

Report for Resolution

Report to Cabinet
16 March 2011

Item
6

Report of Head of Planning

Subject Planning Obligations – Prioritisation Framework

Purpose

This report reviews the prioritisation framework agreed by Executive in May 2009 in the light of experience since then, the practicalities of its operation, current economic conditions, changes in practice nationally and likely future impacts of the adoption of the Joint Core Strategy. The existing framework is appended (Appendix 1).

Recommendations

That the revised version of the Planning Obligations Framework as set out in appendix 2 be agreed.

Financial Consequences

The financial consequences of this report are that in the current economic climate planning permission may be approved with a reduced level of developer contribution where they are shown to be unviable in making the full level of contribution. This is likely to increase the income that will be received to the Council in the short term although in the longer term may increase pressures on the Council and other service and infrastructure providers. The long term effect on Council income is more than likely to be offset by receipts arising from the new homes bonus and is not likely to be significant in any case as this whole approach will need to be reconsidered following the introduction of a Community Infrastructure Levy planned for early 2011.

Risk Assessment

Failure to operate an effective and fair viability assessment process may stifle new development and deter potential developers.

Funds may not be available to the City and County Council to deliver all the community benefits (play space, open space, transport, affordable housing, education etc.) that would normally be expected as development is implemented.

Strategic Priority and Outcome/Service Priorities

The report helps to meet the strategic priority “Strong and prosperous city – working to improve quality of life for residents, visitors and those who work in the city now and in the future” and the service plan priority to maintain high level performance of its development management service

Executive Member: Cllr MacDonald

Ward: All

Contact Officers

Ian Whittaker, Planning Development Manager
Graham Nelson, Head of Planning

01603 212528
01603 212530

Background Documents

Executive Report 27th May, 2009. Response to Consultation – Planning Obligations –
A Framework for Prioritisation

Report

1) Reasons for review

1.1 The current approach to assessing the prioritisation of different aspects of planning obligations was agreed by Executive in May 2009. It was intended that this approach be used only in exceptional circumstances. Although relatively few planning applications have been permitted using this approach since it was adopted, in view of the continuing depressed state of the property market and the increased range of planning requirements likely following the adoption of the Joint Core Strategy (JCS) (particularly the reduced threshold for the provision of affordable housing) it is considered there is a need to refresh the framework.

1.2 In practice there will be few significant scale residential developments that will be able to meet the full range of requirements set out in policy and, furthermore, new policies in the JCS will require maximum viable levels of renewable energy/energy efficiency measures to be delivered. Therefore it will be necessary to understand how competing priorities relate to an increased number of sites if development across the city is not to be stalled.

1.3 There have also been related changes to the law relating to Section 106 agreements for planning permissions granted after 6th April, 2010. There is now a statutory requirement for a planning obligation to meet the following tests:

- be necessary to make the development necessary in planning terms;
- be directly related to the development; and
- be fairly and reasonably related in scale and kind to the development.

Therefore simply applying a mathematical formula for items such as play space, transportation etc has to be justified in relation to the development concerned in order to show that the above tests are met. Failure to do this means that the terms of the planning obligation may be open to challenge.

1.4 A previous version of this report was considered at the Sustainable Development Panel on 17th February. The Panel agreed that the Framework be amended as set out in Appendix 2 and the matter be referred to Cabinet for approval. It was also agreed that the chair would work with officers to consider how to further involve local members in the process and the report has been amended in this respect.

1.5 The previous version of this report was also the subject of discussion at the Developers' Forum meeting held on 14th February.

2) Changes proposed to the Framework

2.1 Appendix 1 sets out the Framework as agreed in May 2009. Appendix 2 sets out the framework as now proposed. The main changes proposed are summarised below (additionally a number of minor changes have been made for presentational reasons).

