



**OXFORDSHIRE
COUNTY COUNCIL**

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Environment & Economy Scrutiny Committee

ITEM CA22

Planning Obligations

July 2007

Review Panel Members:

Cllr. Bolster

Cllr. Joslin

Cllr. Greene

Cllr. Purse





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ENVIRONMENT & ECONOMY SCRUTINY COMMITTEE 18 JULY 2007

PLANNING OBLIGATIONS

1. SUMMARY

- 1.1. Councils expect developers and landowners to provide the basic infrastructure and services made necessary by their development. In addition to temporary disruption during construction, new housing exerts considerable pressures on existing and future local services and infrastructure. Planning obligation agreements are legal agreements (under Section 106 of the Town & Country Planning Act 1990) between developers and the local planning authority that are used to ensure that the adverse effects a development may have on the local community would be mitigated. The planning obligation might involve the provision of improvements by the developer or a payment to the local authority to provide facilities itself.
- 1.2. Following the publication of governmental advice¹, concern had been raised by Councillors about the possibility that the council was failing to levy the full potential of contributions from developers. They were worried about the lack of transparency, which led to a feeling that there may be insufficient ownership of the process and possibly poor levels of control and communication. A further key issue for Councillors was ensuring current practices regarding planning obligations were being used to deliver real benefits to residents and others who visit or work in Oxfordshire.
- 1.3. To develop the analysis attention was focussed on the following issues:
- ❖ *The process by which needs that require contributions through s106 are identified and justified*
 - ❖ *The process of negotiation with developers*
 - ❖ *How the council ensures that it raises the optimum level of funding from s106*
 - ❖ *The impact on timescale targets for determining applications from negotiating s106*
 - ❖ *The preparation of agreements, length of time in preparation and liaison with legal services*
 - ❖ *The methods by which payments are collected and recorded*
 - ❖ *The methods of recording and monitoring the expenditure of receipts from s106*
 - ❖ *How the council knows that the most appropriate facilities are provided*
 - ❖ *How the council communicates with the public and elected Councillors about the benefits of s106*
- 1.4. The Committee found that considerable improvements in the process for monitoring planning obligations have been made in recent years and that officers in the Developer Funding team (DFt) are extremely committed, often exceeding their contracted hours. Their knowledge and expertise was widely acknowledged by several witnesses and they are respected by developers. The DFt has established successful area-wide and formulaic contribution assessment methodologies in the transport, education and library service areas. Through these developments, combined with improved financial management and information systems, a greater consistency of approach is being achieved. Officers are to be congratulated for frequently securing contributions at or near an optimum level.

¹ Improving Performance on Section 106 Agreements: Securing community benefits through the planning process, Audit Commission, August 2006

- 1.5. It is widely recognised that more remains to be done, not least as a result of emerging government advice. To negotiate to best effect, it is important to have the right infrastructure policies in the Development Plan documents – which itself involves a considerable process for each suite of documents. Most importantly, a written policy document which clearly sets out for both internal and external audiences what obligations are expected and how they are calculated, is long overdue. The Committee would also like to see a greater reliance on tariffs and formulae, which need to be clearly set out, so that the council is not so heavily reliant upon the ‘heroic approach’ of a few key officers. The more developers can be informed about what is expected in advance the easier it should be to reach agreement without tying up valuable time and resources in protracted negotiations. The development of good working relations between the DfT and its partners provides a good base to build on.
- 1.6. Human resources are stretched and the council has very properly concentrated its focus on those developments that will have the greatest impact on their communities. The Committee would not wish to jeopardise this policy. However, they feel there is also a need to ensure the cumulative impact of smaller developments is not overlooked. Introducing more explicit formulae will help in this regard but the Committee also believe employing an additional officer would be a cost-effective way of giving much needed additional capacity to the team. The report argues that extra contributions would probably be raised as a result of this investment.
- 1.7. In addition to the policies, it is critical that we know what infrastructure is required to successfully accommodate planned growth. The rest of the council needs to assist the DfT to identify future infrastructure needs. The Committee visited two authorities where this message has been embedded very successfully throughout their organisation. Work could also be undertaken to ensure that the yet-to-be-produced planning obligations policy is effectively tied in with the forthcoming Sustainable Community Strategy, the council’s own capital programme and the emerging raft of Parish Plans.
- 1.8. Councillors possess a great deal of local knowledge that is not always being exploited to its fullest potential and the Committee would like to see greater consistency of effort to ensure that all the relevant elected Members for a locality understand the contribution they can make to the identification of infrastructure necessary for their area. This means ensuring that they know when development is taking place but also that they understand the tight timescales involved.
- 1.9. Unitary authorities have a much easier time when it comes to planning obligations, whereas in two-tier counties additional complexities arise since the local planning authority that ultimately grants planning permission isn’t responsible for the provision of transport and education infrastructure. Working relationships in Oxfordshire are good and the Committee hope to see these reinforced through better communication and tighter synergy in planning obligation policy and guidance.
- 1.10. Monitoring the contributions secured, the payments collected and the resources available to be spent on identified projects, has been highlighted as a particular core capability for top performing authorities. Great advancements have been made in Oxfordshire over the last few years especially through the use of Excel software. An even greater degree of automation is needed, to further extended improvements in the availability of essential financial management information.
- 1.11. It is hoped that the council can find the capacity to maintain improved levels of communication about the planning obligation process and celebrate the provision it enables. The Committee look forward to revisiting this topic in a years time and finding an even more efficient, transparent and flexible system that above all else is improving in terms of its accountability and effectiveness.

RECOMMENDATIONS

The Committee RECOMMEND the Cabinet to:

- R1) make the production of a planning obligations policy guidance document an immediate priority.
- R2) introduce clearly defined and formulae-based tariff systems as a starting point for determining the level of contributions for residential and commercial developments.
- R3) replace the 10-dwelling threshold with a much lower threshold based on bedrooms rather than dwellings and address incremental impact of commercial developments.
- R4) add money into the budget for 2008/09 for one additional Developer Funding team post.
- R5) annually review the administration and monitoring fee that developers are charged and benchmark against top quartile authorities to ensure it remains at appropriate levels.
- R6) ensure that by Oct 2007 every Directorate has a named contact to form the basis of a 'virtual team' for Developer Funding Team liaison.
- R7) ensure councillors are better able to input into the 'needs identification' stage by:
 - (a) establishing a process to check councillors are informed of planning applications in a timely and useful way,
 - (b) producing a short guidance note/ presentation for inclusion in Councillors' induction and training that explains the most constructive way for Councillors to give voice to their communities interests, and
 - (c) offering meetings for councillors of relevant divisions to discuss any planning obligation requirements with officers prior to all applications for a major development being submitted.
- R8) encourage a stronger sense of district and county partnership and work together with each Oxfordshire district council to ensure district and county planning obligation policy guidance are well integrated, preferably in a single joint document.
- R9) ensure the council has sufficient legal capacity to avoid the need for outsourcing work since work undertaken in-house results in additional resources which can be used to enhance the capacity and expertise of the in-house team.
- R10) improve payment compliance by developing the financial monitoring software to produce automatic alerts to officers, as a high priority.

R11) improve linkages between planning obligations and the council's capital programme so that the monitoring and reporting of them are better aligned.

R12) produce a guidance note to be sent to all parish and town councils that:

- (a) explains the concept of planning obligations,**
- (b) encourages them to produce Town/ Parish Plans that consider planning issues and include details of their local infrastructure requirements, and**
- (c) advises them to give their contact details to the district planning team and request they be consulted on all applications likely to affect their own parish.**

R13) find new and improved ways to actively inform a range of local stakeholders of the facilities provided to their communities through planning obligation contributions, beyond merely publishing the annual report to Cabinet on the council's website.

R14) produce an Action Plan in response to the Scrutiny recommendations rather than a Cabinet meeting minute.

2. BACKGROUND

AIMS AND RATIONALE FOR THE REVIEW

- 2.1. The scoping document for the Review was formally adopted 19 July 2006. Five main aims were distilled out of the broader objectives (**Appendix 1**). Essentially, it was the job of the Review to enquire how the process for securing and managing s106 agreements is currently working, to establish whether such arrangements result in the best value for Oxfordshire, and if this is not the case, how that objective can be reached.
- 2.2. The Environment & Economy Scrutiny Committee was tasked with commissioning the review and appointed Councillors Bolster, Greene, Joslin and Purse to carry it out. The Review has identified key issues by examining a great number of planning and strategy documents (listed in **Appendix 2**), combined with several semi-structured interviews with officers within the Environment & Economy Directorate and elsewhere including a number of organisations external to the county council (listed in **Appendix 3**). This has enabled Councillors to hear first-hand what people think are the important issues. In addition a telephone survey of parish councils was conducted to establish how involved they were felt to be.
- 2.3. It was felt that this was an important area for Scrutiny because of Councillors concerns about the lack of accountability and transparency within the current system. Developer contributions provide significant resources to help deliver the vision, objectives and strategic priorities identified in the Corporate Plan. Without them very little of the infrastructure needed in a modern society would get built. Success in securing developer funding not only enables the development of sustainable communities; it also significantly impacts on the council's funds and ability to manage council tax levels and deliver value for money.
- 2.4. Oxfordshire's population will continue to increase as a result of planned new house building. The County Structure Plan identifies provision to be made for 37,300 dwellings between 2001 and 2016, and the outcome of the imminent South East Plan examination in public will result in even more housing in Oxfordshire into the future. It is important that developer funding contributions are maximised within the bounds of government guidance – if not, existing residents risk either picking up the bill for this infrastructure, or suffering sub-standard services themselves.
- 2.5. The Review was considered timely as it followed the publication of national research revealing very large disparities between the abilities of different councils to secure the appropriate level of obligations. Indeed national concern over the performance of the system as a whole has meant government policy about this has been under review in recent years. Their concern has been to speed up the process and improve transparency and reduce uncertainty. Recently the Audit Commission have tried to improve performance on s106 agreements across the board by the publication of four-part guidance of best practice and a template for a model s106 agreement.
- 2.6. It should be noted that the Review deliberately restricted the scope of their assessment and thus chose *not* to examine issues relating to the introduction of Planning-gain Supplement. They also found that the Lyons Report concerning local government funding has had no impact on this area as yet.

