

3 September 2020

Agenda Item: 5

REPORT OF THE CORPORATE DIRECTOR, PLACE DEVELOPER CONTRIBUTIONS AND COVID -19

Purpose of the Report

1. To seek Committee approval for delegated authority to be given to the Service Director for Investment and Growth to agree deferrals of payment of planning obligations where requested and justified in order to support development in Nottinghamshire during the period which the County is affected by the COVID-19 pandemic.

Information

2. Section 106 Planning Obligations are made in association with the grant of planning permission to help mitigate the impacts of development. The County Council receives these obligations from developers in the form of an agreed financial payment as development proceeds to contribute to the impacts of development on services such as schools, transport, waste management and library services. This payment is due at a date prescribed within a legal agreement, which is often linked to the commencement of development or a period thereafter or when a specified level of development is completed. The County Council has an approved [Planning Obligations Strategy](#) last updated in October 2019
3. In response to the spread of Coronavirus (COVID-19), the Ministry of Housing, Communities and Local Government (MHCLG) has introduced measures to assist the development industry and has amended the Community Infrastructure Levy (CIL) regulations to give authorities more discretion to defer payment for small and medium sized developers and has asked local authorities to consider the deferral of payments of section 106 planning obligations. The County Council is a party to S106 agreements within Nottinghamshire and its agreement is needed to any amendment
4. The MHCLG guidance states

“Where the delivery of a planning obligation, such as a financial contribution, is triggered during this period (*to July 2021*), local authorities are encouraged to consider whether it would be appropriate to allow the developer to defer delivery. Deferral periods could be time-limited, or linked to the government’s wider legislative approach and the lifting of CIL easements (although in this case the government would encourage the use of a back-stop date). Deeds of variation can be used to agree these changes. Local authorities should take a pragmatic and proportionate approach to the enforcement of section 106 planning obligations during this period. This should help remove barriers for developers and minimise the stalling of sites.”

5. The County Council has already been approached by developers in relation to deferral of payments who have cited the impacts of COVID-19 as a reason.
6. In order to ensure there is swift consideration of requests it is recommended that any such requests are considered by officers on their merits and should be based upon evidence submitted by the developer as to the impact of COVID-19 on their development. The assessment should take into account the timing and financing of any project for which S106 funding is expected. It is proposed that the Service Director (Investment and Growth) has authority to consider and agree such requests in consultation with the Chair of the Communities and Place Committee and Chair of Planning and Licencing Committee. It is recommended that this should apply for a period up to the end of July 2021.
7. Any deferral will be to a specific date and should not normally result in payments being deferred by more than 12 months. Such variations will be agreed via a side letter (or deed of variation if considered more appropriate) to the existing agreement. An indexation factor is applied to payments to preserve the value of a contribution, and any deferred sum should remain subject to such indexation to the point at which it is due.
8. The recommendation will therefore not result in any loss of obligation to the County Council over time, but enable consideration of deferral of obligations for a time limited period, reflecting Government guidance.
9. It should also be noted that developers are citing COVID 19 in other S106 matters such as the wording of proposed S106 agreements in respect of specified trigger points. Officers will continue to seek to ensure that such wording reflects the principles outlined in the County Council Planning Obligation Strategy wherever possible, given that such development is expected to occur beyond the current COVID-19 Pandemic period.

Other Options Considered

10. None. The County Council is already being approached by developers with regard to amended payment periods and requires an agreed approach.

Reason for Recommendation

11. To ensure that requests for amendments to payments are considered promptly and efficiently.

Statutory and Policy Implications

12. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public-sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) That the Committee agrees that requests for payment deferrals are considered and authorised where necessary by the Service Director (Investment and Growth) in

consultation with the Chair of the Communities and Place Committee and Chair of Planning and Licencing Committee during the period up to July 2021.

Adrian Smith
Corporate Director, Place

For any enquiries about this report please contact: Stephen Pointer, Team Manager, Planning Policy, 0115 977 3793
Constitutional Comments (SS 06/08/2020)

Financial Comments (RWK 06/08/2020)

14. There are no specific financial implications arising directly from the report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All