

Economy and Environment Scrutiny Committee



Scrutiny Review

A review of making the best of “Planning Gain” in the Vale of Glamorgan to provide a more effective response to land use planning issues across the Council.

Final Report
September 2005

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Foreword



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I am pleased to present the Economy and Environment Scrutiny Committee's Report on making the best of planning gain in the Vale of Glamorgan. The review was established following concerns that arose from the Green Spaces Improvement Review.

Throughout the review, the Council's corporate priority "to achieve a quality environment through promotion and the use of sustainable practices and by making the best use of current and future resources" was paramount.

The review considered best practice and how benefits derived from planning gain could be used to reduce the negative impact of development. It was encouraging to discover during the exercise the notable practice that the officers within the Planning and Transportation Department had already introduced prior to the commencement of this review.

I would like to thank the officers involved with the review for providing their full help and assistance and my colleagues on the Economy and Environment Committee for the effective way in which they have carried out their discussions with officers on what has proved to be a positive first review for this committee.

I hope that Members and the public will be reassured by this report and that the recommendations of this scrutiny committee will form the basis of a best practice model.

Executive Summary

The Economy and Environment Scrutiny Committee has a responsibility to examine the work of the Council and its partners in the provision of services in the areas of Building Services, Visible Services, Economic Development and Leisure and Planning and Transportation within the Vale of Glamorgan. Its task is to actively promote improvement by testing the effectiveness of this work and recommending ways in which greater benefit may be obtained for the community as a whole.

The review considered the Council's current approach was to seeking and implementing planning obligations and identifying any gaps or improvements that could be made to enhance that approach. A number of recommendations have been made to the Executive in relation to seeking and implementing planning obligations for interested parties. (See below)

Planning obligations are a legal tool that Local Authorities may use to seek contributions from developers in order to mitigate negative development impacts and facilitate development that might not otherwise occur or to prevent or control unacceptable development or use of land. The existing system of planning obligations is contained within Section 106 of the Town and Country Planning Act 1990 (as amended 1991) therefore they are sometimes referred to as Section 106 agreements or planning gain. The most commonly sought contributions include affordable housing, highways, landscaping and open space, education and community facilities. However, these areas are not exclusive and indeed the Vale of Glamorgan Council has more recently requested contributions for areas such as community art and public transportation.

During the last 3 years the Vale of Glamorgan Council has dramatically improved its approach to planning obligation contributions. This year the Wales Audit Office requested further information on the income account related to S106 agreements as it showed an anomaly from 2002/03 to 2003/04, with a significant increase in income from £23,000 to over £1.3 million.

Although the Council has made a marked improvement towards securing planning gain contributions further work needs to be undertaken in this area. It is clear that workload capacity within the Development Control Section is at saturation point and that if the Council wishes to make the best of "Planning Gain" in the Vale of Glamorgan to provide a more effective response to land use planning issues across the Council, a post would need to be secured within the Planning and Transportation Division.

The areas of greatest concern to Scrutiny include the lack of clarity and nature of some of the negotiated heads of terms of S106 agreements, which are thereafter subject to the poor financial audit trail and the lack of capacity for monitoring the agreements once in place. Should a developer or third party choose to examine any specific agreement and find a discrepancy the reputation of the Council may and should be questioned.

The following recommendations have been drawn up for consideration by the Economy and Environment Scrutiny Committee to discuss and endorse for Executive decision:

- (i) That the Cabinet support the creation of a post at Principal Officer level to deliver the requirements of Section 106 agreements as part of the budget

setting process that will be partly funded from administration charges to developers.

- (ii) That the Cabinet welcome the achievement to date of the Planning and Transportation Division on the progress of Section 106 agreements within the Vale.
- (iii) That the Cabinet acknowledge that monies may have to be refunded to developers where Section 106 agreement spend dates have not been monitored and have passed their spend deadlines.
- (iv) That the membership of the Strategic Planning Group be considered and the group consult with external partners such as the Vale Council for Voluntary Services to ensure sound community knowledge and requirements are written into Section 106 agreements.
- (v) That participants of the Strategic Planning Group are made aware of their responsibilities with regard to Section 106 agreements and confirm they are able to respond to requests for information in a timely manner.
- (vi) That the Planning and Transportation Division request the Research Section within the division to develop an in-house electronic database supported by ICT, to audit and monitor Section 106 agreements.
- (vii) That the heads of terms negotiated by the Planning and Transportation Division for Section 106 agreements are of a nature that is concise and straightforward to audit and monitor.
- (viii) That the Head of Planning and Transportation and the Head of Legal Services, investigate the advantages and disadvantages of externalising the drafting of Section 106 agreements and report to Environment and Economy Scrutiny the outcome of that investigation.
- (ix) That the importance of further Supplementary Planning Guidance be recognised to support the Council's UDP and the cost and timeliness of using a consultant to write a comprehensive set of Supplementary Planning Guidance documents be researched and reported to Environment and Economy Scrutiny Committee for consideration as a matter of urgency.