THE STRATEGIC CONTEXT

- 2.7. The legal basis of planning obligation agreements is set out in Section 106 of the Town & Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004. Where existing community facilities and infrastructure are inadequate to deal with the *extra* demands made as a result of new development, developers are expected to ensure that the necessary additional provision is made at no extra public cost.

Properly used planning obligations may enhance the quality of development and enable proposals to go ahead which might otherwise be refused.²

The principle of a planning obligation is that a developer either agrees to a unilateral undertaking to give money to the local planning authority or enters into a legal agreement with that authority, often known as a Section 106 Agreement, to make acceptable development proposals which might otherwise be unacceptable in planning terms. Such obligations are intended to compensate for any loss or damage caused by a particular development, or alternatively alleviate a development's impact on the local area. The planning obligation might involve the provision of facilities and improvements by the developer or a payment to the local authority to provide the facility itself.

- 2.8. Current government policy and advice on planning agreements is set out in 'Planning Obligations' Circular 05/2005. It stresses that obligations arising from the need to safeguard the local environment or to meet the costs imposed as a result of development will in practice depend on the circumstances of each case. For planning obligations to be valid they should meet the government's five tests, which in order of importance, are that they must be:

- (i) relevant to planning;
- (ii) necessary to make the proposed development acceptable in planning terms;
- (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 aspects.

The 'necessity test' establishes the fundamental principle that any developer contributions sought should be directly linked to a specific impact of a development and that the funds acquired are to be used for that purpose. In determining any needs arising from the extra demand, councils must take into account any spare capacity within existing infrastructure. Although most agreements deal with matters in the immediate area of the development, they can also be applied to mitigate the wider effects of a particular development in nearby areas.

- 2.9. Until the 1990s their use was largely restricted to requiring developers to contribute to a limited range of 'off site' costs, such as providing access roads to sites. However the provision may now include any aspect of the council's functions as service provider and facilitator, depending on the circumstances of each development, and the scope of planning obligations has grown considerably.

Planning agreements are now attached to 40% of planning permissions for major residential developments; the equivalent proportion in 1997/98 was 26%.³

Recent years have seen a significant growth of planning agreements to secure wider community benefits, starting with school buildings but then extending to

² Circular 05/2005, ODPM, 2005

³ Valuing Planning Obligations in England, University of Sheffield/ Communities & Local Government, p.16

include community facilities, adult education, affordable housing, new roads and public transport schemes, open space, or environmental mitigation. It should be noted that in two-tier authority areas responsibility for these areas is split between county and district councils (see **Appendix 4** for a full list). It is not unusual for the overall cost of measures to amount to many thousands of pounds per residential dwelling or commercial unit.

- 2.10. The extension of practice to meeting a wider interpretation of community needs means there are disparities in how different authorities respond to the five tests. This variability in interpretation, when combined with geographic and economic differences (for example in land values, wage rates, house prices, etc), results in considerable differences between councils:

*There are huge variations in the number and value of obligations secured within local authority families and regions and within individual local authorities.*⁴

- 2.11. These variations have encouraged the government to pursue alternative mechanisms based on capturing a portion of the land betterment value. Having accepted Kate Barker's recommendations the government is proposing to introduce a tax – Planning-gain Supplement (PGS) – that would be used to share some of the huge increases in land values that accrue to landowners from selling land for residential development.⁵ A proportion of the yield would be returned to local authorities to help them finance those needs currently funded by developers as a result of negotiations over planning agreements. Section 106 planning obligations will then be scaled back and restricted to dealing with the mitigation of development impact primarily on-site and to agreeing affordable housing contributions. However, consultations on exactly how the PGS will operate are still underway and it is unlikely to be implemented before 2009/2010.

⁴ Valuing Planning Obligations in England, Dept for Communities & Local Government, p.22

⁵ Research Paper 07/04 – The Planning-gain Supplement (Preparations) Bill, HMSO, 10 January 2007

3. FINDINGS

THE CURRENT SITUATION

Local strategy and policy setting

3.1. Planning applications are decided in the context of the Development Plan for Oxfordshire. The emerging development plan is a complex combination of Regional Spatial Strategy (South East Plan), and district-prepared Local Development Frameworks (LDF), which themselves contain a suite of different documents that will take a few more years to be adopted. At present there is no comprehensive planning obligations policy that sets out the county council's rules and procedures. Instead the county council relies on officer interpretation of a general Structure Plan policy (G3), comprising the few sentences shown below, which gives the council the power to seek an unspecific range of developer contributions:

Proposals for development will not be permitted unless the planning authorities are satisfied that necessary infrastructure, on- or off-site transport measures, recreation, leisure, educational, health and community facilities, services and environmental improvements are available, or will be provided.

...Contributions will be sought from developers and/or landowners in accordance with government advice.

3.2. In the past all agreements were dealt with by officers based in the transport section

but as planning obligations grew in both scope and scale the need for more resources to secure appropriate infrastructure from development was recognised and in 2002 a dedicated Developer Funding team (DFt) was set up. All the non-transport contributions are now negotiated by the DFt, whilst the Development Control – Transport team takes the lead in the majority of transport infrastructure negotiations. Three members of the DFt **prepare justifications** (with evidence from service directorates) to persuade developers and local planning authorities (i.e. district councils) of the very real need for the contributions being sought and negotiate with them on that basis. The remaining two officers are tasked with managing and monitoring the collecting and spending of the contributions once secured and providing administrative support.

3.3. The establishment of the DFt brought about major improvements to the procedures for seeking contributions. For example, a streamlined procedure of unilateral undertakings has been developed by Legal Services, in conjunction with the DFt, whereby developers can elect to provide necessary infrastructure without the need for the more cumbersome s106 agreement mechanism. Funding is now secured for a broader range of contributions beyond those traditionally considered (such as highways, public transport and education), as evidenced by a very substantial increase since 2002 in both the number of agreements and the range and value of contributions secured.

Current financial position

- 3.4. The estimated value of obligations agreed nationally in 2003/04 was approximately £1.9bn.⁶ Not surprisingly the value of obligations secured by authorities in London and the South East (where house prices are highest) was almost double that secured by authorities in the North.⁷ **Appendix 5** gives details of the current level of planning obligations held by the county council. This shows that from the first agreement in 1982 over £112m worth of obligations (excluding land and provision in-kind) have been secured, and in the last five years the value of new council obligations totalled £45m (secured from 378 agreements). The average amount secured since 1982 is £4.7m per year. Over the last ten years the average has risen to £8m per year, and over the last five years the average was £9m per year.
- 3.5. The years 2004/05 and 2005/06 were below average in fiscal terms, with a combined a total of 151 new agreements (64 and 87 respectively) securing £11.2m. During 2006/07 a much smaller overall number (86 agreements or 192 contributions) secured a greater total value of £19.4m. In fact this was the largest aggregate secured financial contribution for

any given year so far. This growth probably reflects a period of greater house building on major sites. Ongoing negotiations have “in principle” agreements exceeding contributions to the county council of £62m. This comprises Didcot West (£38m), Banbury Bankside (£8m), Didcot Ladygrove (£10m), Westgate (£4m), and Bicester Village (£2m).

- 3.6. It should be remembered that the bulk of the contributions secured in any given year will not be actually received by the county council until late years, once the respective developments actually start (or other payment trigger points are reached). The current balance of contributions held as cash in the bank and not yet spent is £42.8m. Another £40m is outstanding and another circa £30m has been fulfilled (i.e. collected and used to pay for the provision of services). The actual money is banked by the corporate finance function and placed in a separate s106 account. Each contribution is coded separately by the DFt so that their system and the county council’s integrated financial software application (SAP) will show for what purpose each contribution has been secured.

⁶ Valuing Planning Obligations in England, Dept for Communities & Local Government, p.41

⁷ Valuing Planning Obligations in England, Dept for Communities & Local Government, p.22

SERVICE GAPS

(a) Policy guidance

- 3.7. The Committee were very surprised to learn that in Oxfordshire we did not have specific detailed policies relating to planning obligation agreements but relied on the fundamental (but very short) general policy (G3) in the Structure Plan. The lack of any detailed policy guidance means that the council is reliant upon what might be termed the “heroic” approach, whereby officers from the DfT negotiate agreements on a case-by-case basis. This often works quite well but is time consuming and inefficient in the long term. It is also felt to be a high risk strategy as too much knowledge remains locked inside one or two officers’ heads, rather than being codified and set out in the form of written procedures.

For the system to operate smoothly, a council needs to set its policy requirements for developer contributions at a level where they can be imposed routinely, with only a very small proportion of applications being negotiated on an individual case basis as a departure from normal policy requirements. A well-organised planning authority can estimate the required developer contribution easily in advance, and some publish indicative estimates and examples of the required contribution for different developments.⁸

- 3.8. Furthermore the absence of any such ‘policy bible’ shrouds the whole process in mystery. It means that Councillors (and the public) don’t know how infrastructure requirements are calculated and developers are ignorant of what obligations

any planning application is likely to generate. They have to rely on a “Developer Guide” that was published jointly with the Oxfordshire district councils in summer 2002 which simply outlines the general approach Oxfordshire councils take.

