

TAUNTON DEANE BOROUGH COUNCIL

EXECUTIVE 19 JULY 2006

REPORT OF THE FORWARD PLAN MANAGER

Planning Obligations Strategy for Delivering the Taunton Vision and the Local Development Framework

(This matter is the responsibility of Executive Councillor Bishop)

1.0 Introduction

- 1.1 Planning obligations' from developers under S106 will be necessary to deliver the Taunton Vision, and various other proposals that may be included in the forthcoming Local Development Framework (LDF).
- 1.2 A decision on the way forward is needed to meet the timescales of both the Taunton Vision and the LDF. This report reviews the main issues that are arising and identifies potential approaches. Initially the proposals are aimed at developments in Taunton Town Centre, but will need to be expanded to a Borough-wide approach when the LDF Core Strategy is prepared.
- 1.3 This report has been prepared in consultation with Somerset County Council, the Taunton Vision Delivery Team, the Environment Agency and SWRDA. These organisations are the Borough Council's partners in delivering the Taunton Vision. Consultation with stakeholders in the LDF process has proved very helpful.
- 1.4 This report was agreed by the Strategic Planning, Transportation and Economic Development Review Panel (SPTED) on 29 June 2006. SPTED approved the recommendations without amendment, but Members raised the following specific issues in relation to any planning obligations strategy:
 - (i) In view of the high level of need for affordable housing in the Borough, Members questioned whether affordable housing should be required to contribute to the costs of infrastructure and services. Planning obligations should only be required in respect of market housing.
 - (ii) Members wished to see S106 agreements used to help deliver sustainable development.
 - (iii) It was felt that, in Taunton Town Centre, the majority of developer funding would be needed simply to make development feasible, given the known high costs of site development.
 - (iv) Members asked why the emphasis appeared to be on securing developer contributions from housing. It was explained that the

majority of development activity in the Borough is private sector housing, that employment development may not be profitable enough to make contributions, but that retail development may be able to contribute either in cash or in kind (for example, by funding car parking provision in Taunton Town Centre). It is not the intention to exclude commercial development from any system.

- (v) Account should be taken of what other local authorities have done in preparing strategies for planning obligations. The examples of Milton Keynes and Swindon were referred to.

2.0 Key issues

2.1 The following issues need to be considered:

- (i) Why is a strategy for planning obligations required?
- (ii) What advice is contained in Planning Policy Guidance/Statements (PPG/PPS) and Circulars?
- (iii) What feedback has been received to date from LDF stakeholders?
- (iv) Taking account of (ii) and (iii), what approach might best be pursued?
- (v) What information on infrastructure and services, and their associated costs, needs to be contained in a strategy?
- (vi) What action should be taken next?

3.0 Why is a strategy for planning obligations required?

- 3.1 The Urban Design Framework (UDF) for Taunton Town Centre includes a number of key aspirations that will require developer funding. These include (for example) leisure and cultural facilities, transport improvements, and public realm improvements along the riverside and in streets and open spaces.
- 3.2 General agreement is therefore needed on a strategy for planning obligations before initial market testing of the Firepool site (likely to be in September 2006). More detailed information will be needed when potential developers are short listed and for the TCAAP 'preferred option' stage (October/November 2006).
- 3.2 Consultation with stakeholders on the LDF under Regulation 25 took place between March and June 2006. A workshop for development interests was held on 22 May, and discussion on planning obligations formed a key part of this. The views expressed at this workshop (section 6.0) need to be taken into account in framing a planning obligations strategy.
- 3.3 The overriding purpose of planning obligations on sites in Taunton Town Centre will be to make development physically possible. For example, flood

alleviation could involve works costing some £4 - 5 million. The TCAAP will need to identify the planning obligations in respect of each development site. The respective positions of the Borough Council as a landowner, and SWRDA who are funding site assembly, will need to be reflected in the planning obligations that are sought.