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1. Introduction

- 1.1 The Economy and Environment Scrutiny Committee has a responsibility to examine the work of the Council and its partners in the provision of services in the areas of Building Services, Visible Services, Economic Development and Leisure and Planning and Transportation within the Vale of Glamorgan. Its task is to actively promote improvement by testing the effectiveness of this work and recommending ways in which greater benefit may be obtained for the community as a whole.

The review considered the Council's current approach to seeking and implementing planning obligations and identifying any gaps or improvements that could be made to enhance that approach. A number of recommendations have been made to the Executive in relation seeking and implementing planning obligations for interested parties. (See Section 6)

1.2 Planning Obligations

Planning obligations are a legal tool that Local Authorities may use in order to seek contributions from developers to mitigate negative development impacts and facilitate development that might not otherwise occur or to prevent or control unacceptable development or use of land. The existing system of planning obligations is contained within Section 106 of the Town and Country Planning Act (as amended 1991) therefore they are sometimes referred to as Section 106 agreements or planning gain. The most commonly sought contributions include affordable housing, highways, landscaping and open space, education and community facilities. However, these areas are not exclusive and indeed the Vale of Glamorgan Council has more recently requested contributions for areas such as community art and public transportation.

The Vale of Glamorgan boasts a diverse and attractive environment. Its desirability has resulted in increased pressure for a range of developments including residential, employment, leisure uses and associated infrastructure, in both the rural and urban Vale. The Vale of Glamorgan also has a number of social, economic and physical issues that can often be exacerbated due to the impacts of new developments. Planning obligations must be negotiated to ensure that developments make a positive, equitable and sustainable contribution to the environment and community within the area. Planning gain is a complex issue, there cannot be a blanket approach or standard formulae developed as national guidance is clear that planning obligations must be directly related to the individual proposals.

1.3 Terms of Reference

The review of planning gain forms part of the 2005/06 planned work programme of the Environment and Economy Scrutiny Committee. Review scope and timescales were agreed in May 2005. In line with the agreed work programme the review commenced in June 2005 and was completed in September 2005. Officers from the Improvement Development Team and the Planning and Transportation Division supported the review process.

Appendix 1 of the report contains the review scoping document, which outlines the objectives and purpose of carrying out the review including the desired outcomes.

1.4 Methodology

The review was carried out in line with the Council's Overview and Scrutiny methodology. Comprehensive guidance is provided with regards to the overview and scrutiny function in the Vale of Glamorgan including:

- Identifying issues for scrutiny review
- Scoping the review
- Collecting and collating evidence
- Final report

The main focus of the review was to consider existing activity towards S106 agreements, recent initiatives and Supplementary Planning Guidance instigated by the Planning and Transportation Division, identify any gaps in current provision and make recommendations to address these gaps.

2. Current Situation

2.1 The National Perspective – Wales

The Council's policy on planning gain is in line with National Planning Policy – Welsh Office Circular 13/97 on Planning Obligations. This circular lays down 5 tests that must be met for the Council to seek planning obligations. They must be:

- Necessary
- Relevant to planning
- Directly related to the proposed development
- Fairly and reasonably related in scale and kind to the proposed development
- Reasonable in all other respects

In addition it states that "local planning authorities and developers should place more emphasis on the overall quality of a development proposal than on the number and nature (or value) of planning benefit they can obtain or offer."

Furthermore, the guidance makes it clear that where a condition could be used to secure the same end as a legal agreement in accordance with the policy tests of Welsh Office Circular 35/95 (The Use of Conditions in Planning Permissions), the Local Authority should use conditions rather than a planning obligation. Therefore planning obligations are a means to legally secure benefits to the community when they cannot be achieved by conditions.

Planning Policy Wales (PPW), 2002 state: "The planning system regulates the development and use of land in the public interest. It should reconcile the needs of development and conservation securing the economy, efficiency and amenity

in the use of land, and protecting natural resources and the historic environment, thereby contributing to sustainable development.”

Section 4.7 details the Welsh Assembly Government’s view of planning obligations; it states: “Contributions from developers may be used to offset negative consequences of development, to help meet local needs, or to secure benefits which will make development more sustainable.”

Furthermore, the advice states: “Unacceptable development should never be allowed because of unrelated benefits. Acceptable development should never be refused simply because an applicant is unwilling to offer such benefits.” (Paragraph 4.7.5)

Further national guidance which is relevant to the potential use of planning obligations, is also contained within the following topic specific Technical Advice Notes or TANs:

- TAN 2: Planning and Affordable Housing (1996)
- TAN 4: Retailing and Town Centres (1996)
- TAN 5: Nature Conservation and Planning (1996)
- TAN 6: Agricultural and Rural Development (2000)
- TAN 8: Renewable Energy (1996)
- TAN 13: Tourism (1997)
- TAN 14: Coastal Planning (1998)
- TAN 15: Development and Flood Risk (2004)
- TAN 16: Sport and Recreation (1998)
- TAN 18: Transport (1998)
- TAN 21: Waste (2001)

The Local Planning Authority makes reference to such documents where they represent a material consideration to a planning application or appeal. As such the advice contained within the TANs may influence the scope of planning obligations within the Vale of Glamorgan.

