

**NORTH LINCOLNSHIRE COUNCIL**

**REGENERATION CABINET MEMBER**

**SECTION 106**

**1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To seek approval of the proposals to manage Section 106.

**2. BACKGROUND INFORMATION**

- 2.1 Section 106 (S106) of the Town and Country Planning Act 1990, allows a local planning authority to enter into a legally binding planning obligation with a land developer. S106 can facilitate development which might not be enabled by the use of traditional planning application and permission procedures. This is particularly pertinent currently as public spending is running short.
- 2.2 S106 agreements may impose restrictions or requirements of an indefinite nature. They may (unlike conditions attached to planning permission) require sums of money to be paid to the council e.g. for works of benefit to the area to be funded.
- 2.3 Section 106 agreements generally either improve the quality of the development, or overcome difficulties which would otherwise result in planning permission being refused and include such things as affordable housing, open space, children's play areas, contributions for schools, improved transport facilities etc. This list is not exhaustive.
- 2.4 The creation of a section 106 resource will see numerous benefits to securing and monitoring S106 agreements. These include:
- Delivery of agreed community benefits on time (as timetabled in the agreement).
  - Improved service delivery planning and work programming in all departments (as every department will be given advanced notice of impending planning gain being triggered at various stages within the life of a development).

- Improved financial control and budgeting across the council (as expected incoming financial contributions can be built into budgets with enhanced likelihood of receipt).
- Improved enforcement of S106 agreements (close monitoring will result in early detection of missing gain and improved prospects for ensuring commitments are honoured – whether through reminders or Court action).
- Limited chances for sunset clauses to be triggered (a sunset clause requires developer contributions to be repaid, usually with any interest accrued, if not spent by the council on the specified purpose within an agreed timescale).
- Improved accountability to developers for the expenditure of contributions (this is important as it will underpin and demonstrate the council's reputation for excellent probity).
- Improved public information on the delivery of S106 agreements in their area and better communication of 'progress of delivery' with Ward Members and Town and Parish Councils.
- It will ensure that the council delivers on its obligations within such agreements on time (clearly this is important as a S106 agreement is a multilateral agreement that requires all parties to honour the commitments they have entered into if trust and understanding are to be developed and if the system and/or parties are to be brought into disrepute).
- Enhanced reputation. All the above will help to reinforce the image of the council as a businesslike organisation that is working with the development industry and local communities to deliver the key objectives contained within its Sustainable Community Strategy, Local Area Agreement (LAA), Local Development Framework (LDF) and other policies and strategies.

2.5 Currently a S106 agreement is negotiated between the landowner and the council which is then controlled by the Development Control Officer handling the planning application. There is the possibility for any service area at present to work with the developer in coming to an agreement that is not only acceptable in planning policy terms, but also to the developer in terms of the overall financial viability of the proposed development. This post would allow the whole process to be controlled by one individual including the negotiation, this will allow for a one council approach ensuring that the agreements meet with the priorities of the council.

2.6 There are also limited formal procedures to manage and monitor new and existing S106 agreements. Once these legal documents have been signed it is important that they are co-ordinated, monitored and integrated with in the Council. Enforcement officers from the Development Control team have recently taken on this role, however this has been extremely resource intensive. A review of current S106 agreements has indicated that there is currently potentially around £10m in financial income yet to be spent if the approved schemes are implemented.

### 3. **OPTIONS FOR CONSIDERATION**

#### 3.1 The options for consideration are:

Option 1 – That the Council seconds, the West Lindsey District Council Section 106 officer for 1 day a week, to undertake negotiation and monitoring existing 106 agreements for an initial period of twelve months.

This would be achieved through an agreed Service Level Agreement between North Lincolnshire Council and West Lindsey District Council.

A plan for future s106 provision should be produced within the 12 months.

That Regeneration and Planning provide some resources from within their existing resources to assist the Section 106 officer in the management of the 106 database.

#### 3.2 Option 2 – To do nothing and continue with the current methods of working.

### 4. **ANALYSIS OF OPTIONS**

#### 4.1 Option 1 is the preferred option.

The following tasks will be undertaken by the additional resources:

- Act as lead negotiator for all future Section 106 Agreements.
- Initially review all existing S106 agreements and understand the following:
  - Amount of finance outstanding.
  - Ensure all the obligations have been met.
  - What the contributions have been and are being spent on.
- Establish a system for monitoring S106's to ensure that all contributions due are received, including monitoring of the commencement of development, rate of completions, invoicing for contributions, chasing debtors, and directing appropriate funds internally.
- Co-ordination and processing of applications for re-negotiation of existing S106 agreements.
- Work with legal professionals and relevant teams to standardise legal agreements and investigate the possibility of using cascade agreements.
- Co-ordinate the development of new planning policy on S106 agreements. Work on the establishment and delivery of the Community Infrastructure Levy (CIL) for North Lincolnshire.

It is clear that the introduction of a Section 106 resource will have significant implications for future sustainable development and economic growth in North Lincolnshire.

- 4.2 Option 2 is not viable option as the current Section 106 Management is weak and lacks control.

## 5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

### 5.1 Financial

Resources will be found through the Regeneration and Planning budget for the first 12 months. Future funding will be made permanent through the Regeneration and Planning review.

Costs for the secondee are £22K including on-costs.

### 5.2 Staffing

An SLA agreement will be approved and signed by North Lincolnshire Council and West Lindsey Council through the appropriate process.

There are no other staffing implications.

## 6. OUTCOMES OF CONSULTATION

- 6.1 The report has been referred to the full group for consideration. Human Resources has also been consulted.

## 7. RECOMMENDATIONS

- 7.1 That the cabinet member approves the proposals outlined in this report.

### **HEAD OF STRATEGIC REGENERATION, HOUSING AND DEVELOPMENT**

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**Background Papers used in the preparation of this report**

Draft Audit Report March 2010