- 3.4 Discussions between officers from the Vision partner organisations suggest that to make development happen, priorities for developer funding are flood alleviation, highways and sustainable transport, and public realm enhancements. The reasoning behind this is:
- (i) No development can take place on sites in the flood plain without necessary alleviation measures first being provided.
 - (ii) Highways and other transport measures are essential to provide access to the developments.
 - (iii) A high-quality public realm is fundamental to the design aspirations of the Vision, commercial success of individual developments and to attract people into Taunton Town Centre.
- 3.5 It is clear that these 'up front' costs of site development will limit the ability of town centre schemes to fund other infrastructure and services, particularly affordable housing. In recognition of this, the Borough Council would need to secure higher levels of affordable housing on greenfield sites to offset the lower levels that can be afforded on sites in Taunton Town Centre.
- 3.6 Demand for town centre facilities does not arise solely from sites in the town centre, but from developments throughout the Borough (and in some cases, further afield). In due course, therefore, the LDF Core Strategy will need to identify how developments outside Taunton Town Centre can contribute to the cost of town centre facilities.
- 3.7 The draft Joint Code of Practice for Planning Obligations, endorsed by the Somerset Strategic Planning Conference, remains relevant and will be used as the basis of the LDF approach. Established formulae for calculating developer contributions to services such as education would continue to be used, but would be incorporated within a more comprehensive approach embracing infrastructure and other services.
- 4.0 Procedure and deadlines
- 4.1 The emerging timescale for progressing a planning obligations strategy is as follows:
- LDF stakeholder workshop: held on 22 May
 - Taunton Vision Executive: 6 July
 - Consideration by portfolio holders of TDBC and SCC: June/July

- SPTED: considered this report on 29 June
- TDBC Executive: 19 July
- Preparation of policies for TCAAP: June – September 2006

5.0 Planning Policy Guidance and Circular advice

5.1 Any strategy for planning obligations must be consistent with Government advice as expressed in Planning Policy Guidance/Statements and Circulars. Planning obligations should only be sought where they are:

- (i) Necessary;
- (ii) Relevant to Planning;
- (iii) Directly related to the proposed development;
- (iv) Fairly and reasonably related in scale and kind to the proposed development;
- (v) Reasonable in all other respects.

5.2 Circular 05/2005 (paragraph B8) states that:

Obligations must... be so directly related to proposed developments that the development ought not to be permitted without them – for example, there should be a functional or geographical link between the development and the item being provided as part of the developer's contribution.

The scale of development allocated to Taunton Deane in the RSS must be accompanied by infrastructure and service improvements in Taunton Town Centre. It is therefore reasonable for development on greenfield sites to contribute towards the cost of town centre improvements, as the town cannot sensibly expand without these. Paragraph B9 of the Circular gives added support to this:

...developers may reasonably be expected to pay for or contribute to the cost of all, or that part of, additional infrastructure provision which would not have been necessary but for their development. The effect of the infrastructure investment may be to confer some wider benefit on the community but payments should be directly related in scale to the impact which the proposed development will make.

5.3 The ODPM/Grimley report: *Reforming Planning Obligations: the Use of Standard Charges* (November 2004) recommended that:

...public infrastructure requirements should be examined through the RSS and LDF process, and the relationship between development and infrastructure

needs, costed and apportioned. Appropriate formulae...would be advanced and tested at this stage and reviewed transparently through public consultation at regular intervals.

and

a system should be developed to prioritise...contributions made through planning obligations... The grading would have regard to regionally set priorities such as strategic transport schemes and, at the bottom end, by Community Strategies at the local level.

It went on to say that:

an assessment of financial viability is essential... Allowance must be made for on-site provision and exceptional development costs and, where relevant, current use value.

The report also recommended that affordable housing be required to contribute to the costs of infrastructure and services.

- 5.4 Circular 05/2005 takes forward some of the suggestions in the ODPM/Grimley report. Paragraph B25 states that:

In order to allow developers to predict as accurately as possible the likely contributions they will be asked to make through planning obligations and therefore anticipate the financial implications for development projects, local authorities should seek to include as much information as possible in their published documents in the Local Development Framework.

