescribe the nature of a development, for example, requirements for provision of affordable housing. Westminster's current UDP and emerging Core Strategy seeks on site provision of affordable housing or off site where this cannot be achieved in accordance with Planning Policy Statement 3 Housing. In exceptional cases, where on site provision is not feasible, payments in lieu are accepted. Currently there are two rates for payments: a 'higher value area' sum

applicable to Mayfair, St James, Knightsbridge and Belgravia, and a sum applicable to the rest of the city. DTZ are producing an affordable housing viability report for the City Council which will test the viability of different affordable housing policy requirements to be applied in different circumstances and locations, taking into account alternative and existing use values. It will also provide a new methodology for computing payments in lieu of affordable housing. This will be available at the workshop and if finalised before the workshop will be put on the council website.

The potential role of land use credits to meet planning obligations is also an important issue to consider. A land use 'credit' is where new off-site provision of, for example, affordable housing or social and community use, is provided in advance by a developer on the basis that it will satisfy policy requirements of future developments. The planning obligation agreement would then link the scheme to the appropriate credit. The Council has concerns about the use of land use credits; for many sites and some types land use it might be inappropriate and could inhibit the council in achieving its vision for the future development of the city. For example, land uses such as social and community facilities need to be provided in locations to meet the community needs identified by the service providers; a land use credit system would not necessarily provide the right facilities in the right places. It has been suggested

that this type of credit system might also be used in relation to public realm contributions. Although this type of mechanism would only apply in a very small number of circumstances, the current and emerging planning obligations policy framework does not preclude it.

What have you told us?

- The approach to planning obligations needs to be in accordance with government guidance set out in Circular 05/2005 and must be sensitive to the viability of development. Planning obligations and requirements should facilitate rather than constrain development, in particular housing delivery.
 - The necessary infrastructure must be in place to serve development or it should not be permitted.
 - Identifying infrastructure and funding will be required to demonstrate and justify the actual level of S106 contributions.
 - If the link between the additional pressures placed on service infrastructure by new developments and measures to mitigate this can be demonstrated in a transparent and informed manner, receipt of S106 can be maximised whilst simultaneously promoting the delivery of sites.
 - Flexibility should be built in to allow for the introduction of CIL and a tariff based system should be developed.
 - A standard tariff or charge approach will not always be suitable; contributions should be open to negotiation on a site-by-site basis to ensure viability and deliverability.
 - Planning obligations should be sought in accordance with London Plan and a policy on pooled s106 agreements for strategic transport improvements included.
 - More clarity is needed on use of 'pooled contributions' for strategic infrastructure including transport infrastructure.
- Renewable energy capacity could be included within schemes using a percentage requirement through policy or planning obligations.
 - On some schemes, the community is missing out on planning gain due to the location of development, for example, Cardinal Place.
 - Where community and healthcare facilities are provided, careful consideration should be given to the requirement for planning obligations to ensure that there is no double counting in planning gain contributions.
 - New development should not be allowed unless the demand have been accounted for and addressed.
 - There may be a role for land use credits for example, to deliver residential obligations off site.
 - The relationship between SPG obligations, CIL and Crossrail Levy needs to be considered.
 - Contributions should be sought for environmental gains and improvements for example, flood defences, biodiversity enhancements, green roofs and SUDs.
 - Charitable organisations such as universities and health facilities should be exempt from planning obligations.
 - Contributions that could also be secured from developments include: employment and training, courts, churches (including access improvements), canal security and tow path improvements, local public realm projects and supporting local community and amenity groups, policing needs, health infrastructure (from developments of 10 units or more).

National and Regional Policy

ODPM Circular 05/05 contains the most recent national guidance on the use of planning obligations. At the regional level, London Plan Policy 6A.5 requires the council to set out a clear framework on planning obligations having regard to central government policy and local and strategic considerations. London Plan Policy 6A.4 identifies a number of strategic priorities for planning obligations: affordable housing and public transport are identified as issues to be given the highest importance. The Mayor has indicated that he would like to alter the London Plan to introduce an explicit requirement for planning obligations and CIL to be used to fund Crossrail (these proposed alterations were published for consultation in May 2009). Ensuring appropriate levels of contributions to both regional and sub-regional infrastructure and local infrastructure has been the subject of debate in relation to these proposals. This is an important issue to consider in Westminster. Local infrastructure projects are essential to meet the additional demand from new development and development planned in the city is dependent on delivery of major schemes such as Crossrail. Furthermore, growth and development outside of Westminster's boundaries can also have an impact on the city's infrastructure. The London Plan also states that policies for planning obligations should give priority to tackling climate change, learning and skills and health facilities and services, and childcare provision. These issues will all be considered in the council's approach; however, tackling climate change and more broadly reducing the impact of development on the environment is a strong policy theme in the emerging Core Strategy and will be developed further in the City Management Plan (see City Management Plan briefing notes on Sustainable Energy, Health, Safety and Wellbeing and the Natural Environment for more information). The role of planning obligations in relation to environmental sustainability issues needs to be developed further to reflect this new emphasis.