2.2 The National Perspective – England

As the notable practice element of this report chiefly pertains to England it is important at this juncture to state the difference between planning policy in England under Central Government and planning policy in Wales under the National Assembly for Wales. English planning policy on planning obligations is set out in circular 1/97 and contains the same 5 necessity tests as outlined above. However, Central Government has replaced the existing provisions under Section 106 of the Town and Country Planning Act 1990 under which planning obligations are currently secured. The 2004 Act includes enabling legislation to this effect and provides for the term ‘planning obligations’ to change to ‘planning contributions’. ODPM Circular 05/2005 on Planning Obligations was published on 18 July 2005 and replaced Circular 1/97 with immediate effect. Key points to note in the new guidance in Circular 05/2005 are summarised below:

- Whereas the previous guidance merely referred to the need for contributions, etc. to be "necessary" the new Circular extends this definition by introducing a new test of "necessary to make the development acceptable in planning terms". This is designed to remove the ambiguity over what is "necessary" to allow development to proceed.
- LPAs are encouraged to ensure that their new local development framework policies set out a comprehensive framework for the negotiation of planning obligations.
- LPAs are encouraged to publish standard rates and formulae for planning obligations to meet particular impacts. These might cover, for instance, contributions per dwelling towards schools, health or other facilities.
- Greater use of unilateral undertakings is encouraged.
- Where complex or major applications are involved the Circular suggests that independent third parties could be used to bridge differences between a developer and a local authority in relation to the appropriate scale of planning obligations, although it is clear that any person appointed would only mediate, rather than decide the outcome of the negotiation like an arbitrator.
- The new Circular emphasises the need for transparent decision-making and reiterates the importance of ensuring that both "proposed" and "completed" planning obligations are available for public inspection. Where applications are dealt with by planning committee, the heads of terms of any such agreement should be available for public inspection.
- Where the combined impact of individual developments creates the need for infrastructure, the Circular provides that LPAs can secure contributions from developers towards a common pool of expenditure, which could not be reasonably required of individual developments.

2.3 The Local Perspective – The Vale of Glamorgan Council

The Adopted Vale of Glamorgan Unitary Development Plan 2005 is the Council's primary policy document for Section 106 agreements although few of the UDP policies make specific reference to planning obligations. However, those policies which do refer to the forms of development that may best be provided by the use of Section 106 agreements, are attached at Appendix 2 for information.

To support the Adopted UDP, a background paper on planning obligations was drafted in March 2005. The paper introduces the Council's approach to seeking and implementing planning obligations. The paper outlines the Council's intent to charge a 2% administration fee on top of the cost of the planning obligation agreement, this document is currently out to consultation and as a result may alter the way the administration charge is levied. The paper also details the Council's intent to produce further guidance focusing on specific topic areas,

such as education provision and to clarify in more detail the type and amount of contributions that may be sought from individual developments. This process has already commenced with The Vale of Glamorgan UDP Supplementary Planning Guidance for Affordable Housing having been drafted and adopted. Supplementary Planning Guidance (SPG) documents are non-statutory in nature and can assist landowners and developers with concise information on each S106 area as they are written. It is an on-going process responding to any changes in Local Planning Policy, market trends or specific requirements arising.

Each Supplementary Planning Guidance document needs to be the subject of public consultation in accordance with the protocol on preparing such documents. This process, although essential to strengthen the SPG weight to be accorded to the UDP, is slow and time consuming for the Planning Policy Officers. Due to the quantity and type of planning obligations likely to be sought by the Council, the development and adoption of SPG'S may take a several years.

The Planning and Compulsory Purchase Act 2004 introduced a new system of local development plans (LDPs) to replace the UDPs. The approach under the new system will be different from that by which the UDPs were adopted. It is envisaged that they will be considerably less time consuming as each individual objection need not be considered but the plan instead considered on its overall assessment. It may be possible to strengthen the Councils' position of positive planning obligations in the LDP. It is likely that a public consultation strategy for the delivery agreement to include a LDP will need to be submitted to the Welsh Assembly Government by July 2006, although the LDP is unlikely to be adopted in advance of the expiry of the UDP in 2011.

The ODPM is now encouraging the use of unilateral undertakings in England to speed up the planning gain process. The Planning and Compulsory Purchase Act 2004 received Royal Assent on 13th May this year and sections 46 –48 relate to planning contributions. The Act lays down new powers for planning authorities to introduce an option for developers to pay a pre-determined charge rather than entering into negotiations on planning contributions. WAG are yet to comment on this. There are advantages and disadvantages to this idea of unilateral undertakings:

- Advantages of unilateral undertakings
 - Takes less time than s106 (good for 8 & 13 week figures)
 - The developer's preference.
- Disadvantages of unilateral undertakings
 - Less legal checks.
 - Sometimes just signed off by DC officer.
 - Not passed on to s106 officer
 - Not correctly worded.
 - Sometimes signed by applicant who doesn't own the land

3. Findings

3.1 Planning gain within the Vale of Glamorgan Council

During the last 3 years the Vale of Glamorgan Council has dramatically improved its approach to planning obligation contributions. In 2005 the Wales Audit Office requested further information on the income account related to S106 agreements as it showed an anomaly from 2002/03 to 2003/04, with a significant increase in income from £23,000 to over £1.3 million. The drafting of SPGs has commenced to support the UDP and the Strategic Planning Group has met to consider major development sites planned cross the Vale.