- 5.5 Paragraph B33 states that:

Local authorities are encouraged to employ formulae and standard charges where appropriate, as part of their framework for negotiating and securing planning obligations.

which is qualified in paragraph B35:

Standard charges and formulae should not be applied in blanket form regardless of actual impacts, but there needs to be a consistent approach to their application.

- 5.6 Paragraph B21 of Circular 05/2005 lends support to a 'pooling' approach, whereby costs are shared more widely:

Where the combined impact of a number of developments creates the need for infrastructure, it may be reasonable for the associated developers' contributions to be pooled, in order to allow the infrastructure to be secured in a fair and equitable way.

5.7 To reflect Circular 05/2005, there is a need to 'share out' any existing spare capacity, requiring each developer to contribute to additional capacity on the basis of impact, rather than allowing the first developer who comes along to use all of it. There is also a case for considering a 'credit' offset against the obligation in cases where an existing development is replaced with one having a lower impact.

5.8 'Forward funding' of infrastructure in advance of development, with costs being met by subsequent planning obligations, is endorsed by Circular 05/2005 (paragraph B23) as follows:

In cases where an item of infrastructure necessitated by the cumulative impact of a series of developments is provided by a local authority or other body before all the developments have come forward, the later developers may still be required to contribute the relevant proportion of the costs.

5.9 The DCLG/Halcrow report, *Valuing Planning Obligations in England*, published in May 2006, concluded that in the vast majority of cases, local authorities using standard charges secure more planning obligations than those who do not. The exception is for 'Community and Leisure' obligations (the definition of which *excludes* sports facilities and open space). This may however be because many of these have not in the past been assessed using standard charges.

5.10 The *Consultation Paper on New Planning Policy Statement 3 (PPS3): Housing* (paragraph 27) advises local authorities to:

...balance the need for affordable housing against the viability of sites in their area.

It also recommends a threshold of 15 dwellings, which is lower than the current threshold of 25 in the Taunton Deane Local Plan. Local authorities may set a higher or lower threshold where this can be justified. Given the high level of need for affordable housing in Taunton Deane – as highlighted by the Ark report - it may be that the current threshold of 25 will be reduced in the LDF. However there is also a need for flexibility on sites known to have high infrastructure costs.

6.0 Consultation with LDF stakeholders

6.1 A workshop for stakeholders in the development industry was held on 22 May as part of the LDF consultation process. The main points to emerge were:

- (i) Developers want to know as early as possible what is the maximum level of financial contribution they will have to make.
- (ii) Uncertainty and delays in the planning process should be reduced.
- (iii) The cost of major infrastructure should be shared fairly between developers.

- (iv) Ways must be found of forward funding major infrastructure in advance of development.
 - (v) Developers should be able to offset financial payments by making a contribution in kind.
- 6.2 Stakeholders expressed significant support for a 'planning tariff', to which all developments, even those of a single dwelling, would be expected to contribute. At the moment, a small number of (generally large) schemes are being asked to pay substantial sums towards infrastructure and community facilities, while other (generally smaller) developments pay little or nothing.
- 6.3 A key issue for developers is knowing in advance of site purchase what the maximum level of planning obligations will be. A tariff system is seen as offering greater certainty than relying solely on site-by-site negotiations, and also has potential to speed up the planning process. Landowner expectations will need to take account of the planning obligations strategy.
- 6.4 More design guidance is needed for individual development sites. The volume and type of development that the local planning authority will allow on a site has a major influence on the value of the land, and wherever possible, developers want to know this information in advance.
- 6.5 Delivering affordable housing is seen as a key issue. If too much is expected, this will either make development non-viable, or else will leave no funds available for infrastructure and other services.
- 6.6 It was suggested that there is potential for a tariff to equalise land values. This could encourage mixed-use developments, rather than schemes solely for the highest value use.
- 6.7 In terms of what the Borough Council ought to be doing, stakeholders suggest that it should:
- (i) Play a lead role in identifying what infrastructure is required, and how it is to be prioritised and delivered.
 - (ii) Continue to lobby for funding, including for some smaller infrastructure schemes, across Taunton Deane.
 - (iii) Ensure land allocated for development actually becomes available by taking more account of site viability and the extent of developer contributions.
 - (iv) Seek early dialogue with developers.
 - (v) Produce more site-specific design policy and guidance.

