

REPORT OF JENNY CLIFFORD, THE HEAD OF PLANNING AND REGENERATION

**PROCEDURES FOR DEALING WITH REQUESTS TO VARY OR DELETE PRE-EXISTING PLANNING OBLIGATIONS (S106 AGREEMENTS).**

**Cabinet Holder** Cllr Richard Chesterton  
**Responsible Officer** Jenny Clifford, Head of Planning and Regeneration

**Reason for Report:** In order to amend the way in which proposals to vary or delete planning obligations are dealt with in light of recent requests and to respond to changes introduced by the Government.

**RECOMMENDATION:** That the amendments to the procedure and the scheme of delegation to the Head of Planning and Regeneration be agreed.

**Relationship to Corporate Plan:** None.

**Financial Implications:** None.

**Legal Implications:** Planning obligations are legally enforceable.

**Risk Assessment:** Previous provisions under the Growth and Infrastructure Act 2011 for applications to be made to renegotiate the affordable housing element of planning obligations where the Local Planning Authority had to issue the determination within 28 days unless an extension of time had been agreed in writing have been repealed.

**Consultation carried out with:** None.

**1.0 RENEGOTIATIONS ON EXISTING PLANNING OBLIGATIONS: EXISTING PROCEDURES.**

1.1 The Council receives requests from developers / land owners to vary or remove planning obligations. Such requests may arise from current economic conditions and examples of requests include the deferment of payments, the removal of payments or a reduction in the percentage of affordable housing provided on site.

1.2 The following procedure in such cases was agreed at Planning Committee on 8<sup>th</sup> January 2014:

1. That requests to vary or remove planning obligations be made in writing together with supporting evidence / justification.
2. Once such a request is received relevant consultees, the Chairman of Planning Committee, Ward Members and the Parish / Town Council be advised of the request and its nature and given 14 days within which to respond with comments.
3. That the responses from this consultation be taken into account in consideration of the proposals.
4. Negotiations with the developer / land owner will be conducted by Local Planning Authority, supported by Legal Services (as required).
5. Where the planning application to which the original planning obligation relates was considered by Planning Committee, the renegotiation be referred to Planning Committee for a decision. Where the renegotiation proposal is submitted under Section 106BA of the Town and Country Planning Act 1990, this will not apply if

referral to Planning Committee would be outside the date for determination. In such instances, the Case officer shall advise the Chairman and Vice Chairman of Planning Committee, the Cabinet Member for Housing and Ward Members of the proposed decision. Their views will be taken into account in the determination, which shall be made under delegated powers.

6. Where the relevant planning application to which the original planning obligation relates was dealt with under delegated powers, the Case officer shall advise the Chairman and Vice Chairman of Planning Committee and Ward Members of the proposed decision. The Chairman or Vice Chairman and Ward Members will have an opportunity to require that the Committee consider the changes to / removal of the planning obligation having given clear planning reasons. Where the renegotiation proposal is submitted under Section 106BA of the Town and Country Planning Act 1990, this opportunity will not apply if referral to Planning Committee would be outside the date for determination. In such instances, the Case officer shall advise the Chairman and Vice Chairman of Planning Committee, the Cabinet Member for Housing and Ward Members of the proposed decision. Their views will be taken into account in the determination, which shall be made under delegated powers.

- 2.3 The agreed Scheme of delegation to the Head of Planning and Regeneration for renegotiation of planning obligations (S106 agreements and Undertakings) is as follows:

*In the case of renegotiations on a Planning Obligation (S106 Agreements and Undertakings):*

1. *Is submitted under Section 106 BA of the Town and Country Planning Act 1990, if Committee consideration would be outside the date of determination, delegated authority is given to the Head of Planning and Regeneration to agree amendments in consultation with the Head of Housing, the Cabinet Member for Housing and the Chair of Planning Committee.*
2. *In the case of renegotiations on another planning obligation issue, the Ward Member, Chairman and Vice-Chairman of Planning Committee requires that the Committee consider the proposed changes having given clear planning reasons, otherwise they be delegated to the Head of Planning and Regeneration.*

## 2.0 **The Growth and Infrastructure Act 2013**

- 2.1 In 2013 under the Growth and Infrastructure Act, the Government introduced a new application and appeal procedure on planning obligations that relate to the provision of affordable housing. Under Section 106BA of the Town and Country Planning Act 1990, this introduced a mechanism for the renegotiation of the affordable housing element of S106 agreements and was intended to ensure that existing planning obligations negotiated in different economic conditions do not become a barrier to house building. This provision required Local Authorities to determine an application to revise affordable housing obligations within 28 days. In response to this tight timescale changes were introduced to the procedure for dealing with S106 amendments and the associated scheme of delegation.
- 2.2 The ability to make applications for amend affordable housing under Section 106BA of the Town and Country Planning Act 1990 has now been repealed by the Government necessitating further changes to the way in which requests to vary s106 agreements are dealt with.