Other Council departments have expressed satisfaction with the excellent consideration and communication abilities with regard to Section 106 agreements given by individual Development Control Officers. However, this is not always consistent due to the number of caseloads that are carried by Development Control Officers.

However, receipt of monies is also not the end of the process. All monies received by Section 106 agreement have a “spend by” date. They should also be secured for a specific activity and monitoring of the spending and planning conditions stated within the legal agreements is essential to remain above the reproach of by developers, auditors, regulators and by the general public. This issue will be covered in more detail in Section 4.

3.2 Good and notable practice within the Vale of Glamorgan

The Planning and Transportation Division has established a Strategic Planning Group with the definitive aim of achieving positive planning outcomes within the Vale. The Group has been formed to facilitate ‘joined up working’ between departments when dealing with strategic land use planning matters. This enables a high level working group to consider the implications of significant developments such as the proposal to develop for mixed uses, the land to the north of Rhoose railway line. The group meets quarterly to review all major development proposals, and seeks to ensure the delivery of necessary community benefits through Section 106 legal agreements.

This approach has resulted in a greater understanding of the role of land use planning within Council departments particularly social services and education. There has been a positive approach from other service departments in responding to requests for data and information on the likely impact of new developments, resulting in a more professional approach to planning gain negotiations. At present the group is made up entirely of Council officers but may benefit by being extended to include the voluntary sector. Due to their close working links with community based groups feel that they would have a lot to

offer with regard to understanding and providing information on localised community need.

A number of recent individual site development briefs have been of a high quality, such as the Penarth Heights project, residential development of the Barry Docks Waterfront, the proposed hotel development at Rhoose Airport and Cogan Hall Farm in Penarth. These sites have either promoted or secured good levels of funding for benefits such as green space, transport links and affordable housing, where appropriate, for community benefit.

3.3 The Audit Trail

As part of the review the audit trail from legal agreement to implementation was investigated. It proved quite difficult to follow with a number of departments involved in the activity. Prior to establishing a new structure and more recently appointing to the Senior Lawyer post (with responsibilities for planning and highway), it was necessary for the Legal Services Department to outsource the drafting of S106 agreements to a local firm of solicitors. The charge for drafting an S106 agreement is payable by the developer. The Legal Services recognised on a number of occasions the actual cost of drafting the agreement did not match the original quote given to the developer by the external solicitor. On each occasion the cost having significantly increased, this led to numerous complaints to the Development Control Section. Had it not been noted this would have caused the Council or specifically the Planning and Transportation Division to have had to fund the difference. Having picked up on this discrepancy Legal Services has addressed the situation on behalf of the Council.

Following the establishment of the new structure and the appointment to the relevant Senior Lawyer post, a review of the work outsourced to external companies was examined by the Legal Service. It was decided to undertake all future S106 agreements in-house (subject to capacity). This is consistent with the findings of the Legal Service Improvement Review (May 2004). There are a number of S106 agreements ongoing with the external solicitors and it would not be economic at this stage to bring such matters back in-house.

The Legal fees for planning gain monies are received by Legal Services. Commuted sums are paid directly by the developer/landowner to the Finance Department. When the monies are passed to the accountants by the external solicitor acting for the Council it tends not to be coded or noted by department. This causes difficulties for the accountants who have problems ascertaining where the funds are to be allocated. It is only when the individual departments contact the accountancy officer to request the funds that the money is forwarded to the department to spend. As the monies pass through a number of areas without a specific procedure or coding allocated to it there is not a distinct audit trail to follow.

For example the S106 agreement relating to the George Wimpey development on land at Arthur Street, Barry of £23,552.00 was for an off site open space contribution for the upgrade of an existing playground facility at Henry Street.

The monies have been allocated, but not spent, on the implementation of a traffic management scheme in the area.

A number of the S106 agreements are not particularly well considered at the outset, for example, the retail agreement on the Barry Waterfront. This agreement is attached at Appendix 3. The agreement refers to spend on “community benefits”. As the Council is accountable for spend it must return to the benefactor to discuss the detail of spend prior to utilising the monies. Lack of specification in an agreement cause a number of issues such as ongoing and time consuming discussions with the landowner or developer, or perhaps lack of interest related funding on longer term projects which leaves the Council short of monies to complete the obligation.

The current accounts for S106 agreements are attached at Appendix 4. The accounts show the monies spent and currently awaiting spend. There are no constraints or conditions attached to the accounting process. This therefore does not allow an officer of the Finance Department sufficient information to monitor the spend or indeed advise departments for whom they are holding monies of dates by which the commuted sum must be spent. Interest gained from Section 106 agreements is held centrally and not under the S106 cost code. Therefore any interest is not attributed to the commuted sum year on year.

It should be noted that the S106 agreements specifically referred to above were drafted and completed by external solicitors as opposed to Vale of Glamorgan Council lawyers.