2.2 In section A, para 2 of the framework in Appendix 2 the criteria are amended as follows:

- deletion of “exceptional benefits in terms of regeneration” in section a, para 1. It is expected that planning permission will be granted in many cases where there are benefits in terms of regeneration but this benefit will not necessarily be exceptional in nature.
- add energy, sustainable construction and water efficiency to the bullet list of points in section A, para 2.
- Inclusion of an additional criteria to help in reaching judgement on competing essential policy requirements. There is a need to add to the procedures a requirement on behalf of the “spending department or body” to justify why a particular payment may be necessary in relation to a particular site. Failure to do so would mean, by default, that a particular sum is of low priority when officers are making an assessment of priorities.
- The criteria also refer to lower priority being given to requirements where there is a reasonable expectation that they may be met from other sources.

2.3 In section B, Process for Negotiations, the following changes are proposed:

- Order is amended to reflect that only when it has been ascertained that the process would be going ahead would internal discussions be held and local members alerted. There would not normally be a need to utilise development team to co-ordinate input but there will be a need for the relevant spending departments to justify why the “normal” financial sum is required by, for example, explaining what the money would be spent on, whether there is need for a fixed sum to complete the funding of a nearby project, or where there are any other sources of finance that could be utilised. This amendment also requires case officers to alert local members earlier in the process to encourage greater awareness of local priorities.
- para 2 amended to make clear that an external appraisal may not be necessary in all cases as relatively straightforward, and smaller sites, may be able to dealt with in-house. Guidance can be given on the financial models to be used and the assumptions to be made in submitted iterations.
- Para 4 amended to make clear that more than 1 iteration of modelling may be required in certain circumstances.
- Para 6 clarified to show that a draft report will be made by planning officers and agent/applicant and Norfolk County (if relevant) advised as appropriate. It is not considered practicable to include ward and County councillors at this stage (as was previously the case).
- Para 8. Makes clear that any report to Planning Applications Committee will be prepared in consultation with the Portfolio Holder for Environment. Also amended to make clear that consideration of “clawback” arrangements may not be necessary if schemes are built out promptly following approval.

2.4 It should be noted that the Council's whole approach to planning obligations will have to change when the community Infrastructure levy is adopted and there will

also be the need to consider transitional arrangements for applications determined before CII takes effect but implemented after such date. These issues will need to be considered in detail at the time that the adoption of CIL takes place. Therefore this approach will, by necessity, only temporary in nature and, based on current expectations, reviewed further within 12 months.

Appendix 1

Report to Executive, 27th May, 2009

Planning Obligations- A Framework for Prioritisation.

A) Criteria for determining priorities for Developer Contributions

(In event of a development proposal being proven to be unviable)

The following criteria provide a framework (for use by Planning Applications Committee when determining individual planning applications) for ranking requirements for developer contributions which may be covered by planning conditions, s.106 agreements or planning obligations. The Framework is based on attributing a ranking of requirements based on the following categories, listed in priority order.

1. **Site Specific Critical Requirements** – even if a scheme is unviable, planning permission cannot be granted if these elements are required but lacking.

Note- if these items can be funded by other means they would become Category 4.

- Where the requirement is a vital component or integral part of the scheme
E.g. on/off-site highway improvements
- Where implementation can only happen as part of development e.g.
riverside walk
- Requirements which provide a “once and for all opportunity” e.g. bridges
- Where the ability to provide the requirement is lost once the site is
developed e.g. restoration of historic buildings as part of the scheme

- 3 **Essential policy requirements**– Development should not normally be granted planning permission unless there are exceptional benefits in terms of regeneration. The normal list of Policy Requirements (below)

- General transportation contributions/enhancements
- Affordable housing
- Education
- Libraries
- Play/open space
- Way finding/signs
- Heritage interpretation
- Shop mobility

These will be ranked according to the following criteria. Higher priority will be given to requirements where there is:

- A site specific requirement identified in a Local Plan policy or a SPD e.g. community provision in the North City Centre Area Action Plan

- Evidence of need or existing deficiency in provision e.g. is the development in a sector of the City deficient in open space provision; is there a high level of affordable housing already in this part of the City?