- 3.9. Since the research for this report was conducted the Committee have been informed that the county have had an input into Oxford City Council’s SPD (adopted in April 2007) and Cherwell District Council’s Interim Guidance (also adopted in April 2007).
- 3.10. **Much of the literature emphasises that the importance of Supplementary Planning Documents can not be overstated.** West Berkshire Council reported a dramatic improvement in performance following the production of their SPG, with the value of obligations more than doubling in the following year.⁹ Planning obligations continue to be considered on their merits. However it is recognised that similar developments create similar impacts that need to be negotiated in a consistent way. The SPD’s give this consistency by giving clear guidance on the type and scale of contributions that are expected by the councils in the county. Research undertaken by Cardiff County Council on English Local Authorities in 2005 found that over half of those surveyed had written supplementary guidance on planning obligations.¹⁰
- 3.11. The DfT have been intending to produce more detailed guidance notes for two years

⁸ Route Map to improved Planning Obligations, Audit Commission, p.13

⁹ Delivering Investment for Sustainable Development – Financial Position to 31 March 2006 – Report to Management Board 13 July 2006, Appendix 6

¹⁰ A Report of the Economic Scrutiny Committee: s106 agreements, Cardiff County Council, Nov 2005, p.21

or more but due to the pace of development have been unable to free up the necessary time. Whilst the Committee are sympathetic to such resource constraints, this is felt to be a false economy. Having a clear set of detailed policy documents would allow developers and others to know up front what is likely to be required and allow agreement to be reached more quickly. The earlier in the process information is made available to developers, the more likely it is that contributions will be secured, as these costs can be taken into account in the price paid for land. In recognition of this fact the county council recruited a Policy Officer in March 2007 to ensure policy documents are finally produced.

- 3.12. These new policies should recognise that some elements of the contributions local authorities seek from developers are predictable. Much of the recent literature

emphasises that where this is the case, local authorities should include formulae for calculating the scale of these elements. Informing district councils of the rules and formulas used would also reduce the amount of intensive negotiation required and ultimately greatly improve efficiency and cost-effectiveness.

- 3.13. In order to protect the county council's ability to secure funding for necessary county infrastructure the council needs to make sure policies in the Regional Spatial Strategy and district council Local Development Frameworks sufficiently identify county infrastructure and service needs. When writing county policy guidance, the objectives of both the council's own strategy and the Sustainable Community Strategy that the Environment & Economy Directorate are helping to deliver ought to be clearly set out.

R1) The Committee RECOMMEND the Cabinet to make the production of a planning obligations policy guidance document an immediate priority.

(b) Tariffs and formulae

- 3.14. Local planning authorities have been encouraged to experiment with formulae and standard charges, as well as with standard agreements.¹¹ The government expects local authorities to maximise justifiable contributions and the new planning system, as made clear in Circular 05/2005, emphasises the importance wherever possible of clear and consistent guidance where formulae and standard charges are to be used. 'In the vast majority of cases, those authorities using standard charging secure more planning

obligations than those that do not'.¹² The county council should therefore seek to produce standard formulaic approaches to quantifying needs arising from development, so that calculations are explicitly set out rather than remaining locked 'inside a particular officer's head'.

- 3.15. Greater use of tariffs offers the potential benefit of speeding up the planning obligation process. Enabling more obligations to be secured without the need for complex negotiations would also free up capacity from within the team that could be focussed on helping to unblock other

¹¹ Valuing Planning Obligations in England: Final Report, Dept for Communities & Local Government, p.7

¹² Valuing Planning Obligations in England, Dept for Communities & Local Government, p.19

negotiations, for example by improving liaison with directorates or partners, and thus further improve compliance with timescale targets. The Committee feel these would be tremendous advantages that could greatly enhance the effectiveness and efficiency of the whole system.

- 3.16. The Committee are also concerned that the DfT pays insufficient attention to commercial developments, for which at present only the Development Control team in Transport Planning seek contributions. Unlike the other authorities visited, Oxfordshire County Council does not apply any particular formula in gauging the extent of any non-transport planning obligations

required from business/ commercial developments. The Committee feel that more contributions should be obtained in this area since non-residential development often bring employees into the locality who may benefit from the council infrastructure which supports libraries, waste management, the fire service and economic development. The Committee also wish to see the securing of obligations relating to environmental mitigation measures/ carbon footprint reduction being more robustly considered for all commercial developments, in line with the council's own Future First aims.

R2) The Committee RECOMMEND the Cabinet to introduce clearly defined and formulae-based tariff systems as a starting point for determining the level of contributions for residential and commercial developments.

(c) Lowering the threshold for DfT involvement

- 3.17. Transport Development Control consider all planning applications but current practice for non-transport services involving DfT officers uses a threshold of residential developments of 10 or more dwellings (reduced from 20 previously). Such a tactical threshold represents a valid means to concentrate scarce officer resources where there is likely to be the potential for the greatest impact from development. A directorate priority is aimed at concentrating effort corporately on the major 'strategic site' proposals (i.e. over 800 dwellings) e.g. – Didcot West (3,500 homes) and Bicester South West (1,585 homes). However, the Committee heard evidence that this has led to perverse incentives when developers, keen to exploit their knowledge of this practice, deliberately seek planning permission for only eight or nine houses on a site, thus avoiding contributions.

- 3.18. The DfT take steps to guard against missing piecemeal development by considering the impact of several small applications by the same developer cumulatively and then retrospectively seeking planning obligations from those developers whose combined applications exceed ten dwellings. This approach is by no means fool-proof as it relies heavily on the vigilance of individual officers to spot connections between separate applications which by virtue of their small size are not the main focus of their attention. Garden cramming is an increasing phenomenon and it does not seem fair to some developers who are concerned that smaller companies building fewer houses are sometimes able to free ride on the infrastructure that larger companies are obliged to provide. Developers reported that they would like to see a level playing field for all developments.

- 3.19. Further anomalies arise from the fact that this policy is based on the number of dwellings rather than the number of bedrooms, whereby a developer can make an application for nine 5-bed houses in the knowledge that no planning obligation will be sought, whereas the DFt may commit some of their limited resources to consider the application of another developer because he is proposing ten 1-bed flats, even though the total impact on the community will be less. For example, an application for nine four-bed houses could reasonably secure an education contribution circa £60k but officer resources would not be tasked to look at it, whereas an application for eleven one-bed flats would get officer attention but might only secure £10k. These are not simply hypothetical cases. A recent list of applications in the VOWH district included the demolition of one existing house and the erection of four detached dwellings each with double garage, that would not be considered by the DFt.
- 3.20. It has traditionally been difficult to establish the quantum of contributions from small developments because the demand they place individually on service provision is hard to quantify. It is vital that any further lowering of the threshold would be cost effective and would not divert resources away from the biggest developments which take huge amounts of time but are worth several millions in obligations. Ensuring hundreds more applications are considered will impose an additional workload and
- must secure sufficient funds to justify the extra investment. Estimating the amount of cost (increased workload) and the amount of benefit (additional payments or facilities) from lowering the threshold depends upon the number of applications that are made in future years, which is difficult to predict. However, figures from within the DFt estimate circa £200,000 per year additional contributions might be secured in this way, although it is not clear how this has been calculated.
- 3.21. West Berkshire and the Royal Borough of Windsor & Maidenhead had similar thresholds until the introduction of their SPG which subsequently enabled them to look at every development, even those creating a net addition of only a single dwelling. The publication and application of formulae and standard charges (see R2) in Oxfordshire will enable the council to more consistently secure contributions from smaller scale developments where it has not been possible in the past. This is especially important since in 2005 approximately 40% of all housing development in the county took place on sites which were not major housing allocations. Cumulatively, those developments placed demands on infrastructure and services which invariably they did not meet. It is likely that a large proportion of development will continue to come forward on smaller sites because of the government's priority regarding the use of brownfield land.

R3) The Committee RECOMMEND the Cabinet to replace the 10-dwelling threshold with a much lower threshold based on bedrooms rather than dwellings and address incremental impact of commercial developments.