3.4 Parks and Grounds Maintenance

Parks and open space areas are often included within the Vale of Glamorgan’s section 106 agreements. The Operational Manager commented that the Principal Planner within Development Control was excellent at communicating the possibility of Section 106 agreements but felt that this was the exception rather than the rule. Since 2000, the department has held a database on estimated landscape future cost projections. This database listed at Appendix 5 outlines the scheme by type and location, estimating the annual maintenance cost to upkeep developer-established schemes and whether a commuted sum has been allowed to maintain the scheme.

The information held in the appendix shows a 6-year funding deficit of £142,500 for known schemes, and the list is may well not be exhaustive. This is a major issue for the service, which does not receive an uplift in its’ budget to cope with the increase of land area of Parks and Open Space. The recent Parks and Grounds Maintenance Improvement Review listed this issue as the main reason for the projected overspend within the area.

3.5 Engineering Design and Procurement Division

When dealing with new developments the developer is encouraged to enter into a formal Agreement with the Council (as Highway Authority) under Section 38 of the Highways Act 1980. The Authority may agree under S38 to adopt a road that

is to be constructed to the Authority's design standards by the developer. The Agreement must be made between the Authority and the owner of the land.

Road adoption is a process by which the Authority takes over the maintenance of privately built highways that are considered to be beneficial to the public and are then maintained at the public expense.

It is normal practice for the Agreement to be supported by a bond to ensure the completion of the highways by the Authority in the event that the builder or landowner defaults. The bond value is 100% of the Authority's estimated cost of building the roads. The developer, on signing the agreement, also has to pay the Authority 8% of the bond figure to cover the Authority's Legal and Engineering Supervision fees.

With adoption agreements, house-builders are able to sell their houses more easily with road charges paid. Adoption will also ensure ready access in emergencies and for routine maintenance. This means that the majority of developers are keen to ensure that they comply with Council arrangements to secure an agreement.

An unadopted or private street is not maintained at the public expense, it is maintained by the frontagers to the street. Nevertheless, the Highway Authority will still have a duty under S130 of the Highways Act 1980 to assert and protect the rights of the public to use it. Additionally if it is in such a condition as to be considered dangerous the Highway Authority may carry out emergency repairs under S230 of the Highways Act 1980 and charge the cost to the frontagers. The Highways Act 1980 also gives the Highway Authority the power to adopt the street once it has been made up to a satisfactory standard.

It is possible to arrange for commuted sums under S38 Agreements to maintain the standard of the highway once it has been adopted. This has been considered within the Vale of Glamorgan in the past, particularly where enhanced finishes have been specified. However, this is a concern of the Highways Maintenance Division as commuted sums are not required as the norm and there is no uplift in maintenance budget to cope with the increase in the highway network.

Developers involved in major developments, either retail or residential in nature, are required to undertake an independent traffic impact assessment. Traffic impact assessments enable the Highway Authority and the developer to assess whether any highway improvements are likely to be required as a result of the proposed development and, if so, the nature of those improvements. Should highway improvements be required, the developer has to pay for these via a Section 278 Agreement with the Highway Authority.

Section 106 Agreements are used primarily where works are required remote from the development site but are required as a direct result of the development.

It is imperative that any works associated with a S106 Agreement are designed in sufficient detail to allow an accurate cost estimate to be determined. This information should be recorded and retained on file so that reference can be made when the S106 funds are made available as this may be some time in the future. All appropriate sections of the Highway Authority should be involved in determining the requirements for a Section 106 Agreement. This process should be managed by the Highway Development Group.

The Engineering Design and Procurement Division has the following concerns regarding the current process for dealing with S106 Agreements :

- No budget is available to undertake the preliminary investigations and design work required to identify the works and to determine an accurate cost estimate to be included in a S106 Agreement. This sum could be added to the figure included in the S106 Agreement but would not be available in the first instance.
- S106 funds received should be held in an interest-bearing account so that, should the works associated with the development be delayed, the negative effect of inflation over the period is mitigated. It should be noted that S106 funds are only a contribution and should the actual costs of the works prove to be over and above the S106 funds, the Council would be expected to cover the difference.

3.6 The View from the Development Control Perspective

The Development Control Group is responsible for processing applications for planning permission and other related applications. The Vale of Glamorgan is an area of increasing development, and therefore this Group implements the comprehensive legislation in relation to planning permission, enforcement and the planning appeal system.

The majority of new building work and changes in the use of land and premises requires planning permission. The types of application submitted to the Council vary greatly, ranging from small-scale house extensions and alterations to major developments such as new housing sites, business parks and major conversions of empty properties. During 2003 the Group processed over 1,800 applications for new developments, which rose to just less than 2,500 during 2004. This represents a substantial increase in the number of applications received over previous years with no significant increase in officer resources.

The Office of the Deputy Prime Minister (ODPM) has calculated the size of a sustainable caseload for planning officers as a benchmark, using the number of applications received in a year divided by the number of established Full Time Equivalent (FTE) case officer posts for that year, whether or not they are filled. A sustainable caseload is estimated to be 150 applications per case officer per year and means that, on average, a typical application (major/minor or other) is

allowed 1.46 days of case officer work. The Vale of Glamorgan have a maximum of 9 ½ FTE case officers, including 1½ student officers, which equates to 263 applications per case officer per year.