The requirements cannot be met through contributions from other developments or other funding sources

- 4 **Other related requirements** – these would usually be scheme specific benefits, which are beneficial, but are not a policy requirement and could potentially be capable of being financed by other means (as in Circular 5/05)

Assessment Process.

The process will also take account of:

Deferred payments

As part of the open book process an assessment of the scope to defer payments and achieve full contributions at a later stage in the development will be made. This needs to be balanced against the risk of not securing contributions.

On site provision v commuted sums

The on site requirements will be considered against the potential to secure commuted payments in lieu.

The costs of projects to meet identified needs:

The costs of addressing specific needs and meeting identified requirements should be assessed. This is important to ensure that the contributions secured are capable of delivering worthwhile benefits.

Note: *it is not intended to compromise the quality of design of development proposals.*

B) S.106 –Process for Negotiations.

1. Case officer draws up comprehensive list of s.106/related requirements (in accordance with Circular 5/05) (which impose a cost on development) at “informal” or pre planning application stage. This list should include those requirements secured on behalf of other agencies e.g. education and library contributions for Norfolk County Council (in accordance with County Council standards and protocol)
2. Case officer refines list as a result of discussions with development team to coordinate corporate input
3. In the event that:
 - the developer claims the scheme will not be viable if the full list of planning obligations is to be provided and
 - where it is considered that the development may be needed to meet the aims of the development plan, the City Council instructs an independent valuation expert, such as the District Valuer to undertake an “open book” appraisal of the scheme to verify the viability of the full scheme including all s.106 requirements. This should be based on residual valuation methodology and for housing schemes should be based on the Homes and Communities Agency model. Costs of this work to be met by the developer. The results of the appraisal will be shared with the developer but the detail

will remain confidential and summarised in any report to planning applications committee

4. The appraisal process will include:
 - An assessment of all costs and values based on current prices (at the time of the appraisal) and may not therefore reflect the actual price that the developer has paid for the site)
 - advice from the valuation expert on a reasonable level of profit which is acceptable from the development in the light of development risks, which may require private housing to be dealt with separately from affordable housing e.g. 18-20% (on capital value) and affordable housing (6% of cost.)
 - clarification about the level of developer contributions which can be met from the development and allow the scheme to be economically viable, including the impact of deferred payments
5. Following receipt of appraisal report and understanding of the viability of the scheme, case officer prioritises list of s.106 requirements according to the criteria in the framework to determine whether or not it is appropriate to recommend approval for the scheme without the full requirements being met. The appraisal report will be shared with the developer/applicant.
6. Corporate officer discussion to reach agreement about priorities in particular to:
 - Determine the proportion of the needs arising from the development that can be delivered through potential commuted sums and
 - Ensure that any commuted sums will also be capable of delivering worthwhile community benefits (through identifying works that will be delivered, costs involved and other sources of funding).
 - (Note: Norfolk County Council and ward councillors should be included in the consultation process)
7. Negotiate with developer to secure requirements in priority order according to overall level of contribution that can be provided on the basis of economic assessment of whole scheme
8. Report to Planning Applications Committee (which should be prepared in consultation with the Portfolio holder for Sustainable City Development) to include:
 - An explanation of the exceptional circumstances and how the proposal will meet the needs of the development plan, in order to justify a recommendation of approval with reduced s.106 requirements. This principle should be established first before any consideration of the relative priorities that should be given to specific planning contributions
 - The recommendations about planning obligations priorities based on an assessment of needs the costs of identified improvement works or provision of new facilities and the ability of the development to contribute to meeting these. This should set out the implications of accepting reduced contributions, including those collected on behalf of the County Council.