### 3.0 **Proposed changes to procedures and the scheme of delegation.**

- 3.1 There have recently been several instances where proposed changes to s106 agreements which are either acceptable in planning terms or not considered to be significant have to come before Planning Committee purely because the planning application that they relate to was determined at Planning Committee rather than under delegated powers.
- 3.2 Under current procedures, where the planning application to which the original planning obligation relates was considered by Planning Committee, the renegotiation is referred to Planning Committee for a decision. This adds time to deal with the amendment and necessitates the writing of a committee report. Provisions to deal with applications made under Section 106BA of the Town and Country Planning Act 1990 may also now be deleted.
- 3.3 Under procedure changes introduced in January 2014 certain S106 amendments that related to affordable housing were amended by reference to the Chairman and Vice Chairman of Planning Committee, the Cabinet Member for Housing and Ward Members without referral to Committee. It is proposed to extend this approach, whilst still retaining Member input and building in an opportunity to call the proposed S106 revisions into Planning Committee for consideration. The proposed changes to the procedure are as follows:

#### **EXISTING PROCEDURE:**

5. Where the planning application to which the original planning obligation relates was considered by Planning Committee, the renegotiation be referred to Planning Committee for a decision. Where the renegotiation proposal is submitted under Section 106BA of the Town and Country Planning Act 1990, this will not apply if referral to Planning Committee would be outside the date for determination. In such instances, the Case officer shall advise the Chairman and Vice Chairman of Planning Committee, the Cabinet Member for Housing and Ward Members of the proposed decision. Their views will be taken into account in the determination, which shall be made under delegated powers.
6. Where the relevant planning application to which the original planning obligation relates was dealt with under delegated powers, the Case officer shall advise the Chairman and Vice Chairman of Planning Committee and Ward Members of the proposed decision. The Chairman or Vice Chairman and Ward Members will have an opportunity to require that the Committee consider the changes to / removal of the planning obligation having given clear planning reasons. Where the renegotiation proposal is submitted under Section 106BA of the Town and Country Planning Act 1990, this opportunity will not apply if referral to Planning Committee would be outside the date for determination. In such instances, the Case officer shall advise the Chairman and Vice Chairman of Planning Committee, the Cabinet Member for Housing and Ward Members of the proposed decision. Their views will be taken into account in the determination, which shall be made under delegated powers.

#### **PROPOSED PROCEDURE:**

**Points 1 - 4 unchanged.**

5. **The Case officer shall advise the Chairman and Vice Chairman of Planning Committee, the Ward Members and Cabinet Member for Housing (the latter in the case of amendments to affordable housing only) of the proposed decision. These Members may request that the Committee consider the**

**proposed changes having given clear planning reasons, otherwise they will be decided under power delegated to the Head of Planning and Regeneration.**

**6. Deleted.**

3.4 The accompanying proposed change to the scheme of delegation to the Head of Planning and Regeneration:

**In the case of renegotiations on a Planning Obligation (S106 Agreements and Undertakings):**

- 1. The Ward Member, Chairman and Vice-Chairman of Planning Committee and Cabinet Member for Housing (the latter in the case of amendments to affordable housing only) requires that the Committee consider the proposed changes having given clear planning reasons.***

<b>Contact for any more information</b>	Jenny Clifford, Head of Planning and Regeneration <a href="mailto:jclifford@middevon.gov.uk">jclifford@middevon.gov.uk</a> 01884 234346
<b>Background Papers</b>	Planning Committee: 30th March 2011, 27th April 2011, 8 <sup>th</sup> January 2014
<b>File Reference</b>	None.
<b>Circulation of the Report</b>	Members of Planning Committee, Cllr Richard Chesterton.