
Section 106 Agreements

Planning Obligations

Planning Obligations can be used to: -

- (i) Restrict the use of Land
- (ii) Require specific actions or operations to be carried out
- (iii) Require land to be used in a specified way
- (iv) Require a sum or sums to be paid to the authority on a specified date or dates.

A planning obligation is not a mechanism of selling a planning permission, but instead a mechanism of ensuring that a development provides for itself in terms of providing for the impact that any development may have.

Circular 05/2005 identified five tests that should be met before a planning obligation can be sought. These are: -

- 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.

If a proposal fails to meet any of these tests then it should not be sought.

In addition to these requirements, the provisions of Section 38 (6) of the Town and Country Planning Act 1990 (as amended) apply.

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise"

What is the Development Plan?

- Draft Regional Spatial Strategy
- Structure Plan
- Local Plan

What are Material Considerations?

- Anything that is material to the good development of land:-
- Highway Safety Issues
- Play facilities
- Directly demonstrable needs created, such as school places

Other material considerations: -

- Published planning guidance such as Supplement Planning Documents.

So how does this feed into the Planning System?

The traditional position of government is that where development generates a direct need for a facility, it should contribute towards its delivery. Circular 05/2005 is explicit that, except in exceptional circumstances, development should not be required to address an existing deficit.

So what is Torridge doing?

- (i) Appointed Section 106 Officer – to draft, monitor and enforce S106 agreements, as well as work on the opportunities.
- (ii) Supplementary Planning Document (shortly to be adopted)
- (iii) Consistently applying the provisions of the Development Plan
- (iv) Community Infrastructure Levy

What opportunities are there for Communities?

See final chapter of the SPD.

My Contact Details

Peter Kemp

01237 428767

peter.kemp@torridge.gov.uk