- The timeframe that the viability assessment remains valid, if the scheme does not commence immediately. This will normally be 18 months after planning permission is granted or a longer time to be agreed with the local planning authority where it is agreed that there has been no change in market conditions.
 - Consideration of deferred payments to secure the full level of contributions at a later stage in the development
 - Consideration of an “overage” clause to allow Council to “clawback” funding in the event of developer achieving larger profit than anticipated at the time of the appraisal. The overage clause would be capped to a maximum based on the balance of contributions the site is liable for after deduction of any contribution already made.
9. The detailed information in the appraisal will remain confidential (shared only with the developer/applicant and where relevant other agencies such as Norfolk County Council, where contributions are secured on their behalf).

Appendix 2

Planning Obligations- A Framework for Prioritisation.

A) Criteria for determining priorities for Developer Contributions

(In event of a development proposal being proven to be unviable)

The following criteria provide a framework (for use by Officers and Planning Applications Committee when determining individual planning applications) for ranking requirements for developer contributions which may be covered by planning conditions, s.106 agreements or planning obligations. The Framework is based on attributing a ranking of requirements based on the following categories, listed in priority order.

1. **Site Specific Critical Requirements** – Irrespective of the regeneration benefits of a particular scheme there are certain requirements that must be delivered in full. Without these being delivered planning permission cannot be granted.
 - Where the requirement is a vital component or integral part of the scheme
E.g. on/off-site highway improvements
 - Where implementation can only happen as part of development e.g.
riverside walk
 - Requirements which provide a “once and for all opportunity” e.g. bridges
 - Where the ability to provide the requirement is lost once the site is developed e.g. restoration of historic buildings as part of the scheme
2. **Essential policy requirements** – The following requirements are important, are set by policy and required in order for development to go ahead. However, it is recognised in the current financial climate that development may not be viable where all these requirements are met in full. Where development brings with it a considerable benefit to the existing environment and regeneration objectives it may be considered desirable to compromise on one or more of these requirements where necessary in order to deliver wider benefits. The normal list of Policy Requirements (below)
 - General transportation contributions/enhancements
 - Affordable housing
 - Education
 - Libraries
 - Play/open space
 - Way finding/signs
 - Heritage interpretation
 - Shop mobility
 - Energy
 - Sustainable construction
 - Water usage

Where it can be demonstrated that wider regeneration benefits would occur and these would outweigh contributions foregone requirements will be ranked according to the following criteria. Higher priority will be given to requirements where there is:

- A site specific requirement identified in a Local Plan policy or a SPD e.g. community provision in the North City Centre Area Action Plan
- Evidence of need or existing deficiency in provision e.g. is the development in a particular part of the City deficient in open space provision; is there a high level of affordable housing already in this part of the City?
- A defined need for a particular amount of funding exists to deliver or complete a defined project well related to the site.

Lower priority will be given to requirements where there is a reasonable expectation that they may be able to met through contributions from other developments or other funding sources

3. **Other related requirements** – these would usually be scheme specific benefits, which are beneficial, but are not a policy requirement and could potentially be capable of being financed by other means (as in Circular 5/05)

Assessment Process.

The process will also take account of:

Deferred payments

As part of the open book process an assessment of the scope to defer payments and achieve full contributions at a later stage in the development will be made. This needs to be balanced against the risk of not securing contributions.

On site provision v commuted sums

The on site requirements will be considered against the potential to secure commuted payments in lieu.

Note: *it is not intended to compromise the quality of design of development proposals.*

B) S.106 –Process for Negotiations.

1. Case officer draws up comprehensive list of s.106/related requirements (in accordance with Circular 5/05) (which impose a cost on development) at “informal” or pre planning application stage. This list should include those requirements secured on behalf of other agencies e.g. education and library contributions for Norfolk County Council (in accordance with County Council standards and protocol)
2. In the event that:
 - the developer claims the scheme will not be viable if the full list of planning obligations is to be provided, and
 - where it is considered that the development may be needed to meet the aims of the development plan.

