

Bircham Dyson Bell

# Using Planning Gain to bring greater benefits to residents

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# The Legal Background

- Section 106 Town and Country Planning Act 1990
- Case law
- Circular 05/2005 Planning Obligations



# Circular 05/2005 Tests for Planning Gains

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



## Two types of planning obligation documents

- A bilateral document agreed and concluded between the lpa and the landowner
- A unilateral undertaking signed by one party (the landowner) giving planning obligations to the lpa



## Four types of planning obligations (covenants)

- Restrict development or use of land i.e. impose restrictive covenants
- Require land to be used in a particular way i.e. impose positive covenants
- Require physical works to be carried out
- Require payments of money to be made
  - Specific purpose
  - Pooled contributions



## Traditional (old) method of negotiation

- Developer submits planning application and waits for lpa to produce its 'shopping list' of benefits
- Lpa consults internally within its various departments and then products its list of benefits
- Developer seeks to 'negotiate down' the package
- Heads of Terms agreed direct between the developer and the lpa with little or no third party involvement
- Third parties will have played no role in the process and list of benefits provided may bear little resemblance to the needs of such third party objectors



## Circular 05/2005 and Public Involvement

- Circular ask for negotiations on planning obligations to be conducted as openly fairly and reasonably as possible, and for members of the public to be given every reasonable assistance in locating examining any proposed and agreed planning obligations which are of interest to them
- Part 1 of the Planning Register requires not only applications for planning permission to be registered but also details of any planning obligation entered into or proposed
- At committee agreed heads of terms should be included in committee papers and be open to public inspection



## A new (more modern) Method of Negotiation

- Pre (and post) application consultation will provide an indication of the public's concerns in respect of the proposed development
- From the results of public exhibitions, public meetings and public consultation the developer is able to make an assessment of objectors' principal concerns and where there are benefits which the developer can provide to remove (provide comfort) in respect of these then feed these into the pre-planning application/post application discussions with the lpa on the form of the s.106 Agreement
- If not as part of the submission of the planning application then shortly thereafter the developer should engage early in discussions with the lpa to negotiate and settle at least the Heads of Terms and ideally the form of the Section 106



## A new (more modern) Method of Negotiation (cont'd)

- Modern emphasis in Section 106 Agreements is for Ipa to concentrate less on providing benefits in kind and more on tariff/formulae charges
- Will often make the process of negotiation more predictable
- But will only satisfy residents if monies are promptly applied for the purpose paid



# Types of benefit of interest to residential objectors

- Provide affordable housing on site or 'export' off site
- Contribution to transport e.g. bus services
- Parking restrictions to discourage commuter parking
- Traffic calming measures
- New school/classrooms
- New health facilities
- Conservation features woods/ponds etc
- Landscape features
- Provision and works on open space (including play equipment)
- Use of community trusts to manage facilities on a site
- Studies/improvements to tv reception
- Transfer/lease of land to community organisations



# Delivering planning obligations

- Public is often cynical about Developer payments to Ipa, and will require to be satisfied that monies will be spent on benefits/facilities to ensure that these are delivered within realistic timescales
- To give credibility to such covenants (and gain the support of objectors) Developers should consider:-
  - 1 Substitute the carrying out of physical works for such payments (to ensure the key benefits required by residents are provided) or
  - 2 Where payments are made that there are tough reciprocal covenants from the Ipa to spend money on a particular purpose (more difficult with pooled payments) and within a specific period



# Remember the potential of the Freedom of Information Act

- Public may make requests for information in respect of individual Section 106 Agreements which have not been made publicly available
- Commercially sensitive information relating to planning obligations which is provided by applicants in confidence may be exempt
- Such information will be subject to a “public interest” test and may be disclosed if the release of such information is deemed to be in the public interest

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