

Lambeth Council's protocol for wider community engagement in Section 106 planning obligations



August 2009

The Council's commitment to wider community engagement

1. Lambeth Council is committed to ensuring that full and appropriate community engagement takes place in the determination and implementation of S106 planning obligations at all stages of the planning application process. This is because the Council considers that local communities are well placed to be able to assess the direct impact of development on their areas and that they should have an important role in determining priorities for mitigation measures.
2. This document sets out the Council's approach to community engagement in the S106 process including the setting up of and the operation of project banks. This applies to significant major and other applications of significance to their areas.
3. The Government Circular 05/05 on planning obligations sets out the parameters for the lawfulness of planning obligations and together with the Council's Supplementary Planning Document (SPD) on S106 planning obligations as well as any site/area specific (SPDs) provides the context for the planning obligations to be sought.
4. In many instances there is a range of choices to be made in respect of mitigating the direct impact of development, for example environmental improvements such as pavements, landscaping, pedestrian access, open space, the application of financial contributions for employment and training provision, or provision of facilities serving the local community.
5. In addition the Council is supporting the development of local project banks in conjunction with local community groups and stakeholder organisations. These are projects which are not part of the Council's general programmes but schemes that can be related to the direct impact of development proposals. They can be drawn upon when development proposals relevant to the schemes within project banks come forward.
6. The Council's commitment to community engagement in the planning application process includes the:
 - pre application stage;
 - planning application stage; and
 - post planning permission stage when Section 106 planning obligations become "live".
7. The process of community engagement including the operation of project banks will be assessed and reviewed as necessary in the light of experience and effectiveness.

Process of pre-application advice and identification of requirements

8. The process of community engagement throughout the planning application process is set out in Appendix 1.
9. The Planning Division encourages developers to enter into an early dialogue with the Council and the GLA (in schemes referable to the London Mayor) in order to identify the full range of relevant planning issues as well as advice on S106 planning obligations that may be appropriate to the type of development being proposed.
10. Guidance on planning obligations is contained in the Council's SPD on planning obligations, approved in July 2008. A S 106 tool calculator can be used to identify a number of tariff based planning obligations linked to development proposals. Specific and more detailed planning advice on planning obligations may also be provided in development briefs and area guidance. These will have already been the subject of public consultation. For example the Waterloo and Vauxhall area Supplementary Planning Documents identify a whole range of specific requirements for planning obligations including public realm and transport improvements.
11. In addition the Council will develop project banks with local community groups and other partners. These could also be drawn up as part of site development briefs or area guidance, or from other community initiatives.
12. Depending on the nature of the proposed development and the likely impact that needs to be mitigated, appropriate/relevant schemes from project banks would be identified for inclusion as part of the overall package of S106 planning obligations.
13. For major applications where the confidentiality is not an issue, Planning officers will notify ward councillors about emerging development proposals. As part of pre-application advice the Planning Division will advise that where confidentiality is not an issue, developers **are expected** to consult with local community groups/organisations and ward councillors on proposals for development and specifically on **what planning obligations** were being proposed to mitigate the likely impact of development. .
14. At the planning application stage the developer is expected to **submit a report** explaining the S106 planning obligations being proposed and **to include who was consulted at the pre-application stage; what responses were received; and how these influenced the nature and extent of S106 planning obligations being proposed.**
15. Public consultation carried out by the Planning Division on the planning application will draw attention to S106 planning obligations being proposed and inviting comments on this aspect of the planning application as well.

16. In the report to Planning Applications Committee there will be a summary of community engagement on the S106 proposed in the section dealing with planning obligations.

Project Banks

17. Project banks could be set up in different ways but an essential part would be that they have gone through a process of community engagement and reflect local community priorities.
18. These can come about in a variety of ways through:
 - proposals by local community groups and organisations;
 - proposals identified by Council Departments or other statutory bodies;
 - development brief or area based SPDs;
 - masterplans or other area based initiatives dealing with physical or community impacts.
19. Ideally schemes proposed for project banks should be worked up, costed and prioritised through public consultation. Depending on their nature and the impact of proposed development schemes from project banks could form an important part of S106 Agreements.
20. The process of setting up project banks will be co-ordinated by the Planning Division and published as separate documents.
21. They will be kept up-to-date as schemes are included in S106 Agreements and implemented.
22. It is important to note that the implementation of a project bank scheme that has been included in a S106 Agreement is dependent on the planning permission being implemented and the Council does not have any powers in compelling the implementation of a planning permission. Once a scheme is included in a S106 Agreement, including it in another S106 Agreement to be delivered by a developer, may lead to issues of double counting, and/or conflict between developers and/or Council on who has responsibility to implement it. It may therefore be more appropriate to rely on a pooling approach for financial contributions for the implementation of project bank schemes rather than specifying individual schemes in S106 Agreements.
23. Also priorities of the schemes within project banks may be affected by changing circumstances as new issues arise and/or as circumstances within an area change.
24. The geographic spread of project bank areas should be flexible reflecting variability of areas and neighbourhoods in the Borough. At present it is

likely that in addition to the initial project bank relating to the area covered by the Waterloo area SPD, project banks would be based around the Vauxhall area SPD area; the masterplan areas of Brixton; Streatham and Norwood. In addition community led initiatives for the Herne Hill and Stockwell areas provide the opportunity for setting up Project Banks in these areas.