One of the National performance indicators directly relating to this service area is NAWPI 7.4: The percentage of total planning applications determined within 8 weeks. In light of resource issues previously highlighted, performance dropped last year from 64.6% to 60.5%. However surprisingly the performance remained exactly at the average Welsh point of 60.5%, which is a remarkable achievement. In an attempt to remain in the top quartile with regard to this indicator and the new national statutory performance indicators that are required by the Welsh Assembly Government, the Council has responded to this extra workload by no longer dealing with pre-planning application enquiries on any minor applications. Pre-applications discussions are still undertaken on major schemes these being the most likely, but not exclusively, the forms of development most likely to generate Section 106 agreements. When formal applications are received feedback from other Council departments is sometimes not forthcoming quickly enough to reach timescales for determining major applications and consultees do not always clearly define the areas or extent of S106 contributions.

There is one Team Leader and 4 senior planners available to deal with major applications, each handling a caseload of 40 major applications at any one time. It is the major applications that generally affect S106 or planning gain contributions.

Apart from the workload, other factors that impinge on the successful outcome of planning gain contributions include internal communication and information availability. Development Control officers are sometimes unsure who to contact in Council departments. In one instance when a response was requested from Environmental Health three individual memos were returned.

The Strategic Planning Group has been successful in raising awareness of funding opportunities but does not always receive information on a timely basis. For example, information requested during a meeting in April 2005 on land North of Rhoose railway line from a number of departments has not to date been made available.

The department is of the view that the Council is not proactive in considering the areas where contributions should be made. Although improvement are being made, departments are not providing sufficiently detailed information that is required in order to inform comprehensive S106 agreements. Comprehensive, projected year on year costs are required in order not to incur supplementary funding from Council funds.

There is no capacity within the Development Control department to monitor Section 106 agreements apart from discharging conditions and details on the planning application itself or selected schemes. The department occasionally resolve issues with regard to the financial aspects of agreements but do not handle monies directly. The team leader has recently commenced collation of a Section 106 register containing agreements made over the past 5 years. The

register contains the reference number of each application, the site, the general terms of the agreement. Although the official S106 agreement can often be a long document containing the consent implications and any follow up appointments or notes as required, the register is a paper-based file in an easy to use format.

The working arrangements between legal service and planning division have improved since the division have a dedicated contact in Legal Services. However feedback on the completion of S106 agreements is not always returned to the department quickly and in some instances the agreements have been signed but no notification has been given to the Development Control Section in order for the decision notice to be generated and the planning consent has therefore not been granted as required by the agreement. The department was of the view that current agreements are undertaken both in-house and externally.

Legal Services have confirmed that since the appointment of the Senior Lawyer (with responsibility for Planning and Highways) two unilateral undertakings and one S106 agreement have been drafted internally with the external solicitors completing ongoing work externalised prior to the Senior Lawyer's appointment,

3.7 The position of other Welsh Councils

When considering best practice it is usual to compare initially neighbouring and sister authorities. This is difficult with regard to planning gain due to the different regulations in England and Wales and the different land values of Authorities in Wales. However, in order to establish the current situation with planning gain within the Vale of Glamorgan Council a snapshot of the measures that other Councils within Wales have taken with regard to monitoring Section 106 agreements was taken.

The majority of other Welsh Authorities do not have a designated officer to deal with Section 106 agreements. Most use their enforcement officers to monitor agreements on an ad hoc basis.

Cardiff - have 2 officers based in DC admin who deal with only the monitoring of S106 agreements and are not planners. The Office manager (PO1-3) spends 5% of her time on S106. The assistant on S01 spends 50% of her time monitoring S106s. The role has existed for 2 years. They add a 2% administrative fee to their S106 agreements but this fee is not disclosed to developers.

Newport - are considering creating a post in Planning do deal with negotiation and monitoring of S106 agreements.

Swansea - no one co-ordinates Section 106 agreements, individual departments have to chase the monies. The enforcement section within the Planning department has some involvement as do Legal on an ad hoc basis. Their planning department realises it must consider the its' approach to Section 106 agreements. They do not charge developers for monitoring.

Wrexham - do not have a section 106 officer and are at the same stage as the Vale of Glamorgan, they are considering charging a monitoring fee. They recognise the increasing role of s106 agreements and the vast sums of money they are bringing in for the Council.

Bridgend - do not have a Section 106 officer. Development Control administration check their computer systems for monies received. They do not charge for administration of monitoring.

Caerphilly – have no monitoring officer and little monitoring is undertaken..

Flintshire – have no designated monitoring officer and no fees charged. Monitoring is done by the enforcement / compliance team but with increasing work pressure it tends to be put on the back burner.

Gwynedd - no monitoring officer and have very few S106 agreements. Their enforcement team undertakes Gwynedd Council monitoring of Section 106 agreements.

Merthyr Tydfil - Section 106 is a recent phenomenon and not doing many of them. No monitoring officer is currently required.

Neath Port Talbot – have no S106 officers in post and no fee charged. Monitoring is done on ad hoc basis by the enforcement team.