Current UDP Policy (2007)

STRA 7 sets out the aim to secure planning obligations and related benefits in all types of development. It requires that these: (i) have an identifiable connection with the development; (ii) be in line with policies in Part 2; (iii) be appropriate to the location, scale and nature of development; (iv) seek to mitigate the economic, environmental, transportation, social and community consequences of the development.

Supplementary Planning Guidance

Supplementary Planning Guidance (SPG) on Planning Obligations sets out Westminster approach to the implementation of policy STRA 7 in the current Unitary Development Plan. It sets out the following priorities (in no particular order) for planning obligations and identifies the way in which those priorities can be applied in the case of individual development proposals:

- Housing and Affordable Housing (the detail is set out in the Adopted Unitary Development Plan)
- Public Transport Infrastructure
- Area and Environmental Management Studies and Works (arising out of major development schemes)
- City Management (including the provision of CCTV, safety, security and cleansing)
- Public Realm
- Social Community and Culture
- Education Training and Employment
- Environmental Infrastructure

This is supplemented by details of the formulae for different obligations towards certain 'funds', for example environmental improvements or community facilities. The formulae vary depending on the type of planning obligation being sought and the SPG indicates that this may be pooled with other obligations to address major investment needs e.g. for infrastructure or impacts wider than one development.

Core Strategy Publication Draft 2009 (subject to agreement)

POLICY CS 43 - DELIVERING INFRASTRUCTURE AND PLANNING OBLIGATIONS

The Core Strategy includes a policy on planning obligations which sets out that they will be used to ensure the development complies with those policy requirements within the development plan secured through planning obligations and where appropriate seek contributions for supporting infrastructure. The policy seeks to ensure infrastructure is planned and delivered to support growth and also highlights the possible role of the Community Infrastructure Levy, if implemented, in funding infrastructure.

Further Information

ODPM Circular 05/05: Planning Obligations
(2005)

The London Plan – Consolidated with Alterations
Since 2004 (February 2008)

Proposed London Plan Alterations: Use of plan-
ning obligations in the funding of Crossrail, (May,
2009)

Mayor of London's Draft Supplementary Planning
Guidance Use of planning obligations in the fund-
ing of Crossrail (May, 2009)

Adopted Unitary Development Plan (January
2007)

Core Strategy Publication Draft

Planning Obligations Supplementary Planning
Guidance (January, 2008)

Sustainable Energy City Management Plan Brief-
ing Note (2009)

Health, Safety and Wellbeing City Management
Plan Briefing Note (2009)

Natural Environment City Management Plan Brief-
ing Note (2009)

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The agenda for the Planning Obligations part of this workshop is as follows:

Welcome and Introduction

to workshop by Councillor Alastair Moss (5 mins)

What should we do?

1. A balanced approach to ensuring that policy requirements are met and development remains viable is essential. How can requirements for planning obligations be applied more fairly and effectively to ensure the cumulative effect of development is adequately mitigated?

2. The London Plan identifies priorities for planning obligations to be reflected in the council's LDF (see National and Regional Policy above). How should these broad strategic priorities be more specifically applied to the local circumstances and distinct city development challenges in Westminster?

3. How can we ensure planning contributions are fairly balanced between national, regional, sub-regional and local infrastructure either in the context of voluntary pooling of planning obligations or if a Community Infrastructure Levy were introduced?

In exceptional circumstances, where it is not feasible to meet policy requirements, planning obligations may be used to bring a development in line with the policy objectives. One mechanism by which this may be achieved is through "in lieu" financial contributions. Questions 4 - 9 below highlight some specific issues for discussion.

4. In exceptional circumstances, or when it is not feasible for Registered Social Landlords to manage the units due to their small number, payment to the council's affordable housing fund is accepted in lieu of on site or off site affordable housing. There are currently two rates of payments applied

in the city. Would you support a wider range of different land value zones with payment in lieu sums reflecting these differing values?

5. Should planning obligations be sought to mitigate or offset residual:

- carbon emissions
- air pollution
- noise pollution
- ecology and biodiversity impacts?

In which circumstances would this type of planning obligation be appropriate?

6. In cases where it is not practical or viable to achieve required on-site renewable energy standards should the council require planning obligations to fund:

- decentralised energy generation on other sites
- expansion of existing networks, including linking to existing buildings
- on-going network management elsewhere in the borough
- energy efficiency measures in existing properties?

7. More broadly, where the required sustainable design measures cannot be achieved, is there a role for a sustainable design offset scheme which could be used to fund projects to improve the sustainability of the city?

8. Are there any other issues that have not been covered above?

9. Are there issues that the Council should be aware of in its lobbying process?

1 hour 20mins

BREAK - 10mins