- (vi) Introduce a planning tariff, but continue to examine viability and justification for individual schemes.
- (vii) Consider making use of compulsory purchase powers in partnership with developers to bring land forward for development.

7.0 Alternative approaches to planning obligations

- 7.1 An increasing number of local authorities have been consolidating charges for infrastructure and services to form a planning tariff, in the manner suggested by LDF stakeholders. The tariff is applied on a unit basis (per dwelling, per square metre of floorspace, per vehicle trip, etc.) Examples include Milton Keynes, Ashford and Peterborough.
- 7.2 In November 2005, the Government consulted on its proposals for a Planning Gain Supplement (PGS), as recommended by Kate Barker in her review of housing supply. Nationwide, the response to this consultation does not appear to have been positive, although it appears that Government intends to press ahead with its proposals.
- 7.3 In broad terms, there appear to be three options available for securing planning obligations:
 - (i) Site-by-site negotiation
 - (ii) Introduction of a planning tariff applying to all sites above certain thresholds
 - (iii) A hybrid involving a planning tariff on small sites and a combination of standard charges (for off-site elements) and negotiation on larger sites
- 7.4 Evidence from the DCLG/Halcrow study (see 5.9) suggests that Option (i), would raise less money and would therefore be less effective in securing contributions to fund off-site works. This is a key consideration in view of the infrastructure and services that Taunton Deane will need over the next 15-20 years. In particular, smaller sites would continue to pay less than their 'fair share' of costs compared to larger developments.
- 7.5 Options (ii) and (iii) both 'share out' costs of infrastructure and services among developers, and involve assessing what these costs are. Although this requires a significant effort, the output would be of value under a range of scenarios. For example, if PGS is introduced, the need for infrastructure and services provides evidence of the level of PGS revenue that Taunton Deane ought to receive.
- 7.6 Option (iii) has already been adopted by a number of local authorities. It has the merit of recognising that in larger developments, much infrastructure will be provided on site, but that this isn't possible in smaller developments. A flat rate tariff for smaller schemes ensures that they contribute equally to infrastructure and services.

- 7.7 The TCAAP is now to be prepared somewhat ahead of the Core Strategy, and will have to contain details of what planning obligations will apply to each development site. Given what is known about scheme viability, those obligations necessary to make development feasible – such as flood alleviation and transport – will have to be given priority. Other, less site-specific elements could be subject to a tariff approach. On all major town centre development sites, a detailed viability appraisal will need to be provided.
- 7.8 Infrastructure costs associated with the Urban Extension, and other major developments, need to be considered further when drawing up the planning obligations policy for the Core Strategy. Some of these will be very substantial (for example, orbital road schemes) which suggests that Option (iii) – a mix of contributions by developers in cash and in kind – may be most appropriate.
- 7.9 The ODPM/Grimley report suggested that retail development in Taunton Deane is viable enough to support a tariff. However, sites in town centres are likely to have exceptional costs (such as demolition and contamination), and retail development within mixed-use UDF schemes may not be very profitable. In terms of employment uses, evidence suggests that these will probably only be able to meet their direct development costs, although this situation would need to be kept under review. Changes in yields, for example, can significantly affect viability of commercial schemes.
- 7.10 Different issues arise on each major development site within Taunton town centre. For example, the major developments around High Street would probably contribute more often in kind, rather than in cash – for example, by constructing replacement multi-storey car parks. At Firepool and Tangier, by contrast, the overriding priority will be funding of flood alleviation measures, so that the sites can physically be developed.
- 7.11 The Government Office for the South West (GOSW) has indicated a desire to work with the Borough Council in developing planning obligations proposals.