The City Council may instruct an independent valuation expert, such as the District Valuer to undertake an “open book” appraisal of the scheme to verify the

viability of the full scheme including all s.106 requirements (for simpler and smaller cases there may be sufficient experience in-house). The appraisal should be based on residual valuation methodology and for housing schemes the Homes and Communities Agency model will be used unless otherwise agreed. Costs of this work to be met by the developer. The results of the appraisal will be shared with the developer but the detail will remain confidential and summarised in any report to planning applications committee

3. Case officer refines list as a result of discussions with spending departments to coordinate corporate input and alerts local members and portfolio holder to fact that exercise is being conducted to see if any relevant views exist on local priorities.
4. The appraisal process will include:
 - An assessment of all costs and values based on **current** prices and valuations (at the time of the appraisal) and may not therefore reflect the actual price that the developer has paid for the site)
 - a reasonable level of profit which is acceptable from the development in the light of development risks, which may require private housing to be dealt with separately from affordable housing e.g. 18-20% (on capital value) and affordable housing (6% of cost.)
 - clarification about the level of developer contributions which can be met from the development and allow the scheme to be economically viable, including the impact of deferred payments
 - more than one iteration of data may be required. One should include the “normal” s106 requirements and 40% affordable housing (with an assumption of nil grant aid from the HCA and affordable rents¹). Planning officers will advise of other iterations that would be required to be submitted.
5. Following receipt of appraisal report and understanding of the viability of the scheme, case officer prioritises list of s.106 requirements according to the criteria in the framework to determine whether or not it is appropriate to recommend approval for the scheme without the full requirements being met. The appraisal report will be shared with the developer/applicant.
6. Corporate officer discussion (Including County Council officers where appropriate) to reach agreement about priorities, and if agreement cannot be reached to recommend a proposal, in particular to:
 - Determine the proportion of the needs arising from the development that can be delivered through potential commuted sums and
 - Ensure that any commuted sums will also be capable of delivering worthwhile community benefits (through identifying works that will be delivered, costs involved and other sources of funding).

¹ Practice regarding affordable housing contributions is subject to considerable uncertainty at present. However, it is understood that providing grant to secure increased provision of affordable rented housing on private residential led schemes will be a very low priority for HCA funding. If grant is likely to be forthcoming it is likely that obligations will need to be renegotiated.

7. Agree with the developer to secure requirements in priority order according to overall level of contribution that can be provided on the basis of economic assessment of whole scheme. If the developer does not agree and will not sign the s.106 agreement then there is little point in pursuing further, and a report for refusal of planning permission would then be drafted.
8. Report to Planning Applications Committee (which should be prepared in consultation with the Portfolio holder for Environment) to include:
 - An explanation of the exceptional circumstances and how the proposal will meet the needs of the development plan, in order to justify a recommendation of approval with reduced s.106 requirements. This principle should be established first before any consideration of the relative priorities that should be given to specific planning contributions
 - The recommendations about planning obligations priorities based on an assessment of needs the costs of identified improvement works or provision of new facilities and the ability of the development to contribute to meeting these. This should set out the implications of accepting reduced contributions, including those collected on behalf of the County Council.
 - The timeframe that the viability assessment remains valid, if the scheme does not commence immediately. This will normally be 18 months after planning permission is granted or a longer time to be agreed with the local planning authority where it is agreed that there has been no change in market conditions.
 - Consideration of deferred payments to secure the full level of contributions at a later stage in the development.
 - Consideration of an “overage” clause to allow Council to “clawback” funding in the event of developer achieving larger profit than anticipated at the time of the appraisal. The overage clause would be capped to a maximum based on the balance of contributions the site is liable for after deduction of any contribution already made. If a “short dated” commencement condition is imposed and development is completed in a timely manner then this element would not normally be necessary.
9. The detailed assumptions and background information in the appraisal will remain confidential (shared only with the developer/applicant and where relevant other agencies such as Norfolk County Council, where contributions are secured on their behalf).