

*promoting quality public transport.....*

## **The use of Section 106 agreements in enabling public transport improvements**

### **What is a Section 106 agreement?**

Enforceable obligations entered into under Section 106 of the Town and Country Planning Act 1990 are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are particularly designed to minimize the impact of a proposed development in areas generally outside the boundaries of the development itself, or to enable the provision of affordable housing within a proposed housing development. Such planning obligations may be undertaken unilaterally by the developer or by agreement between the developer and the local planning authority.

A Section 106 obligation can:

1. restrict the development or use of the land in any specified way;
2. require specified operations or activities to be carried out in, on, under or over the land;
3. require the land to be used in any specified way; or
4. require a sum or sums to be paid to the local or regional authority on a specified date or dates or periodically.

It is the second of these planning obligations which is particularly relevant when possible public transport improvements are being considered.

Given that a Section 106 agreement is designed to encourage the approval of a particular planning application it is more than likely suggested and formulated by the developer at an appropriate time. Such an agreement may not feature within the initial attempt to achieve approval - as the developer will be keen to avoid additional cost associated with the development - but may well become a feature of a subsequent re-application or as part of a planning appeal submission, in effect to act as a 'sweetener'.

Despite the introduction of the Community Infrastructure Levy, which has been developed to address broader impacts of larger developments, Section 106 agreements still focus on addressing the specific mitigation required by a new development.

If a proposed development receives planning consent, either in the normal manner or following an appeal, it is the role of the local planning authority to ensure that the requirements of the Section 106 agreement are fully implemented. Given that a Section 106 agreement relates to the land itself rather than the applicant, costs of implementation will be passed down from the developer to the subsequent land owner, typically a house building company. For obvious reasons it is unlikely that the house builder will prompt the LPA to ensure compliance with any such agreement.

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## Section 106 public transport gain - a case history

In August 2010 an application was submitted to Ribble Valley Borough Council (RVBC) by Gladman Developments Ltd to construct 270 houses on a green field site off Henthorn Road, Clitheroe (Grid Ref SD 731 409). After a vociferous local objection process the application was refused by the planning committee in July 2011. As expected an appeal was lodged and the hearing held in March 2012. Within 10 days of the end of the week's hearing the inspector had determined that the development should proceed.

In preparation for the appeal, which involved highly qualified QCs and a panoply of consultants working on behalf of the developer, changes had been made to certain details of the application, including the introduction of a Unilateral Undertaking submitted by the developer on behalf of the landowners which included, among other off-site provisions, an agreement relating to the provision of a bus service to serve the development.

At the time of the appeal there was a bus service, known as C1 Clitheroe Town Circular, which was and has been subsequently financially supported by Lancashire County Council (LCC). The developer's proposal, enshrined in the Section 106 agreement which resulted from the Unilateral Undertaking, was for the bus service to be re-routed round the new development *'at any time prior to the first occupation of the 51<sup>st</sup> residential unit'* and that a Quality Standard bus stop be provided. The transport consultant's report, on behalf of the developer, stated *'the developer will provide a bus stop within the development and will undertake to provide 100% secure funding for the operation of the bus service 'to lighten the burden on the public purse which is especially welcome in the current economic circumstances of budgetary constraints'*. She went on to say *'The current LCC subsidy of Service C1 is no longer required and can be available elsewhere . . . '*

The key aspects of the public transport promise are:

- full funding of the C1 bus service (or its successor) for a period of five years;
- the route must include the development site and calls in Clitheroe town centre including a stop at the railway station;
- the frequency will be 30 minutes at peak times, otherwise hourly. (NB - This has since been changed to half hourly throughout the day, Mon-Sat only);
- the bus service must be operating prior to the occupation of the 51<sup>st</sup> dwelling;
- 100% of the farebox revenue to be placed in a ring-fenced fund and retained solely for the purpose of providing further funding for the bus service to continue to operate when the five years' funding provided by the appellant ends;
- a bus stop will be provided prior to the commencement of the service (see below).

