

**PROCESS FOR CONSIDERING REQUESTS TO DEFER SECTION (S) 106
PAYMENTS**

To: **Cabinet**

Date: **7 July 2009**

From: **Executive Director: Environment Services**

Electoral division(s): **All**

Forward Plan ref: **2009 / 42** *Key Decision:* **Yes**

Purpose: **To consider the proposed process for dealing with
developer S106 deferral requests.**

Recommendation: **Cabinet is invited to consider and approve the proposals
for dealing with developer S106 deferral requests.**

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1. BACKGROUND

- 1.1 A Section 106 Agreement (S106) is a legal agreement that is generally required alongside the grant of a planning permission between the Council and developers. Developers have signed numerous S106 agreements with the County Council in which they have agreed to pay financial contributions, mainly in relation to education, libraries and transport. The County Council ensures the S106 money is spent on developing new facilities or supporting existing services which are necessary in order to support the development.
- 1.2 The schemes which are funded by S106 contributions are linked to the County Council's capital programme and are reflected within the Integrated Plan, as well as other documents such as the Local Transport Plan and service based capital programmes. All County Council S106 contributions are negotiated and secured in line with current adopted planning policy.
- 1.3 As a result of the economic slowdown, the County Council has received a number of requests from developers who are seeking to defer Section 106 payments that have already been negotiated. This has triggered the need for a process to deal with such requests. It must be expected that more requests will be received in the short to medium term.
- 1.4 This paper sets down a proposed process for dealing with such requests, for determination by Cabinet.

2. SECTION 106 DEFERRAL PROCESS

- 2.1 It is suggested that the process for considering s106 deferral requests be set within the context of the scheme of financial delegation. All decisions will be made by Cabinet and reported either through the Integrated Finance and Performance Report or a separate report in the larger cases.
- 2.2 In more detail, the proposed process for determining requests will be as set down in table 1 and is as follows.

Stage 1 – Developer requests received by the County Council

Stage 2 – Assessment of Request

Officers within Growth and Infrastructure and Finance, Property and Performance Directorates will assess all deferral requests in consultation with the relevant spending Directorates (see assessment criteria below). A recommendation will then be made to Cabinet as set out within Table 1.

Stage 3 – Decision

Once a decision has been taken, the developer will be informed of the outcome.

Table 1: Proposed Authorisation Limits for Variations to S106 Agreements

S106 deferral amount	Over £250,000	under £250,000
Decision made by:	Cabinet as a separate report	Cabinet as part of the Integrated Finance and Performance Report
Recommendations made by:	Corporate Director, Finance, Property & Performance and Executive Director, Environment Services	Corporate Director, Finance, Property & Performance

2.3 It is proposed that the following criteria be used by officers when considering the appropriateness of s106 deferral requests.

- Which scheme the S106 money is allocated to (if any)
- When is the scheme programmed to take place
 - underway
 - completed
 - programmed to start
 - no programme at present
- What percentage is the S106 payment in relation to the overall scheme cost.
- What relationships are there between funding streams from separate S106 agreements. Pooling of contributions from different developments towards individual schemes is common practice and is a practice that is appropriate within the national planning guidance and circulars. An assessment would need to be made of the impact of a deferral of one S106 as to how it affects the pooled funding from a number of different S106 agreements.
- Any financial costs to the County Council if the S106 payment were to be delayed - cost of prudential borrowing and bridging finance and where these costs would be covered from – the default position is the developer
- Will the County levy interest for deferred payments – this is a standard clause within S106 agreements. A decision would need to be taken whether to invoke this clause.
- Instead of deferring payments, consideration will be given whether receiving the due amount in instalments is more appropriate.
- Developer risk – the use of bonds to protect the payment in the event of the developer entering a period of financial difficulty (late payment) or going out of business (no payment) is made at present. However the ability to secure bonds in the current financial markets is reported by

developers to be difficult. The cost of bonds is an additional development cost.

- The social cost to the community because of the delay to the provision of infrastructure.

- 2.4 A number of requests for deferral have recently been made and it is proposed that they be reported with an evaluation against the above criteria, to the next Cabinet meeting.

3. SIGNIFICANT IMPLICATIONS

Financial Issues and Implications

- 3.1 A significant part of the Council's capital programme is funded through s106 funding. If s106 payments are deferred, there is the potential to have a financial impact on the Council if borrowing has to be undertaken to fill the gap temporarily left by the s106 funding. This will be fully considered when requests are made and recommendations prepared for Cabinet. This impact can be mitigated principally by adjusting the spend profile to reflect any agreed changes to the receipt of s106 funds.

Resources and Performance Implications

- 3.2 If schemes funded by s106 payments are delayed, this could have an impact on the Council's performance and particularly the services that it provides to the Community. This will be considered as part of any recommendations to Cabinet.

Statutory Requirements and Partnership Working

- 3.3 The County Council has statutory responsibilities for the provision of certain services, such as education. Any agreement to defer S106 payments must not jeopardise the County Council's ability to deliver services it has statutory responsibilities for.
- 3.4 County Council Officers work extensively with partners including Cambridgeshire Horizons and the district councils regarding the securing and management of S106 funding agreements. County Officers input into the district councils' policy development and review work regarding S106. For deferral requests, County Officers will work closely with District Colleagues and the need for this close working is underlined by the fact that the developer may be seeking to vary the requirements that also affect the district and parish councils such as public open space requirements or the provision community facilities or community development workers.

Climate Change

- 3.5 There are no significant climate change implications.

Access and Inclusion

- 3.6 There are potential access and inclusion implications should developers seek

to defer S106 contributions relating to transport. These implications will need to be considered on a case-by-case basis.

Engagement and Consultation

- 3.7 It is proposed that Officers within the Growth and Infrastructure Directorate will make the relevant Local County Member, District Member and Parish Council Members aware of deferral requests as soon as they are received. Officers within Growth and Infrastructure will then alert the relevant Members as to the outcome when the final decision is made.

Source Documents	Location
Copies of S106 agreements are held by the New Communities Service	Castle Court A wing 2nd Floor
Original S106 agreements are held by the County Council Records Office	Shire Hall 023