FREEDOM OF INFORMATION REQUEST – 315/18

Dear Sir/Madam

Your request for information has now been considered and the information requested is provided below.

Request:

1. Who at RCC decides the projects that section 106 money will be spent on (Within RCC’s remit) when a section 106 agreement is drawn up with a developer?

Answer: Developers have a finite pot of funding available for planning gain benefits. Prior to an application being decided a developer will need to prioritise the spending to ensure scheme viability. Decisions are therefore taken on what the s106 money will be spent on at the application development stage and during the planning application stage which follows.

However, Rutland County Council believes that this question relates to the alternative decision making process which takes place after the monies are collected and the answers below are given accordingly.

Following revised government guidance Section 106 agreements are now predominantly used to secure the gain of onsite provisions, for things such as onsite play areas, equipment, drainage systems, landscaping or other physical requirements. (Rutland has adopted the Community Infrastructure Levy [CIL] as a means of securing other developer funding for infrastructure projects elsewhere.)

Since the adoption of the CIL the Council’s position has had to change with regard to s106 decisions. Development Management Officers will consider the content of s106 agreements in conjunction with Members through the planning application.

Decisions on historic s106 agreements and the expenditure of receipts previously taken in to the exchequer are taken through a bidding system overseen by the Chief Executive who will deal with expenditures that are within a capital expenditure programme of up to £50,000 under delegated powers. Sums in excess of this will be presented to Members at either Cabinet or full Council meetings.

2. Do the council have a procedure in place where local residents can offer their knowledge of the needs of the local area when the projects are drawn up at the initial stage of the section 106 agreement? (For example, a particular children's playground needing an upgrade over another)
Answer: There are three main methods of bringing community goals to the Council’s attention:

1. The Local Plan process
2. Neighbourhood Plan preparation and Planning application process

1. The Local Plan process has involved several stages of public consultation and in response to submissions concerning infrastructure and local facilities, the Planning Policy team will include “Development Principles” within the body of the Plan to steer developer expenditure.

2. The Council encourages the preparation of Neighbourhood Plans which are prepared locally by community or parish council groups. While there are some procedural requirements these plans provide a useful vehicle to bring infrastructure needs to the Council’s attention.

3. If legitimate concerns are raised through the local consultation process for a given planning application and the provision requested is based in “sound planning reasons” then local concerns may be addressed by:

   • Development Management officers during the pre-decision phase when negotiations of this type are regularly undertaken OR

   • By Members of the Planning Committee during their assessment of any application placed before them (at which time members of the public may also address Members for up to three minutes to explain their view) OR

   • A Planning Inspector, who is also required to consider public submissions, whilst dealing with an appeal.

*Note: The term “sound planning reasons” is used to describe those issues that are based in the government’s legislation and case law determined by the Courts. Specific tests have been evolved to prove that conditions, clauses and Agreements are lawful.

3. If an organisation comes forward for a grant from an allocation of Section 106 money that has been provisionally earmarked for another use, how do RCC decide which has priority?

Answer: This circumstance rarely arises, if ever, as the clauses relating to a finalised agreement will have passed through the hands of Solicitors representing the Developer, landowners and the Council. The tests referred to in answer 2 above ensure that each clause is relevant to the application in hand and this focusses likely expenditure on a particular task / site. The developers will usually ask for money to be refunded if it has not been spent on the originally intended task within a 5 or 10 year period.

Any monies that have been pooled under the historic s106 agreements are earmarked for expenditure under the process identified in response to question 1.

4. What is the procedure for monitoring the section 106 money to ensure it's spent appropriately well before expiry?
Rutland County Council’s Finance department and the Council’s CIL/s106 officer oversee an in house monitoring system whose content is currently being transferred to a market leading CIL/s106 management system. This allows ready access to the sums available for distribution and timetabling of expenditure.

5. How do RCC communicate with local groups/members of the public if there is unallocated section 106 funds to be spent? Please provide details of all forms of communication utilised by RCC to publicise this information. How frequently does this occur?

Answer: Rutland County Council does not enter into this form of communication – please see the statutory forms of consultation explained above.

6. On what date did the government change the rules of section 106 spending so that it can only be spent in the specific town or parish where development took place?

Answer: The Government changed The Community Infrastructure Levy Regulations from 1 April 2015. The Regulations placed a limit on the ability of LPAs to pool more than five S106 contributions towards a single item or infrastructure ‘pot’.

7. How much section 106 money did RCC obtain and still hold for Oakham as a result of the Barleythorpe and Spinney Hill developments?

Answer:

Agreements overall value* £2,734,157*
The Council currently holds outstanding funding of £1,057,506.
Of this sum potential and full spending commitments exist for £659,630.
Awaiting allocation for infrastructure and service spending £397,875

Note these sums are rounded and those which are current and monitored. Previous spending and receipts have been removed from the s106 accounting system and archived.

*This figure is for the current parish of Barleythorpe as a whole plus the Spinney hill development within Oakham and relate to s106 agreements only. The figures do not include the Hawksmead agreement under Section 1 Localism Act 2011 and Section 111 of the Local Government Act 1972, relating to land North of Oakham.

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The Information Commissioner's Office  
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Yours faithfully

FOI Administrator  
Corporate Support Team, Rutland County Council