(d) Staff shortages

- 3.22. The core DFt was established in spring 2002 with an initial complement of three staff, quickly rising to four. In September 2005 a Financial Co-ordinator was recruited to upgrade the financial information. The team now comprises five permanent staff, with other officers from Planning Implementation (such as the District Councils Consultation Manager) playing a role in specific projects. In March 2007 a temporary Planning Obligations Policy Officer was recruited for a year to help create a s106 policy document and ensure that local development frameworks incorporate appropriate policy statements regarding contributions to be sought.
- 3.23. Almost all witnesses highlighted the fact that the Developer Funding Team is over stretched, with its officers regularly working overtime. In the eyes of the Committee over-reliance upon the council's Developer Funding Team Leader in particular represents a high risk strategy. The team is already exceptionally busy with negotiations on a large number of sites and given the house building forecasts for the county, the day-to-day workload is unlikely to reduce in the medium term. Moreover, there is a great deal of work to be done in the short to medium term on the matters set out in this report. The Committee suggest an additional experienced officer should be recruited.
- 3.24. Applying the ratio of current team size to current contributions secured (up to five officers have secured £40m in five years) suggests that all things being equal each officer contributes £1.5m p.a. Such methodology is essentially flawed because things are not equal and Pareto's Law means it is conceivable that the work of 20% of the team (i.e. one officer) secures 80% of the total. Accepting this overly-cautious assumption means that the remaining four officers together secure £300,000 per year or £75k each, which is still more than the costs of employing an extra member of staff. Looked at in another way, and assuming total staff costs of £40k, an additional officer would increase the team's capacity by 20% but need only realise 2.6% additional contributions to cover their cost, which, even allowing for diminishing rates of return, should be feasible. Moreover, the quality of the service needs to be considered in more than simple financial terms. Improving capacity should enable the team to improve its communication and reduce the average time taken on many procedures. In short, it would be highly cost effective to invest in more officer input to the planning obligations process.
- 3.25. In line with nationally accepted practice elsewhere, the county charges developers a fee for its legal costs incurred in the drawing up of agreements. The government Circular 05/2005 neither expressly prohibits nor permits seeking an additional contribution from developers towards the funding of local authority planning obligations officers. Some of the best performing councils are charging administration fees and using this cost recovery method to pay for extra staff, justifying them to developers on the basis that such payments make a significant contribution to overall efficiency and the quality of service they receive. In Bristol, the Section 106 Officer post is paid for by an additional administration fee levied on top of planning costs. In Oxfordshire the county council has, in the last 18 months, started charging a fee for administration and monitoring, on top of the legal fees. A flat fee of £100 is levied for unilateral undertakings and bigger contributions are charged according to a sliding scale but capped at approx £5k for the very biggest developments. Depending on the quantity of applications, this can be expected to generate an annual income of up to £30,000 per year, which could have been used to finance an additional member of staff at no additional cost to the council. However, this money has already been allocated in the county council's budget as an 'efficiency saving'.

- R4) The Committee RECOMMEND the Cabinet to add money into the budget for 2008/09 for one additional Developer Funding team post.**
- R5) The Committee RECOMMEND the Cabinet to annually review the administration and monitoring fee that developers are charged and benchmark against top quartile authorities to ensure it remains at appropriate levels.**

(e) Involvement of other Directorates

- 3.26. When considering the process by which needs are identified that might require contributions through s106, one of the key messages of the IDeA's Planning Advisory Service is for local government to properly integrate and support planning as a means of delivering an authority's strategic objectives. Improved cross-service mechanisms need to be in place to ensure this happens and to ensure that the authority raises the optimum level of funding from planning obligations. This is important if the council is to ensure that it implements its own policies; for example, in guaranteeing that adequate provision is made for adult learning or special needs in new development, or in seeking adequate contributions towards public transport provision.
- 3.27. Generally the service directorates recognise the benefits in engaging with the planning process to identify necessary improvements in services and facilities. However, outside of the education branch of Children's Services, it has proved difficult to get all services signed-up to concentrating on what demands and impacts a proposed development will place on the community within their service responsibility. The impact of immediate work pressures on Directorates to deliver their core service prevents such work from being given sufficient priority. As a result justifications for what contributions should be sought are not being delivered to the standards of assessment required by developers, which creates additional workload pressures for the DfT. This situation increases the potential for proposals to go to public inquiry which use up a lot of time since Planning and DfT officers are required to prepare and present evidence to the Planning Inspectorate.
- 3.28. The council still has some way to go in achieving this, for example in ensuring individual Directorates have someone responsible for articulating the Directorate's future infrastructure needs and liaising consistently on such matters with the DfT. Best practice in some unitary authorities has seen the creation of virtual teams comprising named contacts within each service area who accept responsibility for planning liaison. District councils would also benefit from Directorate-based contacts that they could consult quickly. Without such access they often resort to using a previous case on which to base their justification. When this works it is a great time saver, but when asked questions that they cannot answer, they then have to start looking for a Directorate contact, the end result being that they have lost time.
- 3.29. Sometimes service areas may have unrealistic expectations from the negotiations, which can also make the task of negotiating more difficult. A detailed planning obligations policy framework which established some clarity on this issue would aid service areas. There is also a need for clarity on what are the priority needs for particular locations, based on strategic council policy. The use of



standard charges and formulae could also potentially make it easier to secure contributions once the initial justification work has been undertaken.

- 3.30. The authority similarly needs to do much more to ensure that the Corporate Core, and in particular the Chief Executive, portfolio holders and others responsible for the Local Strategic Partnership (LSP)/ Sustainable Community Strategy (SCS),

are aware that the planning process generates substantial s106 monies. Development management is therefore an essential component to the delivery of local area agreements and potential contributions from planning obligations need to be integrated with the delivery of the community strategy.

R6) The Committee RECOMMEND the Cabinet to ensure that by October 2007 every Directorate has a named contact to form the basis of a 'virtual team' for Developer Funding Team liaison.

(f) The role of elected Councillors

- 3.31. The Committee found widespread agreement that Councillors should not sit at the negotiating table with developers as this is more properly a role for officers. However, most witnesses acknowledged that Councillors could play a much greater role in helping to determine local needs at the pre-application stage. In West Berkshire Council, as a routine part of the planning procedure, the local councillor is asked to advise officers of the most important infrastructure requirements related to a particular development, based on their local knowledge and the community's wishes. Some officers were initially concerned that involving Councillors would create an extra burden of work and could complicate and thus lengthen what was already an extremely time-critical process. In reality, these fears proved largely unfounded as local Councillors wanted the right to be involved more as a matter of principle and very often did not think it necessary to participate in identifying local need. Furthermore, their local knowledge sometimes short-cut the investigative process for officers, thus shortening the overall timescales.
- 3.32. Communication about planning applications is generally a district council matter but it would be helpful if the DFt created a step in their process which requires officers to satisfy themselves that relevant Councillors have been informed. Experience in other authorities suggests that creating a willingness amongst officers to speak to Councillors first requires a cultural step-change. In West Berkshire Council this was most effectively achieved by emphasising to officers that any additional time spent involving Councillors at an early stage (where local knowledge plays a crucial part) is far more beneficial than time spent dealing with dissatisfied Councillors questioning agreements once they have been made.
- 3.33. To help district councils, the county could produce a short guidance note advising Councillors of all the relevant matters they should consider, which should accompany all notifications to Councillors about planning applications in their locality. This should clearly set out the time limits with which Local Planning Authorities are expected to comply and the need for Councillors to put forward their views

promptly. Very often (though by no means always) local Councillors, especially at Parish level, simply do not want development in their area. Best practice in other authorities has shown that time spent

explaining to Councillors that identifying local needs (that should be met by development) is still worthwhile and does not weaken their objections.

- R7) The Committee RECOMMEND the Cabinet to ensure councillors are better able to input into the ‘needs identification’ stage by:**
- (a) establishing a process to check councillors are informed of planning applications in a timely and useful way,**
 - (b) producing a short guidance note/ presentation for inclusion in Councillors’ induction and training that explains the most constructive way for Councillors to give voice to their communities interests, and**
 - (c) offering meetings for councillors of relevant divisions to discuss any planning obligation requirements with officers prior to all applications for a major development being submitted.**

(g) Working with the district councils

- 3.34. It is widely acknowledged that single-tier authorities have an advantage over two-tier areas because more of the service delivery functions are within the council’s control. In Oxfordshire, the sharing of information is more complex. Overall, the Committee found a very positive pattern of relationships that enable a great deal of effective joint negotiation with developers. Oxford City Council are particularly good at weekly notification as it is a requirement within their SPD although others are less consistent.
- 3.35. When the research for this Review started District councils were taking 20 working days on average to notify the county council of a planning application, despite the existence of weekly lists, and some were still sending paper rather than electronic documents. Over the past nine months there have been improvements and all Oxfordshire district councils now publish an electronic list which they update weekly. However, when DfT officers trawl the districts’ websites looking for relevant applications it is hard to ensure that nothing

has slipped through the net, especially when trying to input old agreements into the county’s database. This is because different systems use different reference numbers, so time consuming cross-referencing with the Land Registry is required. E-planning will try to integrate nine departments within the county council but the extent to which it will dovetail with each of the district councils is not clear. Ultimately there needs to be one place where an application can be accessed and where all partners can view it (an electronic ‘one-stop-shop’), with no time delay in between while people wait to be sent notification. The Committee also wish to see a standardised system of reference numbers being used by all planning authorities in the county to make sharing information easier.

- 3.36. The best way to improve the use of standardised or routine requirements is to ensure they are written into the planning policies when they are developed. The City Council has produced its Supplementary Planning Document setting out its normal

policy requirements for planning obligation agreements. Cherwell DC are reviewing the need for a similar SPD but at the moment South Oxfordshire, Vale of White Horse, and West Oxfordshire district councils do not yet propose to prepare such documents.

service requirements has a potentially limiting effect on provision of high levels of affordable housing considered essential in new development, as developers claim combined demands sometimes threaten the viability of their plans. These levels vary across the county as shown in the table below:

3.37. The Committee believe that to help the county secure full benefit to the community from developer contributions, SPDs setting out the councils' approaches to this provision must be produced as soon as possible. Reaching agreement on how any conflicting priorities can be resolved is important to ensure that applicants receive a consistent approach from both district and county. Buckinghamshire County Council chose to integrate their policy within Wycombe District Council's SPD as they were much further on with their LDF process. Oxfordshire County Council could consider a similar joint approach, by producing a county chapter for inclusion in each of the district councils' SPDs.

3.39. Districts are also concerned that any time delays caused by the county have a knock-on effect on their ability to meet the government's stringent 8 and 13-week targets (for minor and major applications respectively). Cherwell and the Vale of White Horse were amongst 81 district and borough councils to be designated as Planning Standards authorities in 2006/ 07 for failing to meet these targets. As this potentially jeopardises the level of government grant received it can have an impact on their tolerance for county requests which they believe may be hard to justify. Worryingly, this gives some scope to developers to play one council off against another.

