



<b>Development Control Committee</b>	<b>Thursday, 16 November 2017</b>	<b>Matter for Information</b>
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**Title:** **Agenda Update**

**Author(s):** **Richard Redford (Planning Control Team Leader)**  
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**5c. 17/00375/FUL** The Elms  
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The following text was submitted by the applicant's agents in support of their planning application.

"This planning application has had a s106 agreement imposed which we feel should not apply. Therefore we have no choice but to commence action for non-determination of the planning application. However, in fairness, we will point out the following, to enable the Council to reconsider their position.

We have taken advice, as supplied from the following:

The Local Government Association  
The Planning Officer's Society  
Department for Communities and Local Government

The legal tests for when you can use a s106 agreement are set out in regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 as amended.  
The tests are:

- Necessary to make the development acceptable in planning terms
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

National Planning Policy Framework (NPPF) – Policy Tests

As well as the legal tests, the policy tests are contained in the National Planning Policy Framework:

- 203. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.*
- 204. Planning obligations should only be sought where they meet all of the following tests:*

- *Necessary to make the development acceptable in planning terms*
- *Directly related to the development; and*
- *Fairly and reasonably related in scale and kind to the development.*

If an obligation does not meet all of the tests it cannot in law be taken into account in granting planning permission. While these tests are a consolidation of the 05/05 advice, they are now a legal requirement giving them much greater force.

Whereas previously there was a view among LPAs and developers that if a S106 had been signed voluntarily (or if a unilateral undertaking had been freely offered) it would not be scrutinised too closely, the statutory status of the tests brings a much greater need to demonstrate that the terms are lawful. There is clear evidence that the Planning Inspectorate and the Secretary of State are taking a much more forensic interest in S106 agreements to ensure the statutory tests are met.

For the LPA to take account of a S106 in granting a permission it needs to be convinced that without the obligation permission should be refused. It is not sufficient to rely on a generic LDF policy or adopted SPD. This is particularly relevant where there is an authority wide tariff scheme. The LPA should be able to provide evidence of the specific impact of the particular development, the proposals in place to mitigate that impact and the mechanisms for implementation.

PINS advises Inspectors that for obligations in the form of financial contributions to meet the Reg 122 tests (now also set out in the NPPF para 204) evidence will be needed in respect of:

- The relevant development plan policy or policies, and the relevant section of any SPD or SPG
- Quantified evidence of the additional demand on facilities or infrastructure which are likely to arise from the proposed development
- Details of existing facilities or infrastructure, and up to date, quantified evidence of the extent to which they are able or unable to meet those additional demands
- The methodology for calculating any financial contribution which is shown to be necessary to improve existing facilities or infrastructure, or provide new facilities or infrastructure, to meet additional demand
- Details of the facilities or infrastructure on which any financial contribution will be spent

The increased scrutiny and testing of S106 obligations should move the negotiation from behind closed doors to a more open and transparent approach, including community involvement. S106 obligations should be used for:

- Regulating development
- On site mitigation
- Affordable housing
- Securing benefits from non-CIL developments

If a development is acceptable without the obligation it should not be sought.

The PPG changes emphasise the S106 legal and policy tests and relationship with the development plan (including neighbourhood plans). In terms of the process- the changes focus on early engagement by the Local Planning Authority (LPA) with applicants and infrastructure providers and S106 being part of the pre-application process.

We feel that there has never been discussion with regard this 106 requirement, there is no evidence in the Officer's Report that the development would be unacceptable in planning terms".

**Background Documents:**

Planning Application 17/00375/FUL

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<b>Implications   Agenda Update</b>	
<b>Finance</b>	No implications directly arising from this update.
<b>Richard Redford</b> (Planning Control Team Leader)	
<b>Legal</b>	No implications directly arising from this update.
<b>Richard Redford</b> (Planning Control Team Leader)	
<b>Corporate Risk(s) (CR)</b>	<input checked="" type="checkbox"/> <b>Not Applicable</b>
<b>Richard Redford</b> (Planning Control Team Leader)	
<b>Corporate Priorities (CP)</b>	<input checked="" type="checkbox"/> <b>Not Applicable</b>
<b>Richard Redford</b> (Planning Control Team Leader)	
<b>Vision &amp; Values (V)</b>	<input checked="" type="checkbox"/> <b>Not Applicable</b>
<b>Richard Redford</b> (Planning Control Team Leader)	
<b>Equalities &amp; Equality Assessment(s) (EA)</b>	No implications directly arising from this update.
<b>Richard Redford</b> (Planning Control Team Leader)	<input checked="" type="checkbox"/> <b>Not Applicable (EA)</b>