8.0 Infrastructure and service delivery

- 8.1 There is a need to identify services and infrastructure required over the LDF period (2006-2021), make an allowance for funding from other sources (e.g. grants) and allocate the remaining unmet costs between the anticipated developments. This could include certain services that are the responsibility of agencies other than the Borough and County Councils. Some work has already been done on this, but further refinement is needed prior to completing the LDF Core Strategy.
- 8.2 The RSS build rate implies an average of 700 dwellings per annum in Taunton itself. Applying a level of tariff similar to those being applied in other fast-growing areas, would create a need to manage an income and deliver schemes with a value of millions of pounds per annum. Appropriate systems

need to be put in place to collect and distribute these monies, together with an 'audit trail'.

- 8.3 Where local authorities have introduced planning tariffs, they have usually been accompanied by a delivery plan, setting out how the infrastructure and service improvements will be managed, and identifying what other funding sources are available to contribute to schemes. It would seem sensible to work in partnership with other agencies (such as the County Council where their services are involved) to tackle this.
- 8.4 Development and infrastructure provision need to be considered over shorter time periods than that of the LDF. 5-year phases correspond with the LTP, the Urban Housing Potential Study and probable feasibility of reviewing the LDF.
- 8.5 Some key items of infrastructure will be needed in advance of development. These need to be identified in a delivery plan, and means of funding them established. The role of the tariff would be to repay, over a period of time, the initial investment.
- 8.6 To deliver major developments in the town centre, the urban extensions etc. will require planning obligations to be approached on a partnership basis between TDBC and SCC, and in some cases also SWRDA and the EA. The role of each agency in any forward funding arrangements needs to be clarified. Each agency would be eligible to receive developer contributions towards the cost of infrastructure and services for which they are responsible.
- 8.7 The draft RSS (paragraph 3.6.8) refers to establishment of a Regional Infrastructure Fund as '...an essential component' in delivering significant levels of development in the region's Strategically Significant Cities and Towns (SSCT), of which Taunton is one.
- 8.8 Planning agreements may sometimes relate to a scheme where the final nature of the development is not known. In the case of residential development, different types of dwelling have a different impact on services such as education and transport. The respective S106 agreements will need to refer to any tariff for each type of dwelling.
- 8.9 Local authorities elsewhere suggest that the use of standard clauses is desirable in S106 and similar legal agreements. The Councils' respective legal advisors therefore need to be involved at an early stage.
- 9.0 Recommendations
- 9.1 The Executive is recommended to approve the following measures
 - (i) Incorporation of planning obligations for each town centre site in the TCAAP, on the basis of priorities agreed with the Taunton Vision Delivery Team to secure development.

- (ii) Incorporation of a 'hybrid' approach to planning obligations in the LDF, under which small schemes would pay a flat rate charge, and larger schemes would be able to make equivalent payments in kind as an alternative.
- (iii) Commission further research to establish what level of tariff may be affordable in Taunton Deane, having regard to the viability of differing types of development.
- (iv) Establish a project plan for completing the planning obligations strategy via the Core Strategy and SPD.
- (v) Continue to prioritise and refine costs of schemes where developer funding will be sought (and which will be included in the LDF).
- (vi) Seek to maximise the availability of other sources of funding for particular projects.
- (vii) Reviewing existing procedures for collecting and distributing payments received from developers.
- (viii) Continuing to liaise with GoSW on the proposed way forward, in the light of LDF stakeholder response and the Taunton Vision requirements.
- (ix) Consulting further on the emerging planning obligations strategy with LDF stakeholders at the 'preferred option' stages of the TCAAP and the Core Strategy.

Contact

Philip Bisatt Tel: 01823 356592

Email p.bisatt@tauntondeane.gov.uk

Ralph Willoughby-Foster Tel: 01823 356480

Email r.willoughby-foster@tauntondeane.gov.uk

Background Papers

Circular 05/2005 *Planning Obligations*, Office of the Deputy Prime Minister, July 2005

Reforming Planning Obligations: The Use of Standard Charges, ODPM/Grimley, November 2004

Consultation Paper on New Planning Policy Statement 3 (PPS3): Housing, ODPM, December 2005

Valuing Planning Obligations in England, DCLG/Halcrow, May 2006