3.38. From a district perspective, the county's wish to secure their infrastructure and

Table 1: Differences in Affordable Housing thresholds between districts

LA	Threshold	Affordable Housing
Cherwell DC	25 dwellings/ 1.0 hectare (Banbury, Bicester, Kidlington); 6 dwellings (in villages)	30% (Banbury, etc); 30% (villages)
Oxford City	10 dwellings/ 0.25 hectares	50%
SODC	15 dwellings/ 0.5 hectares (urban); 5 dwellings (villages < 3,000 population)	40% (urban) 40% (villages)
VOWH DC	10 dwellings/ 0.25 hectares (urban); 5 dwellings (villages < 3,000 population)	40% (urban) 40% (villages)
WODC	15 dwellings/ 0.5 hectare (in Witney, Carterton, Chipping Norton and Eynsham); 2 dwellings (in villages)	30% (Witney and Carterton only) 50% (elsewhere)

R8) The Committee RECOMMEND the Cabinet to encourage a stronger sense of district and county partnership and work together with each Oxfordshire district council to ensure district and county planning obligation policy guidance are well integrated, preferably in a single joint document.

(h) The role of the Legal Services unit

- 3.40. The production of s106 Agreements, on major applications, has sometimes attracted criticism due to the time taken in producing the final agreement. Whilst it is undoubtedly true that the negotiation and production of these agreements can be lengthy and resource intensive, the Committee heard complaints about Legal Services' input from only one witness. Apart from this dissenting voice everyone else felt that the legal unit was a particularly effective part of the process. Often other factors outside the legal section's control contribute to the length of time required, such as or delays in establishing information from instructing officers in some service areas or other parties' solicitors.
- 3.41. Government guidance advocates the widespread use and publication of standard agreements and heads of terms. The Legal Services unit has developed an array of templates for agreements, clauses and undertakings to accommodate a wide range of development needs. These formats have been found to be efficient and effective and have evolved to accommodate the changing nature of the planning obligations environment. The development of a fast-track, low cost (no legal fee) system of Unilateral Undertakings which is commonly used in the more straightforward cases (where the developer agrees and contributions do not exceed £20,000) has further speeded up the process for the more routine agreements.
- 3.42. The main issue for Legal Services is the sheer plethora of very substantial applications coming on stream, each of which entail significant quantities of complex legal work to make sure that high value agreements are watertight. As a result the unit is exceedingly stretched at the moment and a certain volume of legal work then gets outsourced. Whilst arrangements are in place to do this efficiently on a small scale, if a larger amount has to be outsourced additional costs inevitably arise since using lawyers unfamiliar with Oxfordshire involves substantial initial work for in-house officers for which they are seldom paid (as it is difficult to quantify and the developer's legal fee goes to the external law firm) despite the fact that such firms charge developers more than the in-house rate.

R9) The Committee RECOMMEND the Cabinet to ensure the council has sufficient legal capacity to avoid the need for outsourcing work since work undertaken in-house results in additional resources which can be used to enhance the capacity and expertise of the in-house team.

(i) Monitoring the collection and delivery of obligations

- 3.43. The Committee are keen to ensure best practice is implemented which advocates effective and transparent implementation and monitoring of obligations to ensure that contributions are spent on their intended purpose and that the community benefits within the agreed timescale. In the past, the Directorate were concerned that the current accountancy system in relation to planning obligation payments did not have sufficient control mechanisms in place that enabled the status of contributions to be robustly tracked. Historically, there was no systematic reporting of progress on s106 agreements to Councillors.

- 3.44. A number of changes have since been made including recruitment of a Financial Coordinator, who has introduced an improved system of monitoring and control using a database and several spreadsheets. This systems overhaul has improved the reliability of contribution audit trails. This is to be welcomed, especially since national research has shown that ‘...authorities that use electronic databases to record details of planning agreements secure more agreements than those that do not.’¹³
- 3.45. In 2006 a report was produced for the first time to enable the Cabinet to monitor planning obligation monies. Whilst this does not represent a comprehensive system for Member involvement it is very much welcomed as a step in the right direction. However, Bristol City Council produces six monthly reports to its Planning Committee on the position of planning obligation agreements. Newcastle City Council has taken this several steps further and “...developed a management information system that extracts information from the development control IT system to provide reports on the status and progress on outstanding planning agreements.”¹⁴ The Committee would welcome a similar approach being replicated in Oxfordshire as they are concerned that the collection of managerial information about the number and value of existing planning obligations is still an over-complex process. In part this is a consequence of the fact that the volume of agreements in recent years, combined with the task of updating older agreements onto the new system, has created a huge workload for officers.
- 3.46. Tracking the money collected is the first step in improving the co-ordination and scrutiny of the use of contributions. One of the biggest problems for the council is that they rely on developers to inform them as to when development starts and thus obligations are due. Bearing in mind that
- ‘...monitoring the delivery of infrastructure arising from the receipt of planning obligations is particularly poor in the majority of local authorities’¹⁵ it is vital that the financial data is used to ensure a named individual has an overview of each major development and the pattern of spending on it. It is also important that there is sufficient communication to ensure that someone in the relevant Directorate is aware of what money they have to spend. Work should also be undertaken to better integrate linkages between the council’s capital strategy and the LDF/ planning obligation policies.
- 3.47. Spreadsheets are in the process of being placed on the county council’s intranet, in password protected format, to enable key contacts in the Directorates to be able to track the progress of contributions in relation to specific developments. The Committee would also welcome the Cabinet being given access to this information. Detecting that trigger points for payments are reached, or that payments not yet spent may soon exceed their lifespan, is at present a manual process. Such reliance on a sole officer who knows their way around the spreadsheets is a high risk strategy. The Committee would like to see some form of automatic alerting built into the SAP financial system in future so that appropriate action is taken when there is a risk that a payment is overdue and at risk of being lost.
- 3.48. The Committee also believe that if councillors were more involved and better informed about the nature of agreements that could potentially play a useful role in monitoring any s106 agreements in their area. They often have local knowledge about when units are completed or other obvious trigger points reached and if local councillors were notified of relevant agreements they could act as community intelligence sources.

¹³ Valuing Planning Obligations in England, Dept for Communities & Local Government, p.19

¹⁴ Route map to improved planning obligations, Audit Commission, p.28

¹⁵ Valuing Planning Obligations in England: Final Report, Dept for Communities & Local Government, p.7

R10) The Committee RECOMMEND the Cabinet to improve payment compliance by developing the financial monitoring software to produce automatic alerts to officers, as a high priority.

R11) The Committee RECOMMEND the Cabinet to improve linkages between planning obligations and the council’s capital programme so that the monitoring and reporting of them are better aligned.

(j) Communicating with parish councils and the general public

3.49. The Committee identified two main issues in respect of communicating at all levels within the local community. Firstly, the wish to support the widening of public knowledge of how the planning obligations *process* operates, so that there is greater awareness at the outset of any development for communities to put forward their views on infrastructure needs. West Berkshire (which has Beacon status for Parish Planning) emphasise the importance of encouraging parishes to include any aspirations they might have into a written document, since this greatly increases the prospects for subsequent justification of such needs during s106 negotiations. Parish Plans are being effectively developed in Oxfordshire but more parishes need to be made aware of their importance and the potential benefits with regard to planning obligations clearly spelt out.

3.50. Most witnesses felt that the primary responsibility for ensuring parish councils are informed and involved about how development might affect them lay with the Local Planning Authority (i.e. the relevant

district council). However the Committee are keen to identify ways in which the county council can assist in raising awareness amongst parishes. The county should therefore produce a guidance note specifically for a parish council audience, and request district councils to include references to this on all the routine forms and letters used to communicate with parish councils about planning matters. This guidance should also be made available at appropriate points on district and county council websites.

3.51. The second issue concerns the extent to which councils publicise the outcomes of planning agreements and explain to communities the extent of facilities that have been provided as a result. Developers in particular are keen for communities to understand that they have created infrastructure for the community’s benefit. Councils should be beholden to account for what they’ve spent developer contributions on, ideally by making comparisons of obligations secured with services delivered in an accessible and publicly available form.

R12) The Committee RECOMMEND the Cabinet to produce a guidance note to be sent to all parish and town councils that:

(a) explains the concept of planning obligations,

(b) encourages them to produce Town/ Parish Plans that consider planning issues and include details of their local infrastructure requirements, and

(c) advises them to give their contact details to the district planning team and request they be consulted on all applications likely to affect their own parish.

R13) The Committee RECOMMEND the Cabinet to find new and improved ways to actively inform a range of local stakeholders of the facilities provided to their communities through planning obligation contributions, beyond merely publishing the annual report to Cabinet on the council’s website.

4. CONCLUSIONS

4.1 Section 106 is one of those “open secrets” in local government, a complex, technical issue, hitherto the preserve of professional officers. As such Councillors have felt powerless to influence the Section 106 process, despite its importance to their communities. The Committee wishes to “open up” these matters to all Councillors and to the general public. They wish the whole process to become more transparent and with this in mind have made a number of recommendations for various stages in the process. These draw heavily on the evidence collected and take particular account of the experience of other councils, particularly those recognised nationally for the changes introduced after their own processes of internal review.

4.2 The key improvements being sought include clearly laying out the policy and producing guidance that includes agreed formulae so

that developers can anticipate their likely contribution amounts. The Committee also wishes to address improving the level and flow of communication through the council and between different councils so that information people need is shared more routinely. Measures are also suggested to help clarify when and how the communities for whom these obligations are secured can become involved.