4. Notable Practice

All planning gain best practice English authorities with employ specific officers to deal with Section 106 agreements. Two authorities that have recently had excellent success with obtaining and monitoring commuted monies were Bristol and Southampton. Each had taken a different approach to the role:

4.1 Bristol City Council

The Post

The dedicated Section 106 post has been in place for 3 years. It was introduced in light of audit and elected member pressure as there was no tracking of when and where monies were being spent etc.

The officer is based in the Planning Policy Section. Fifty percent of officer time is spent on monitoring the implementation of S106 agreements and fifty percent is spent on policy development (LDF policies and production of topic based SPGs). Advice to Development Control is provided on request.

In Bristol, it was felt that the necessary skills were in place in Development Control in terms of the negotiating skills to obtain planning obligations, but the lack of policy support remained an issue – therefore the post was based in Policy not DC, although this may not be the most appropriate course for all Local Planning Authorities (LPAs).

Fees

Bristol City Council charge 15% of the cost of the planning application fee as an administrative charge for the monitoring of the agreement. This equates to around £30k a year. Developers do sometimes complain about the charge. The charge is backed by a Council resolution.

The Council decided against a % based on the value of the planning obligation because there are often planning obligations, which are negative, or do not have a financial value yet would still have an administrative burden.

Bristol has already developed a Local Plan or LDP. A number of policies in Bristol's Local Plan refer to planning obligations in general and refer the reader to the Supplementary Planning Guidance for information on detailed guidance on specific topics. Bristol's SPG encompasses all Service areas and sets down formula to calculate levels of contribution. There were objections from the development industry. The Council's position is supported by National Planning Policy in England.

Thresholds for obtaining commuted sums are set, especially on residential development; 10 units + for open space, 15 units + for affordable housing (usually between 20-30% of units), 40+ for education, leisure, libraries etc. Other developments do not use thresholds because the Section 106 arises from site-specific requirements e.g. screening of telephone masts.

Income

Bristol deals with around 5000 planning applications per year and the Council has 40 Development Control Officers, approximately 1.5-2% of these applications have Section 106 agreements attached. There are approximately 420 agreements active at one time. The Section 106 agreement account value is currently approximately £11.5 million. This is an increase from £1.4million in 2002. Interest is accrued from the funds in the cost code to cover rates of inflation.

The income from fees alone does not cover the cost of the S106 officer, but the increased overall funds generated in terms of planning obligations for various service areas justifies the post.

ICT

There is currently no database system in place at Bristol but the Council wishes to implement one. The Council has viewed a package developed in South Gloucester which enables authorities to keep track of spend and progress.

What is currently sought in planning gain agreements?

As standard Bristol City request affordable housing, educational facilities, library provision, open space, highway improvements, public transport provision, travel plan funding and landscaping that includes street furniture as standard in planning gain.

Bristol also tends to cover Highway works under section 106 agreements and the post holder also monitors these.

4.2 Southampton Council

The Post

The planning gain post was established in June 2003 on equivalent scale SO1-PO1. Southampton had difficulty recruiting for the post and employed a business manager rather than a planner. The post is based in Development Control. The main driver for the post was to speed up the planning applications subject to S106 agreements and to ensure proper implementation.

The post holder calculates that 70% of their time is spent negotiating and processing new Section 106 agreements and 30% monitoring implementation of those Section 106 agreements.

Process

Pre-application discussions are encouraged (almost compulsory for major planning applications). When an application comes in, the S106 officer is notified of the application. He instructs solicitors to start drafting an agreement and provides likely heads of terms. The S106 officer consults relevant parties to find out details of what requirements will be. The Solicitor drafts details of agreement prior to going to Planning Committee. If the committee agree with the officer recommendation the agreement is signed and forwarded to the developer. There is little involvement of the planning officer in negotiation of S106 agreements.

At the start of the 8 or 13 weeks the applicant is sent a letter advising that if they fail to sign the legal agreement within the stipulated time period, the planning application will be refused. This has not been tested yet. Most developers are pleased with the fast-track system.

Weekly meetings are held with the S106 officer, major applications officer and head of Development Control for information purposes.

Fees

The Council sought legal / Counsel advice and were told they could only seek fees for the monitoring side of 106 agreements and not the negotiation side – the new circular (in England only) may change this in favour of extra fees.

Fees are charged at an hourly rate (£28/h) based on time spent monitoring the S106 agreement – usually 5 hours per head of term.

Policy Support

A draft SPG was prepared by consultants, which took 12 months to complete and covers most basic topics including – highways, affordable housing, public open space, public art, public transport etc. The policy is supported by various

strategic and regeneration documents alongside strong Local Planning policies with low thresholds (e.g. 15 units + for affordable housing).

Income

Southampton deal with around 2,000 planning applications a year, approximately 70-80 applications require S106 agreements each year (4% of applications).

The income from fees alone does not cover the cost of the officer, but the increased overall funds generated in terms of planning obligations for various service areas justifies the post.

The reported income is £150-200k per month for financial contributions (i.e. in addition to on-site contributions).

Legal

Southampton out-source the drafting of most of their S106 agreements to ensure efficiency. The solicitors send out drafts and letters direct to applicant. They are instructed at the start of the process, even before committee approval. The S106 officer explained that this does not tend to lead to excessive abortive work, however, where there is abortive work and the application is refused, the applicant is still expected to cover the cost.