Construction of houses on the site, involving sections built by either Taylor Wimpey (the lead developer) or Barratt Homes, commenced in 2013. It is reasonable to conclude that the 51<sup>st</sup> house was occupied during 2014 yet there was no evidence of progress being made towards introducing the bus service. Since then the Town Circular has been modified, with an extended route, but in spite of cut-backs elsewhere in Lancashire it held on to its subsidy, listed as being £112,000 per year in 2016.

In May 2016 it had become evident that the bus service was not being extended into the new development (known ironically as Ribble Meadows) so I decided to make a few enquires. An FOI request to RVBC, submitted on 18<sup>th</sup> May, drew the brief reply that *'the council is not responsible for travel provisions'* and that I should refer the matter to LCC. At least this FOI request was responded to within the statutory period.

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A further FOI request, asking for details of all communications relating to the Section 106 agreement, was submitted to LCC on 31<sup>st</sup> May 2016. An acknowledgement was received but there was no substantive reply within the statutory 20 day period. On 21<sup>st</sup> July I was informed by LCC that both the bus stop and bus service provision were still in negotiation *'as Lancashire County Council has not received the finalised S106 agreement. Officers will remain in discussion with the developers and Ribble Valley Borough Council to finalise these.'* Apart from this brief resume LCC had not provided the information in the FOI request.

On 23<sup>rd</sup> August I received another email from LCC which, in a sense, answered my question. The email said *'I have now received a response from our Highways Department who have confirmed that there is no email trail or otherwise for our correspondence on this development and as such we have no information to provide for the question raised in your email of 21st July.'*

As I was becoming more and more frustrated with the lack of action I submitted a critical letter to Clitheroe Advertiser and Times, outlining the story so far and suggesting that a) money thus saved could be used to restore the bus service to Sabden (blighted by the sudden removal of service to the village by the commercial operator Transdev), and b) that RVBC may have been 'encouraged' by the developer to keep quiet. Perhaps it was this letter which kick-started some positive action.

Having decided that the responsibility for arranging the implementation of the 'bus provision promise' I wrote to RVBC making it clear that I was submitting a formal complaint regarding failure to act. The legal officer responded by pointing out that I should have completed the official complaint form instead! This was quickly done and quite soon I received an invitation to a meeting with the legal officer.

Whilst waiting for the meeting, which was delayed for family reasons on both sides, I unearthed a document *Planning Obligations - A Practice Guide* issued by the Dept for Communities and Local Government in July 2006. The document states *'[Planning obligations] will require monitoring by local planning authorities, which in turn may involve joint-working by different parts of the authority [and] may require joint work between LPAs and County councils. In these cases LPAs need to ensure that they coordinate and communicate well with the necessary partner organisations to ensure that contributions are made at the right time as agreed.'*

RVBC responded after the meeting by admitting that due process had not been applied and that the council would be reviewing such obligations, including communication with other statutory bodies.

In the meantime LCC had sprung into action by accepting the developer's 'kind offer', re-organising the bus service around Clitheroe and providing the much need support to allow an LCC supported service to serve Sabden. It remains a real shame that due to the inordinate delay Sabden residents have been denied their rightful bus service since the end of March 2016. The new No. 2 Clitheroe Town Circular commenced on 5<sup>th</sup> December 2016 with its extension into the new development. In the event a bus stop was not required as a hail-and-ride system applies along the town's streets.

LCC councillor John Fillis kindly complimented his officers who *'have been working hard to find a solution and I'd like to thank them for their efforts to identify the funding available through the planning process . . . .'* He clearly did not know the whole story.

Similar situations could occur across the country and people with an interest in public transport need to be ever watchful that appointed local and regional officers (and councillors) are not failing in their duty to ensure compliance and hence long-term gain for the community at large.

David J Butterworth  
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