4.3 The Committee has concluded that the council already has many of the vital building blocks in place to improve performance on planning obligations still further. By ensuring greater transparency in the process it is expected that an even more efficient, flexible, accountable and effective system will emerge.

R14) The Committee RECOMMEND the Cabinet to produce an Action Plan in response to the Scrutiny recommendations rather than a Cabinet meeting minute.

Lead Member Review Group on planning obligation agreements

Cllr. Greene

Cllr. Joslin

Cllr. Purse

Cllr. Bolster

Scoping Document

Section 106 of the Town and County Planning Act 1990 enables councils and developers to enter into an agreement whereby the developer either provides facilities or pays a commuted sum to the council for the provision of facilities. Agreements to restrict or regulate the development and use of land are necessary to ensure that a new development does not place unnecessary strain on existing services and facilities such as roads, schools, health and social care providers. Planning obligation agreements were introduced to safeguard local amenities.

Review Topic (name of Review)	Developer Contributions – Planning Obligation Agreements
Review Reference Code	EN012 v.1
Parent Scrutiny Committee	Environment & Economy
Lead Member Review Group (Cllr's involved)	Cllrs. Bolster, Greene, Joslin & Purse
Member responsible for tracking (nominate one Cllr)	Cllr. Joslin
Officer Support (Scrutiny Review Officer lead)	Matt Bramall
Rationale (key issues and/ or reason for doing the Review)	<ul style="list-style-type: none"> • Councillors are concerned about the lack of accountability and transparency with regard to developer contributions. • High level of public interest in some Councillors' divisions. • Councillors wish to understand new arrangements coming forward from central government via Barker & Lyons reviews. • 7 out of the 10-question criteria are met
Purpose of Review/Objective (specify exactly what the Review should achieve)	<ul style="list-style-type: none"> • To examine the council's policies and legal requirements relating to planning obligation agreements. • To assess the effectiveness of planning obligation agreements in providing adequate facilities and ensuring that the contributions from all developments, including cumulative smaller developments, are maximised. • To establish if relationships between the county and district councils enable them to work effectively together. • To investigate the financial management arrangements relating to the receipts and expenditure of planning obligation monies. • To determine whether planning obligation monies are fully utilised and appropriate facilities are provided.
Indicators of Success (what factors would tell you what a good Review should look like)	<ul style="list-style-type: none"> • Members are satisfied that the Directorate has a specific and consistent policy on when to enter into planning obligation agreements and Members have a clearer idea about the process for securing them. • A suitable role for members in the process managing developer contributions is established to improve transparency of the process and scrutiny of the outcomes. • Best practice in other local authorities is identified, and Oxfordshire is benchmarked against other authorities. • Recommendations are made to ensure future developer contributions are optimised/ maximised.

Methodology/ Approach (what types of enquiry will be used to gather evidence and why)	Interviews with witnesses Desk-based literature review Benchmarking against other local authorities
Specify Witnesses/ Experts (who to see and when)	<ul style="list-style-type: none"> • O.C.C. Transport people – Noel Newson • O.C.C. Transport people – Paul Staley • West Oxon DC relevant officers in planning – Ian Morrow • South Oxon DC relevant officers in planning – ?Ian Price? • Oxford City Council relevant officers in planning – Lorraine Freeman • VOWH DC relevant officers in planning – Mike Gilbert • Cherwell DC relevant officers in planning – Jenny Barker • District Consultation Team Leader – Linda Currie • O.C.C. Planning Projects Manager – Tracey Dow • Social & Community Services contacts - ?? • Education contacts – Mike Mill • Developer representatives - ?? • Building/ construction industry representatives - ?? • O.C.C. Developer Funding Team Leader – Howard Cox • O.C.C. Developer Funding Financial Coordinator – Karen Howe • Chief Finance Officer – Sue Scane • Principal Solicitor (Environmental) – Julia Taplin • Town/ parish council representatives (North, South, City) - ?? • CIPFA expert – ?? • Milton Keynes Borough Council Planners - ?? • O.C.C. Cabinet Member for Transport – Cllr. David Robertson • O.C.C. Cabinet Member for Sustainable Development – Cllr. Roger Belson • SEERA Chairman – Cllr. Keith Mitchell • SEERA Planning Implementation Director – Martin Tugwell • SEERA Senior Regional Planner – Alison Bailey • Oxfordshire MPs –
Specify Evidence Sources for Documents (which to look at)	<ul style="list-style-type: none"> • Cabinet Report 18 July 2006 – Developer Contributions to Service Infrastructure. • Sustainable Development Service Plan 2005-06 • Sustainable Development Service Plan 2006-09 • Any internal policy documents in use by the Developer Funding team • ODPM Circular 05/ 2005 (18 July 2005) • Planning Gain Supplement: a consultation, ODPM/ HM Treasury • LGiU Policy Briefing 255/05 Planning Gain Supplement • Review of Housing Supply (Barker) Final Report, HM Treasury • Government’s Response to the Barker Review • Valuing Planning Obligations in England: final report (research study) • Planning Obligations: Practice Guidance, DCLG • ??

Specify Site Visits (where and when)	Visit another authority, to learn what they do well. Visit a recently completed development, to analyse if the contributions mitigated impact sufficiently to safeguard local amenities.		
Specify Evidence Sources for Views of Stakeholders (consultation/ workshops/ focus groups/ public meetings)	<ul style="list-style-type: none"> • Talk to local people living in or near a recently completed development to ascertain their views. • Other stakeholders are district, town and parish councils; internal customers to the council, such as planners in education or social care; or partners. 		
Publicity requirements (what is needed – fliers, leaflets, radio broadcast, press-release, etc.)	Press release to advertise the Review		
Resource requirements <ul style="list-style-type: none"> • Person-days • Expenditure 	35 days £500 (may increase if financial expertise has to be bought in)		
Barriers/ dangers/ risks (identify any weaknesses and potential pitfalls)	<ul style="list-style-type: none"> • The government is currently reviewing local and regional planning policy as part of the local government review. Possible changes to planning obligation and land use planning in particular arising from the (Kate) Barker report. The outcome is unclear, as both of these reviews are expected to report during the Review, and may mean procedures and policies have to change. There is the potential for lots of ‘shifting sand’ as a result, which may delay the review. • The topic has a great deal of overlap with district council responsibilities – they are the planning authority – the review will need to be careful not to stray too far into their activities or spread ‘the net too wide’. • Developers may be reluctant to speak to Councillors. 		
Projected start date	19 July 2006	Draft Report Deadline	21 Feb 2007
Meeting Frequency	every three weeks	Projected completion date	16 May 2007
When to evaluate impact and response	12 months after considered by Cabinet		

Bibliography

During the course of the review, the following documents were collated, prepared or considered. Copies of all these documents are available for inspection in the Members' Resource Centre:

National documents:

- *Planning Policy Statement 1, Delivering Sustainable Communities*, ODPM, 2005
- *Regional Planning Guidance note 9: for the South East*, SEERA, Mar 2001
- *South East Plan, Core Document*, South East England Regional Assembly, March 2006
- *Circular 05/2005 Planning Obligations*, ODPM, May 2005
- *Planning Obligations: Practice Guidance*, Communities and Local Government, July 2006
- *Improving Performance on Section 106 Agreements: Securing community benefits through the planning process*, Audit Commission, August 2006
- *Improving Performance on Section 106 Agreements: Value for money self-assessment guide*, Audit Commission, August 2006
- *Improving Performance on Section 106 Agreements: Route map to improved planning obligations*, Audit Commission, August 2006
- *Improving Performance on Section 106 Agreements: Corporate awareness checklist*, Audit Commission, August 2006
- *Planning Simplified: A guide for councillors*, LGiU, Jan 2005
- *Councillor Involvement in Planning Decisions: Final Report*, CLG, January 2007
- *Formulation of Standard Approaches to Section 106 Planning Obligations in London*, Association of London Government/ Halcrow, 2005
- *The Provision of play areas/open spaces under Section 106 Agreements*, Wakefield Metropolitan District Council
- *Summary of Planning-gain Supplement: a consultation*, HM Government, December 2005.
- *Valuing Planning Obligations in England: a summary*, HM Government, May 2006
- *Valuing Planning Obligations in England: Final Report*, University of Sheffield and Halcrow Group/ Communities and Local Government, May 2006
- *Review of Housing Supply – Developing Stability: Securing our Future Housing Needs*, HM Treasury, 2004
- *Planning-gain Supplement a Consultation*, LGiU, December 2005
- *Planning-gain Supplement: a Consultation*, HM Government, December 2005
- *Research Paper 07/04 – The Planning-gain Supplement (Preparations) Bill*, HMSO, 10 January 2007
- *Colchester: The creation of a Section 106 Database*, Planning Advisory Service
- *Clone Town Britain: Policy Prescriptions for the Nation's Identity Crisis*, New Economics Foundation, 2004
- *Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990*, CLG, 2006
- *To Have and to Hold: The DTA Guide to Asset Development for Community and Social Enterprises*, Development Trusts Association, September 2005
- *Local Development Frameworks: Delivering the Vision*, Planning Advisory Service, July 2006
- *Audit Commission Praise for Borough's Developer Contributions System*, Royal Borough of Windsor and Maidenhead, August 2006

Other local authorities documents:

- *Statement of Requirements for Developer Contributions in Leicestershire*, Leicestershire County Council, June 2006.
- *Draft Developer Contributions Supplementary Planning Document*, Wycombe District Council, April 2006
- *Delivering Investment from Sustainable Development: Core Guidance*, West Berkshire, September 2004
- *Planning Obligations and Developer Contributions Supplementary Planning Document: A developers' guide*, Royal Borough of Windsor and Maidenhead, December 2005
- *Statement of Requirements For Developer Contributions in Leicestershire*, Leicestershire County Council June 2006
- *Developer Contributions Strategy for Bedfordshire County Council Infrastructure and Services*, Bedfordshire County Council, March 2007

Relevant local policies and reports:

- *Oxfordshire Structure Plan 2016*, Oxfordshire County Council, adopted 2005
- *Oxford Local Plan 2001-2016*, Oxford City Council, adopted November 2005
- *Planning Obligations Supplementary Planning Document (Draft)*, Oxford City Council, Oct 2006
- *Local Development Scheme 2005-2008*, Oxford City Council
- *Negotiating and implementing planning obligations code of practice*, Oxford City Council, August 2006
- *General Policies for Development*, Vale of White Horse District Council, July 2006
- *Local Development Scheme*, West Oxfordshire District Council, April 2005
- *Report of Planning Services Business Manager*, Oxford City Council, September 2006
- *Environment and Economy Plan 2005-06*, Oxfordshire County Council, 2005
- *Local Plan 2011 – July 2006 – Chapter 4*, Vale of White Horse District Council, July 2006
- *Infrastructure and service provision*, Oxfordshire County Council

List of Witnesses

Oral evidence was obtained from the following 'witnesses' during the review public hearings:

- ❖ Rob Dance – Planning Implementation Manager, Environment & Economy
- ❖ Howard Cox – Developer Funding Team Leader, Environment & Economy
- ❖ Alan Pope – Developer Funding Team (Case Officer), Environment & Economy
- ❖ Karen Howe – Financial Coordinator, Environment & Economy
- ❖ Paul Staley – Group Manager (Transport Strategy and Development Control), Environment & Economy
- ❖ Linda Currie – District Council Planning Consultations Team Leader, Environment & Economy
- ❖ Tracey Dow – Planning Project Manager (Planning Implementation Group), Environment & Economy
- ❖ Nick Welch – Head of Service (Planning and Partnerships), Social & Community Services
- ❖ Michael Mill – Senior Education officer (Planning & Performance), Children Young People & Families
- ❖ Patrick Rosum – Technical Officer (Fire Protection Group), Community Safety
- ❖ Nigel Reynolds – Technical Officer (Fire Risk Group), Community Safety
- ❖ Julia Taplin – Principal Solicitor (Environmental), Legal & Democratic Services
- ❖ Cllr Roger Belson – Cabinet Member for Sustainable Development
- ❖ Cllr David Wilmshurst – County Councillor for Thame & Chinnor Division
- ❖ Geraldine LeCointe – Senior Planning Officer, Vale of White Horse District Council
- ❖ Lorraine Freeman – Developer Funding Officer, Oxford City Council
- ❖ Lyn Lawrence – Team Leader (Policy Implementation), Oxford City Council
- ❖ Jenny Barker – Senior Planning Officer (Major Developments), Cherwell District Council
- ❖ Mick Moore is Major Applications Officer for South Oxfordshire District Council
- ❖ Phil Shaw is Area Planning Manager at West Oxon DC
- ❖ David Keyse – Development Planner, Gallagher Estates
- ❖ David Coates – Planning Director, Kingerlee Homes
- ❖ Tony Woodward – Joint Managing Director, Kingerlee Homes
- ❖ Cllr Caroline Dalton – Chair of Planning Committee, Wheatley Parish Council
- ❖ Mr. Morris – Clerk to the Council, Wheatley Parish Council
- ❖ Cllr Steward – Chair of Environment Committee, Bicester Town Council
- ❖ Mrs Wilson – Clerk to the Council, Bicester Town Council
- ❖ Dr. Kathrin Luddeke – Communities Team, Corporate Core
- ❖ Catherine Chater – Carterton Fast Forward Partnership

Written evidence was obtained from the following people:

- ❖ Julie James – Programme Support Manager (Beacons and Services), IDeA
- ❖ Stephen Barker – Planning Advisory Service
- ❖ Phil Hall – Audit Commission

Visits were made to three local authorities and a local delivery vehicle where the following people were interviewed:

- ❖ Gail Kenyon – Group Manager (Transport Policy and Implementation), Royal Borough of Windsor & Maidenhead
- ❖ Caroline Grey – Developer Contributions Officer (Planning), West Berkshire Unitary Council
- ❖ Tim Slaney – Planning and Transport Policy Manager, West Berkshire Unitary Council
- ❖ James Fox – Section 106 Officer (Strategic Planning Group), Buckinghamshire County Council
- ❖ Liz Thomas – Project and Development Manager, Aylesbury Vale Advantage

The following witness was unable to find time in his schedule to meet the Lead Member Review Group:

- ❖ Dr. Richard Fordham – Managing Director, Fordham Research

The following witness declined all requests from the Lead Member Review Group to submit evidence:

- ❖ Mark Bacon – Department for Communities and Local Government

Examples of community need addressed through planning obligations

As the main body of the report makes clear, the range of community benefits secured through planning obligations has grown tremendously over recent years. What was initially seen as the means to mitigate against the impact developments had on roads and schools can now incorporate any of the following essential services:

Primarily county matters

- Archaeology and conservation
- Education and schools
- Employment and training
- Fire and rescue
- Highways, transport and travel schemes
- Libraries
- Public transport subsidy
- Town centre improvements
- Waste management/ treatment

Primarily district matters

- Affordable housing
- Affordable business space
- Cultural facilities and public art
- Flood defence
- Local environmental improvements (positive planning)
- Open space provision
- Recreation, sport and leisure facilities

Joint county and district responsibilities

- Community centres and facilities
- Crime and disorder prevention
- Environmental mitigation measures
- Healthcare
- Recycling facilities
- Specialist accommodation, day care or nursing homes

It should be noted that not all of these examples need apply to all developments – any particular obligation will always be justified according to the requirements of a particular development.

Developer Funding Team – Financial Data

Oxfordshire has secured a total of 701 planning obligations, securing 975 contributions totalling £112m (each agreement secures an average of 1.4 contributions).

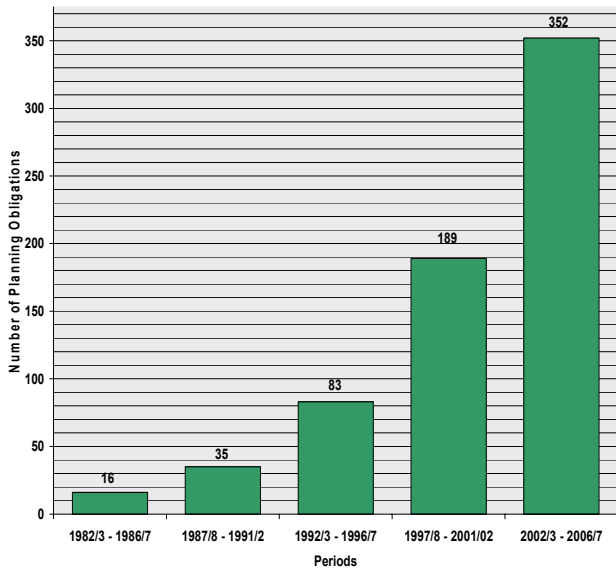
The average income secured from planning obligations in Oxfordshire over the last five years is almost £9m a year. This represents a substantial level of income.

Over this five year period on average just over £70k is secured per contribution, or £117k per s.106 Agreement. In reality, contributions range from £350 for things like museums and libraries up to £1,000,000 for schools.

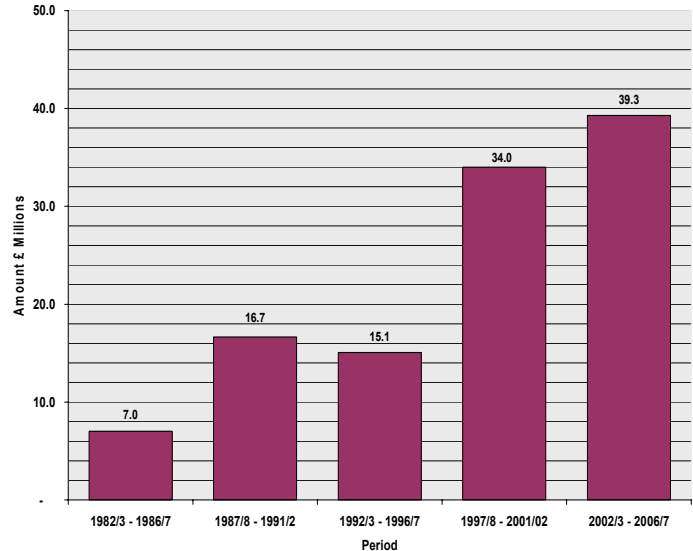
The figures also show how much these amounts vary both over time and between service areas, depending on the number and type of applications received from developers. Transport and education are by far the most valuable contributions, whereas transport and libraries are the most numerous.

Education has the highest average value per contribution over the last ten years at approximately £330k, followed by transport (£100k), then minerals (£56k) and libraries (£14k).