ICT

The Section 106 officer has developed his own Excel spreadsheet to keep track of applications.

What is sought?

As standard the Council seeks affordable housing, open space, highway improvements and public transport provision, The city does not consider there is currently a need for further educational or library provision.

5. Conclusions

Although the Council has made a marked improvement towards securing planning gain contributions further work could be undertaken in this area to increase contributions to fund public works. It is clear that workload capacity within the Development Control Section is at saturation point and that if the Council wishes to make the best of "Planning Gain" in the Vale of Glamorgan to provide a more effective response to land use planning issues, a post would need to be secured within the Planning and Transportation Division. The post is likely to be able to be partially funded by adding an administration cost to the S106 agreement, this must happen in an open and transparent fashion. Developers have been consulted on the possibility of adding a 2% administration cost and response was not favourable. However, this would be expected and does not mean that the administration cost cannot be progressed.

The post would need to be at Principal Officer level with the specification as follows

- Requiring detailed knowledge of planning regulations, negotiation and communication skills in order to support Development Control officers with the negotiation of S106 agreements.
- Experience of working in a policy environment in order to support the development of SPGs.
- Ability and working knowledge of all Council Service areas in order to coordinate the sought requirements and to support all service areas with the provision of timely information for the agreements.
- Basic ICT skills to supervise an electronic database.
- Ability to monitor agreed spend of monies on all commuted sums.

Whilst the Strategic Planning Group is good practice, departments are not making the best of opportunities offered. The makeup of the group needs to be reconsidered and the terms of reference need to include clearly defined response times that are adhered to by all members of the group. The Council should consider extending the group to include partners from other public bodies, but certainly would benefit by requesting information from Vale Council for Voluntary Services due to their localised consultation activities with members of the community.

The paper-based S106 register needs to be transferred into an electronic database, preferably web enabled in order that all departments concerned are able to utilise the file, for example Legal in order to input when the agreement is executed, finance to indicate when the monies have been received, all departments involved in the request to view progress and detail activity and Building Control to establish when, if there is trigger measure, such as quantity of built units to inform the S106 officer that the trigger has been passed and monies are now due.

The heads of terms for Section 106 agreements need to be written in a fashion that is more concise with heads of term that are as simple to measure as possible. Often the heads of terms will include trigger measures based on occupation of units. This measure is difficult to monitor, delays with occupants informing Council Tax can mean loss of interest revenue. It would be preferable to use a unit build quantity and/or a latest date. S106 agreements may be improved by procurement from one legal supplier. It may be possible to increase the service received from the legal firm if all agreements were tendered out to a local company, as is the situation in Bristol. If it would be advantageous for the Council for this element of the Legal Service to remain in-house proformas should be established to aid the audit and monitoring of the agreements.

The Adopted UDP is relatively weak in the area of planning gain and is the main policy document considered for future development. It needs to be supported by Supplementary Planning Guidance (SPGs), such as the one drawn up for affordable housing for all considered areas as soon as possible. The process for writing and agreeing SPGs is time consuming; it may be beneficial in the absence of an S106 Officer to outsource the development to an external consultant. In any case the Local Development Plan will need either to refer to

comprehensive Supplementary Planning Guidance or the policy within it for planning gain to be more influential.

6. Recommendations

The following recommendations have taken into account issues identified during research, discussions with specialist officers, both internal and external and officers working in best practice authorities.

Cabinet is requested to consider and approve each of the following Economy and Environment recommendations in relation to planning gain within the Vale of Glamorgan:

- (i) That the Cabinet support the creation of a post at Principal Officer level to deliver the requirements of Section 106 agreements as part of the budget setting process that will be partly funded from administration charges to developers.
- (ii) That the Cabinet welcome the achievement to date of the Planning and Transportation Division on the progress of Section 106 agreements within the Vale.
- (iii) That the Cabinet acknowledge that monies may have to be refunded to developers where Section 106 agreement spend dates have not been monitored and have passed their spend deadlines.
- (iv) That the membership of the Strategic Planning Group be considered and the group consult with external partners such as the Vale Council for Voluntary Services to ensure sound community knowledge and requirements are written into Section 106 agreements.
- (v) That participants of the Strategic Planning Group are made aware of their responsibilities with regard to Section 106 agreements and confirm they are able to respond to requests for information in a timely manner.
- (vi) That the Planning and Transportation Division request the Research Section within the division to develop an in-house electronic database supported by ICT, to audit and monitor Section 106 agreements.
- (vii) That the heads of terms negotiated by the Planning and Transportation Division for Section 106 agreements are of a nature that is concise and straightforward to audit and monitor.
- (viii) That the Head of Planning and Transportation and the Head of Legal Services, investigate the advantages and disadvantages of externalising the drafting of Section 106 agreements and report to Environment and Economy Scrutiny the outcome of that investigation.

- (ix) That the importance of further Supplementary Planning Guidance be recognised to support the Council's UDP and the cost and timeliness of using a consultant to write a complete set of Supplementary Planning Guidance documents be researched and reported to Environment and Economy Scrutiny Committee for consideration as a matter of urgency.