

NAME OF SCRUTINY COMMITTEE	COMMUNITIES SCRUTINY COMMITTEE
DATE OF MEETING	17 November 2015
TITLE	The use of agreements under section 106 of the Town and Country Planning Act 1990
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CABINET MEMBER	Councillor Dafydd Meurig
PURPOSE	To scrutinise the Council's arrangements for the use of 106 agreements.

Background

1. Following the preparatory meeting of the Communities Scrutiny Committee, one of the items the committee was eager to scrutinise was matters relating to 106 agreements and how effective these documents actually are.
2. In order to consider the efficiency of 106 agreements, the statutory structure behind these agreements must be considered first as well as the times when local planning policies will give an authority the opportunity to use these agreements.

Statutory background

3. 106 agreements or planning obligations are part of the planning process and are usually associated with planning permissions. Agreements such as these may:
 - Restrict a development or use of land in some way.
 - Require an action or activity to be undertaken on, within, under or above ground.
 - Require the land to be used in a specific way.
 - Require specific amounts of money to be paid to the local planning authority.
4. The above is included within Section 106 (1) of the Town and Country Planning Act 1990. However, in order for the agreement to be effective it needs to adhere with the statutory requirements. It is essential that every agreement is:
 - (a) Necessary in order to make the development acceptable in planning terms;
 - (b) Directly related to the proposed development;
 - (c) Associated, in a fair and reasonable manner, to the type and scale of the development in question.
5. Therefore, the above noted that specific justification will be required for such an agreement. Very often, this justification is seen through our local policies e.g. affordable housing 106 agreement.

6. It should also be noted that 106 Agreements can only be used in situations where planning conditions cannot be used to realise what is required.

Gwynedd Council's use of 106 agreements

7. Gwynedd Council makes considerable use of 106 agreements in order to realise the requirements of our local policies that are in the Gwynedd Unitary Development Plan. It is likely that the agreement used most often is the affordable housing 106 agreement and guidelines regarding using these can be seen in our Supplementary Planning Guidance on Affordable Housing. Even with these type of agreements, it must be borne in mind that their use and requirements must be individually assessed every time. Matters such as development viability can affect our ability to use 106 agreements and there will also be a need to consider whether or not an Agreement is required i.e. is the property affordable anyway without any 106 agreement due to its size and location? It must be remembered that the purpose of an affordable housing 106 agreement is mainly to limit the price of the property so that it is affordable and can meet the specific need.
8. Generally, the type of Affordable Housing Agreement used depends on the location of the development, and policies within the Unitary Development Plan and the Supplementary Planning Guidance on Affordable Housing provide further details about this including details about the size of affordable housing. Generally, locations within Local Centres, villages and rural villages involve limiting the price of the property, who they could be sold to (local people within the catchment area) and also that they are in need of an affordable house. Agreements within the Sub-regional Centres (Bangor) and the Urban Centres limit the price and insist on selling to people in need.
9. The number of Affordable housing on any site will also depend on its location and consideration of all policies and relevant planning matters. It should also be noted of course that National Policy also places Affordable Housing at the heart of its housing policies.
10. Over the years, it is true to say that amendments have had to be made to the agreements to enable us to comply with the requirements of the banks that lend. This is a continuous and frustrating battle as the requirements of the banks change frequently. Banks' willingness to accept constraints within section 106 agreements also depends on the position of the housing market at the time. However, it should be noted that examples of a complete lack of funding, in our experience, are limited.
11. We have recently seen examples where the Council has decided that a section 106 agreement is not required in relation to developments by Housing Associations. The logic behind this was that they were not required on the grounds that statutory regulations and their internal mechanism and policies ensured the affordability of these houses. Gwynedd Council follows a number of other authorities in doing this.
12. Another example of when agreements are used is for financial contributions. These are occasionally used when a financial contribution is required in order to make this development acceptable. A good example of this is contributions towards the expansion of schools when a specific development is very likely to mean that the number of children within specific schools will increase. The Supplementary Planning Guidance on 106 Agreements regulates and sets a specific formula in order to do this. Contributions have also been used for the purpose of improving footpaths, highways and improving links with town centres etc. It is required to consider these again in the context of the statutory test referred

to in part 4 above. In Appendix 1 of the report, a list is provided of all applications that have been approved subject to a 106 agreement over the past five years.

13. It is noted that the Council is in the process of preparing a Joint Local Development Plan (Gwynedd and Anglesey), that has been examining varied evidence in order to develop new policies to meet the need for affordable housing. The Deposit Plan (namely a full draft version of the Plan) went out to public consultation during March this year and the observations received as a result of the consultation are currently being considered and assessed.

An example of a situation where the use of 106 agreements is not acceptable

Renewable energy and community benefit plans

14. Clear direction is given in Appendix B of Technical Advice Note 8 that states it is acceptable for a developer to offer benefits on top of what would be necessary for the development in question to proceed however these benefits **should not influence the decision process**. Paragraph 2.16 of TAN 8 emphasises that contributions toward such benefits should not enable consent to be given to an application that would otherwise be unacceptable in planning terms. In accordance with TAN 8, the absence or presence of any contribution to local communities is not a matter that would be considered by a Local Planning Authority when determining whether or not a planning consent should be granted or not. This is reiterated in Paragraph 11.1 of the Supplementary Planning Guidance on 'Onshore Wind Energy' which states that the absence or presence of any contribution to local communities is not a matter that will be considered by the council when determining whether or not consent should be given.
15. Even if a plan is deemed as one that is led by the community, this definition would not outweigh the clear guidance in TAN 8, Planning Policy Wales and the SPG Onshore Wind Energy:
 - That contributions to local communities should not be considered when determining planning applications;
 - That community benefits should not be used as a reason to approve applications that are otherwise unacceptable under usual planning considerations.
16. Therefore, it is difficult to anticipate when the planning system can be used to ensure community benefits by using planning obligations. Examples of when this can be done are extremely limited and they can only be used when it is possible to justify them through the statutory tests above in part 4 of the report. To this end, it is possible that a voluntary arrangement which sits outside the planning system would be the most effective and appropriate way of delivering benefits for the community.

Conclusion

17. The Council implements policies in terms of 106 Agreements in accordance with its statutory responsibility and within the (local and national) policy constraints and the law in general. However, the service also understands that there will be a need to amend its system to deal with matters that arise, but that it is done so within policy and law constraints.