25. In general the ability of project bank schemes to progress will be dependent on development proposals generating S106 financial contributions for their implementation. This is very much dependent on the distribution of development demand. It may therefore be appropriate to consider whether project banks could also include a range of other projects reflecting local community priorities but being delivered through other means as well.
26. The example of the initial project bank in Waterloo is set out below.

Example of Project Bank – Open Space Projects in Waterloo

A range of public realm parks and open space projects were identified by the Waterloo Open Space Partnership (WOSP), a partnership of local community organisations and stakeholders interested in improving public open space in Waterloo. A number of these projects have worked up designs, costs, and have been publicly consulted upon and prioritised. This enables S106 requirements to be readily identified and ready to be progressed when considering development schemes in the Waterloo area. These project bank schemes will provide benefits from improvements to parks and public open space to existing and new residents, visitors, and people working in the area.

S106 funded schemes or those where planning obligations are currently being pursued in Waterloo, include:

- Jubilee Gardens
- Archbishops Park
- Emma Cons Gardens.

Further projects are being worked up, and may receive S106 funding in the future.

Involved in WOSP are: Waterloo Green Trust; Waterloo Community Development Group; Lambeth Parks; Groundwork Lambeth/ Southwark; Roots & Shoots; Putting Down Roots; Bankside Open Spaces Trust; and the South Bank Employers Group

Post planning permission process

27. The step by step process is set out in Appendix 2.
28. When the Planning Division becomes aware that a planning obligation which is non-specific (that there is flexibility/choices in the application of

financial contributions or choices of project as could be the case with planning obligations which just refer to the carrying out of environmental improvements) comes live, it will notify the relevant Council service department(s) responsible for implementation; local community groups; and elected members (Cabinet member and ward members).

29. It will then be up to service departments to consider options and consult with local groups; Cabinet and ward councillors. The same process will apply in the case of specific planning obligations where there is some scope and flexibility for different alternative ways of implementing the planning obligation. Options will include schemes within a local project bank where one has been established and where projects can be clearly linked and justified in the legal sense to be in accordance with the planning obligation.
30. Following consultation, the service department will prepare a report setting out the consultation carried out and summarising its results together with recommendations on how the planning obligation should be applied including the implementation/lead delivery agency, for example - Council department, other statutory body, local regeneration partnership, community organisation.
32. In the case of employment and training planning obligations, Lambeth First (Lambeth Local Strategic Partnership) will have a key role in determining the application of financial contributions and implementation of employment training programmes.
32. The Planning Division will need to confirm that the recommended proposal is legally in accordance with the purpose of the planning obligation and seek legal advice if necessary and then the report will go to the Cabinet member with responsibility for Planning (Housing Regeneration and Enterprise as at October 2008) and/or other Cabinet members as appropriate for signing off.
33. The scheme design or other necessary process of implementation takes place with further local consultation and stakeholder project group involvement as appropriate.
34. Regardless of how the planning obligation is implemented it is essential that there is transparency and full accountability for all financial and other aspects of the implementation of planning obligations in accordance with the Council's corporate procedures and value for money objectives.