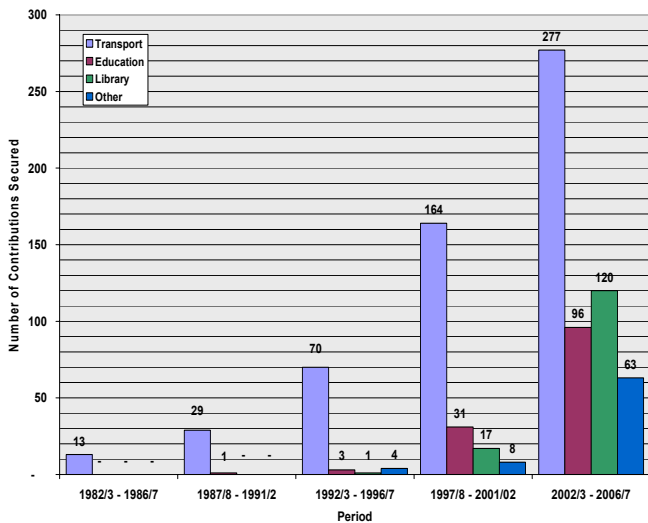
**Number of Planning Obligations Completed
Within 5 Year Periods**



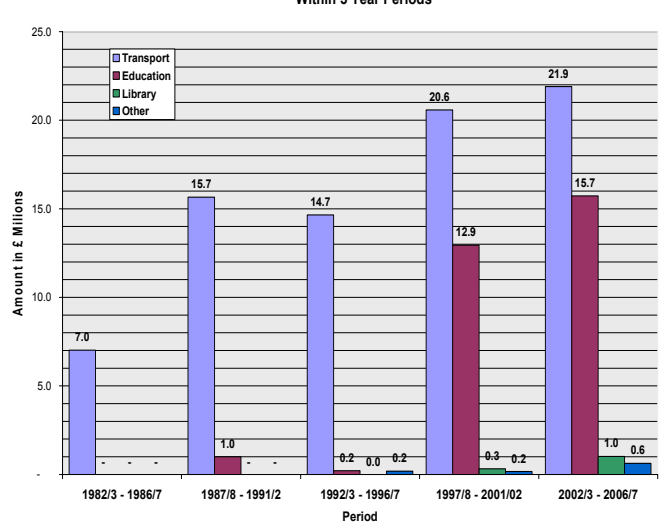
**Overall Value of Secured Contributions
Within 5 Year Periods**



**Number of Contributions Secured by Type
Within 5 Year Periods**



**Value of Secured Contributions by Type
Within 5 Year Periods**



GLOSSARY

Affordable housing	Housing which meets the needs of people who cannot afford accommodation to rent or purchase on the open market which is suitable for their needs, including housing for rent, shared ownership or low cost market housing.
Brownfield site	A brownfield or previously developed site is defined in PPG3 in summary as: "...land which is or was occupied by a permanent structure (excluding agricultural or forestry buildings), and associated fixed surface infrastructure."
CLG	Communities & Local Government: central government department which took over responsibilities from ODPM in May 2006
Development	The Town and Country Planning Act 1990 defines development as 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land'.
Development plans	Statutory documents produced under Section 54A of the Town and Country Planning Act 1990, which set out local planning authorities' adopted policies and proposals for the development and use of land within their area. The development plan in Oxfordshire consists of the county Structure Plan, local plans prepared by the district councils and the Minerals and Waste Local Plan prepared by the county council. Development decisions must conform with the development plan, unless material considerations indicate otherwise. The current development plan for Oxfordshire will be replaced by the South East Plan (the regional spatial strategy for the south east which will provide the strategic planning framework for the region), local development frameworks prepared by each district authority and the minerals and waste development framework prepared by the county council.
DfT	Developer Funding Team: The team primarily responsible for council activity concerning planning obligations
DPD	Development Plan Document: Statutory documents prepared by local planning authorities to outline the key development goals of the LDF. These documents will replace the policies in the adopted Structure and Local Plans and together with the RSS form the Development Plan for an area. All DPDs must be subject to rigorous procedures of community involvement, and consultation and then adopted after receipt of the Planning Inspector's binding report. Once adopted development control decisions must be made in accordance with them. DPDs are a type of LDD (see below), however not all LDDs are statutory documents.
Greenfield sites	Land not been previously developed either inside or outside urban areas.
LDD	Local Development Document: The documents which (taken as a whole) set out the council's policies relating to the development and use of land.
LDF	Local Development Framework: A non-statutory term used to describe the portfolio of Local Development Documents. It consists of Development Plan Documents, Supplementary Planning Documents, a Statement of Community Involvement, the Local Development Scheme and Annual Monitoring Reports.
LDS	Local Development Scheme: A project plan (timetable) for preparation of Local Development Documents, agreed with government reviewed annually.
LPA	Local Planning Authority: The tier of local government that grants planning applications. In Oxfordshire this is always one of the district councils. The county council is the planning authority for waste & minerals.
LSP	Local Strategic Partnership: A group of significant stakeholders, including public, private and voluntary sectors, who produce the Community Strategy.
ODPM	Office of the Deputy Prime Minister: Responsibilities transferred in May 2006 to Communities & Local Government

PGS	Planning Gain Supplement: A new proposal to seek a governmental levy from the increase in land values arising from the granting of planning permission, so as to allow landowner development gains to contribute to wider benefits for the community. This would be allocated to local councils by a formula, and s106 Agreements would be scaled back as a result.
Planning obligation	Agreements or undertakings under Section 106 of the Town and Country Planning Act 1990, specifying certain requirements of the development. This may include financial contributions to improve community facilities and install infrastructure to meet the extra demands made as a result of the development. Developers are obliged to ensure that any necessary additional provision is made at no extra public cost.
PPG	Planning Policy Guidance notes: National planning policy guidance produced by the government (ODPM) under the <u>previous</u> planning system. In due course the government will replace them with PPSs.
PPS	Planning Policy Statement: National planning policy guidance produced by the government under the <u>new</u> planning regime. All planning policies at a regional, county and district level, and the determination of all planning applications, must comply with Planning Policy Statements.
RPB	Regional Planning Body: The body that will produce the Regional Spatial Strategy. In the case of Oxfordshire this is SEERA.
RPG9	Regional Planning Guidance note 9: for the South East, March 2001.
RSS	Regional Spatial Strategy: The type of planning policy produced at the regional level that forms part of the statutory development plan.
s106 Agreement	See Planning Obligation (above)
SAP	The county council's integrated financial software application.
SEEDA	South East England Development Agency: A body established by the government to take the strategic lead in promoting the sustainable economic development of the region.
SEERA	South East England Regional Assembly: The regional planning body (RPB) for South East England. It prepares the South East Plan.
SEP	South East Plan: The Regional Spatial Strategy – the planning policy produced at the regional level that forms part of the statutory development plan for South East England – which once adopted by the Secretary of State will replace RPG9.
Structure Plan	Oxfordshire Structure Plan 2011 , adopted 21 Oct 2005.
SPD	Supplementary Planning Documents: A type of Local Development Document that supplements and elaborates on policies and proposals in the 'parent' Development Plan Documents (DPD). SPDs do not form part of the statutory Development Plan.
SPG	Supplementary Planning Guidance: Guidance documents to support specific policies in the Local Plan under the previous planning system, although they do not form part of the Development Plan itself.
Minor development	Minor development: small residential developments of nine houses or less or a commercial development of less than 1,000m ² .
Major development	Major development: defined by a General Development Order as a residential development of 10 or more dwellings or a commercial development > 1,000m ² .
Significant site	Significant site: as an Oxfordshire rule of thumb these are the significant major developments of at least 400 dwellings.
Strategic site	Strategic site: as an Oxfordshire rule of thumb these are the really large developments of at least 800 dwellings.

“Formate alternative te ketij publikimi ofrohen me kerkese. Kjo perfshin dhe gjuhe te tjera, me shkronja te medhaja, shkronja per te verberit, kasete degjimi, disk kompjuteri ose email.”

Albanian

আপনি যদি অনুরোধ করেন তাহলে এই পুস্তিকাটি বিকল্প ছাঁদে, যেমন, অন্য কোনও ভাষায়, বড় হরফে, ব্রেইলে, অডিও-ক্যাসেটে, কমপিউটারের ডিস্কে বা ইমেলের মাধ্যমে পেতে পারেন।

Bengali

“本刊物備有其他的格式可供索取。這些包括有其他語言版，大字版，盲人用版，錄音帶版，電腦磁碟版或電子郵件版。”

Chinese

प्रार्थना करने पर यह प्रकाशन दूसरे रूपों में प्राप्त किया जा सकता है। जिस में सम्मिलित है, दूसरी भाषाओं में, बड़े छापे में, ब्रेअल, सुनने की टेप पर, कम्प्यूटर की डिस्क पर या ई-मेल द्वारा।

Hindi

“ਇਹ ਪੁਸਤਕ ਬੇਨਤੀ ਕਰਨ ਤੇ ਹੋਰ ਟੁਪਾਂ ਵਿਚ ਵੀ ਉਪਲਬਧ ਹੈ। ਜਿਵੇਂ ਕਿ ਹੋਰ ਭਾਸ਼ਾਵਾਂ ਵਿਚ, ਵੱਡੇ ਛਾਪੇ ਤੇ, ਬ੍ਰੇਲ ਵਿਚ, ਸੁਣਨ ਵਾਲੀ ਟੇਪ ਤੇ, ਕੰਪਿਊਟਰ ਡਿਸਕ ਜਾਂ ਈ ਮੇਲ ਤੇ।”

Punjabi

“اس اشاعت کو متبادل اشکال میں درخواست کرنے پر حاصل کیا جاسکتا ہے۔ اس میں دوسری زبانیں، براہرٹ، بریل (جسے اندھے چھو کر پڑھ سکیں)، آڈیو کیسٹ، کمپیوٹر ڈسک یا ای میل شامل ہیں۔”

Urdu

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Scrutiny Review Report into Planning Obligations

JULY 2007

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