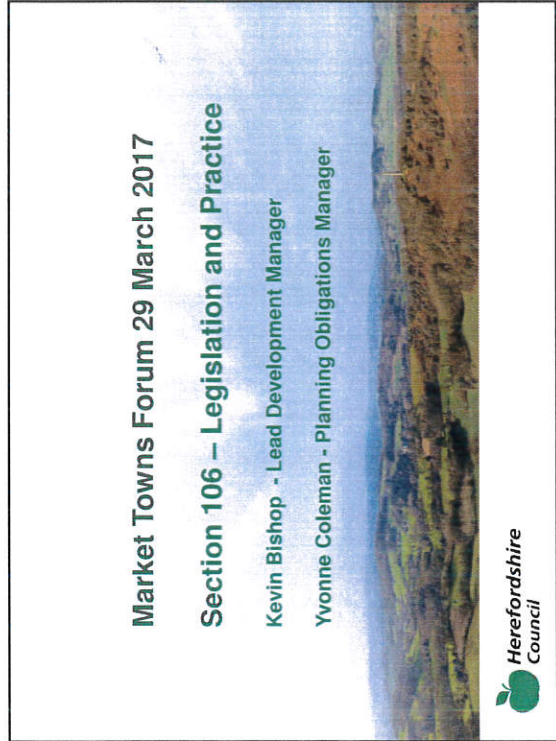



Market Towns Forum 29 March 2017

Section 106 – Legislation and Practice



Kevin Bishop - Lead Development Manager

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Planning Obligations – what are they?

- Legal agreements between a developer and the Local Planning Authority and any others that have an interest in the land.
- Developers can also enter into a voluntary legal agreement to carry out works and these are known as a Unilateral Undertaking

Types of Planning Obligation

- restrict the development or use of the land in any specified way;
- require specified operations or activities to be carried out in, on, under or over the land;
- require the land to be used in any specified way; or
- require a sum or sums to be paid to the authority on a specified date or dates or periodically.

Planning Obligations – legal tests?

- 3 tests introduced by Regulation 122 of the Community Infrastructure Levy Regulations
- These are all statutory in law and it is unlawful to enter into an obligation unless all of the statutory legal tests are met:
 - **NECESSARY** to make the development acceptable in planning terms
 - **DIRECTLY RELATED** to the development
 - **FAIRLY AND REASONABLY** related in kind and scale to the development
- Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms.



Planning Obligations – Policy?

- Paragraph 204 of the National Planning Policy Framework: Planning obligations should only be sought where they meet the statutory tests
- Government Planning Obligations Practice Guidance published 19 May 2016
- Core Strategy Policy ID1 – Infrastructure Delivery
- Planning Obligations Supplementary Planning Document
- Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms.



Contributions for different types of development

Figure S1 - Contributions for different types of development

Development Type (Use class)	Transport	Affordable Housing	Community Services	Children Young People	Open Space Sport	Town Centres	Waste	Bio-diversity	Landscape
Residential (Use class) for more dwellings including (A8)	✓	✓	✓	✓	✓	✓	✓	✓	✓
Retail (A1)	✓				✓	✓		✓	✓
Financial and Business Services (A2)	✓				✓	✓		✓	✓
Offices (B1)	✓				✓	✓		✓	✓
Industrial (B1, B2)	✓							✓	✓
Warehousing/Storage (B8)	✓							✓	✓



Affordable Housing and contributions-thresholds

Residential Development

- On 10-units or less, affordable housing and tariff style contributions should not be sought.
- ### Employment Development
- Current suspension on contributions
 - Provided that development commences within 12 months

What can't planning obligations be used for?



Restriction on the pooling of section 106 contributions

- Have historically pooled contributions to deliver infrastructure projects
- Restriction on pooling commenced on 5 April 2015 through the Community Infrastructure Levy Regulations
- Cannot pool 5 or more contributions for infrastructure or infrastructure project
- Need to include contributions from 6 April 2010



Vacant Building Credit

- Introduced following a Written Ministerial Statement 28 November 2014
- Intended to incentivise brownfield development
- Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building the developer is entitled to a 'credit' equivalent to the existing gross floor space of the relevant vacant buildings, which is offset against the affordable housing contribution



Enforcement of Planning Obligations

- Enforceable against the person that entered into the obligation and any subsequent owner; and
- Can only be enforced by injunction through the Court;
- Prohibitory injunction
- Mandatory injunction



Delivery and viability of development

- *"Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled."*

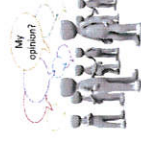


Paragraph 205 - NPPF



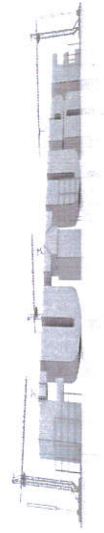
How to input into the process

- Consultation responses to planning applications
- Town Council infrastructure 'wish lists'
- Neighbourhood Planning Process
- Market Towns spreadsheets
- Input into expenditure



Update on Community Infrastructure Levy

- Government Housing White Paper published 7 February 2017
- Independent panel report on CIL published
- Recommendations
- Government to respond to recommendations in Autumn Statement



Questions