Appendix 1

WIDER COMMUNITY ENGAGEMENT IN SECTION 106 PLANNING OBLIGATIONS – PLANNING APPLICATION PROCESS

| 1. PRE-APPLICATION STAGE | |
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| Pre-application advice (see notes 1, 2, & 3) | Initial identification of planning obligations based on: <ul style="list-style-type: none"> • Unitary Development Plan (UDP) policies • S106 Supplementary Planning Document (SPD) – including tariff based contributions derived from S106 SPD toolkit calculator • Site specific (development brief)/area based SPDs – if applicable • Project bank where established & relevant to mitigating potential impact of development • Other public infrastructure providers identified requirements e.g. TfL public transport requirements • Cabinet member confirmation of identified priorities |
| Pre-application engagement (note 4) | <ul style="list-style-type: none"> • For major applications where the confidentiality is not an issue, Planning officers will notify ward councillors about emerging development proposals. • Planning Division pre-application advice service would state that it would be expected that where confidentiality was NOT an issue prospective applicants would be expected to carry out community engagement to include what planning obligations were being proposed to mitigate the impact of development. • Where a proposal was not confidential, the planning case officer would send local ward members a list of local groups and organisations for comment as to which groups it was appropriate to consult. • The applicant would then be provided with the list of groups and councillors that should be consulted and given 21 days for response. |
| 2. PLANNING APPLICATION STAGE & PUBLIC CONSULTATION | |
| | <ul style="list-style-type: none"> • At the planning application stage the applicant would be expected to submit a report explaining the S106 being proposed which would include who was consulted at the pre-application stage; what responses were received; and how these influenced the nature and extent of S106 proposed. |
| | Public consultation carried out by the Planning Division. This would include groups; ward councillors; general community |

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| | (individuals); and statutory type consultees and attention would be drawn/comments invited on the planning obligations proposed/required to mitigate the impact of the proposed development. |
| 3. PLANNING APPLICATION ASSESSMENT | |
| | <p>Planning obligations assessment and finalisation taking into account:</p> <ul style="list-style-type: none"> • UDP policies • S106 SPD • Development Brief (SPD) if appropriate • Project bank • Response from public consultation, including the Mayor of London and any infrastructure providers • planning obligations proposed/required to mitigate the impact of the proposed development. |
| 4. PLANNING APPLICATIONS COMMITTEE (PAC) DECISION | |
| Decision on the planning application including S106 heads of terms | PAC report includes a summary of community engagement on S106 proposed within the section dealing with planning obligations |
| (note 5) | |

NOTES

1. UDP, S106 SPD and site specific development briefs and area based SPDs will have gone through their own consultation process.
2. The arrangements for the setting up of the project banks will be informed by the identification of proposals from area based SPDs, Masterplans or local community area strategies that can be related to the direct impact of development, which in accordance with Circular 05/05, would not normally be met from general Council budget funding. This would also be informed by service departments' confirmation that projects would be appropriate.
3. Identification of other public infrastructure providers requirements will need to be forthcoming in a timely and justified manner for inclusion at this stage.
4. Process for wider engagement would apply to larger major developments: the developer would advise the Planning Division when his or her proposal can be regarded as not confidential.
5. Once Heads of Terms have been agreed by the Council's Planning Applications Committee (PAC) – these can only be changed in substance by referral back and agreement by PAC.

Appendix 2

WIDER COMMUNITY ENGAGEMENT IN SECTION 106 PLANNING OBLIGATIONS – POST PLANNING PERMISSION PROCESS

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| STEP 1 | Planning Division identifies that S106 planning obligation has become live as a result of the implementation of planning permission progression of relevant trigger points in S106 Agreement. |
| STEP 2 | <p>Notification as relevant to the S106 planning obligation to:</p> <ul style="list-style-type: none"> • Relevant Council Department or other statutory body with responsibility for service delivery • Local community groups/organisations • Regeneration and Enterprise Division • Elected Members – (relevant Cabinet Member/local ward Councillors) |
| STEP 3 | <p>(A) <u>Non-specific planning obligations</u></p> <p>The relevant service department identifies and co-ordinates the proposed application of financial contributions/ projects following consultation with local community groups/organisations; and local ward councillors, having regard to:</p> <ul style="list-style-type: none"> • Purpose of planning obligation • Existing Project Bank • Submissions from interested parties • Any criteria to be adopted for prioritisation <p>(B) <u>Specific planning obligations</u></p> <p>The relevant service department will confirm with the Planning Division that the proposed implementation of the planning obligation is in accordance with the S106 Agreement as approved by the Planning Application Committee. If there is scope for options within the terms of the obligation the service department will carry out the same consultation as in (A) above.</p> <p>In the case of employment and training planning obligations, Lambeth First (Lambeth Local Strategic Partnership) will be consulted and help determine the application of financial contributions and implementation of employment training programmes.</p> |

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| STEP 4 | The relevant service department drafts a report (with Planning Division sign off), setting out the consultation carried out and its results with a recommendation on the application of financial contributions/project, its implementation/lead delivery agency, for example - Council department, other statutory body, local regeneration partnership, community organisation. |
| STEP 5 | Allocation report signed off by Cabinet Member Housing and Regeneration (and other relevant Cabinet Member if appropriate). |
| STEP 6 | Scheme design takes place – including any further local consultation and stakeholder project group involvement. |
| STEP 7 | Sign off by the Planning Division of S106 Expenditure Approval (EA) report prepared by the service department through Delegated Officer Report or S106 EA form, and Service Delivery Plan. |
| STEP 8 | Implementation/delivery of scheme takes place. |