



Technical, Economic and Environmental Services Scrutiny Panel

Review of Section 106 Agreements

August 2005

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Technical, Economic And Environmental Services Scrutiny Panel

Review Of Section 106 Agreements

1. Introduction By The Chair

In introducing this report, I would firstly like to thank the officers from Oldham and Stockport Metropolitan Borough Councils, who helped the Panel with this Review and for the time they devoted showing Elected Members appropriate sites in their respective Boroughs.

I would also like to acknowledge the work of the staff from the Scrutiny Support Unit, who are as much a part of scrutiny as the Panel Members and I feel we are developing into probably one of the best scrutiny services in the country.

The Members of the Technical, Economic and Environmental Services Scrutiny Panel were surprised to learn at our first meeting, that in Tameside, we did not have specific policies on when to enter into Section 106 Agreements, or associated Commuted Sum Payments, and this is highlighted in the report. The report also illustrates the advantages that can accrue from a clear and transparent policy and procedure, with regard to developer contributions.

The Members of the Scrutiny Panel enjoyed visiting Oldham and Stockport to see at first hand, the various ways in which communities can be improved, when developer contributions are fully utilised. The best practice learned from these visits is detailed within the report.

Finally, I would like to thank fellow Members of the Scrutiny Panel for their commitment to this Review, and in particular to Mr Tony Moss of the Citizens' Panel for his contribution to Panel meetings, thus once again involving the public and the wider community in the work of scrutiny.



A handwritten signature in black ink, appearing to read 'P J Robinson'. The signature is written in a cursive style and is positioned above the printed name of the chair.

Councillor P J Robinson
Chair

2. Summary

During the past decade, there has been an increasing number of residential developments within Tameside. As traditional investments, such as retirement pensions and stocks and shares, have received negative press, the public have placed their trust in bricks and mortar in order to secure their future. Although in the past house building may have fallen below target, there has more recently been a pronounced upturn.

Likewise, new commercial developments have become increasingly popular, from shopping centres to supermarkets, and new developments have contributed to the economy of the Borough.

It is acknowledged that substantial contributions have been made following Section 106 Agreements with developers of both housing and commercial properties. These have included contributions to education, highways and recreation provision. The Panel has been informed that this has been done in consultation with local Councillors. The Panel has however, identified that there is a far greater potential to achieve developer contributions from smaller developments and that there is a need for a consistent approach to planning obligations (see Sections 6.3.5 - 6.3.8 for definition of planning obligations).

The government is currently reviewing the subject of planning gain, although the outcome is unclear and revised guidance has not yet been produced.

The purpose of this review has been to consider the Council's approach to Section 106 Planning Agreements and to recommend any potential improvements, following the identification of best practice in other local authorities.

With regard to commercial schemes, developers are required to contribute to factors which are considered appropriate for each individual development. However, with regard to housing developments, the Council has traditionally, only considered asking housing developers to contribute to "Type, Size and Affordability of Dwellings" (Policy H4 of Tameside's Unitary Development Plan), "Open Space Provision", (Policy H5 of Tameside's Unitary Development Plan) and "Education and Community Facilities", (Policy H6 of Tameside's Unitary Development Plan), if new housing developments comprise 25 or more dwellings (until November 2004, this figure was 50). The Panel feel that this is an area, which needs strategies to reflect the cumulative effect of developments on the Borough.

The Panel have been extremely impressed by the significant sums of money generated by Stockport MBC, which have been used to enhance their Council priorities, and would recommend the introduction of a similar policy in Tameside. This would be in keeping with the government's intentions of ensuring neighbouring authorities introduce a uniform approach, for developer contributions.

In undertaking this Review, the Panel has taken the advice of the Head of Planning, the Assistant Borough Solicitor, the Estates and Valuation Service, and Councillor P Bibby, as an independent expert on planning matters. Neighbouring authorities and a local developer have also been key consultees in the Review. Members also met Councillor Whitehead the Cabinet Deputy for Technical Services.

The Panel has explored the policies contained in the Council's latest Unitary Development Plan and is satisfied that procedures are in place to ensure that with regard to developments comprising 25 or more dwellings, the guidelines in the Unitary Development Plan relating to developer contributions for Type, Size and Affordability of Dwellings, and Education and Community Facilities, are adequately

followed.

The Panel however, do not believe that the current practice in the Planning Service, complies with the explanatory guidelines contained in Policy H5 of the Unitary Development Plan. These guidelines state that “.. where a deficiency exists, virtually all new housing developments that result in an increase in residential capacity will now be expected to provide appropriate amounts of open space either directly on or adjacent to the site, or to contribute to provision elsewhere in the area”. Furthermore, the guidelines state that “...all new housing in fact places some demand on the facilities available in the Borough”.

This report therefore, also seeks to recommend the introduction of clear and concise guidelines, for the application of developer contributions for Public Open Space in the Borough.

Consideration has also been given to the most appropriate and cost effective way in which this can be achieved, and the Panel has thoroughly examined the use of Commuted Sum Payments and Section 106 Agreements. The report contains clear comparisons of the two processes, together with concise conclusions and recommendations, which aim to address the disparity of the current system.

3. Membership Of The Scrutiny Panel

Councillors P Robinson (Chair)

Councillor S Shepherd (Deputy Chair) NB. Councillor R Welsby replaced Councillor Shepherd as a Panel Member and Deputy Chair from May 2005

Councillors Bailey, Downs, Meredith, S Quinn, Seabourne and S Smith.

4. Terms Of Reference

The following Terms of Reference and objectives for the Review were approved by the Panel at its meeting held on 10th January 2005.

Terms of Reference

Aim of the Scrutiny Review Exercise

“To review the Council’s current policies and processes surrounding Section 106 Planning Agreements with a view to making recommendations for improvements to the Council”.

Objectives

1. To produce accurate information on selected Section 106 Agreements and schemes – past, present and planned (to include e.g. quality of work undertaken by developers, quantity of schemes, location and comparisons with other local authorities).
2. To assess the Council’s existing policy in relation to Section 106 Planning Agreements, to include if/how it links to other local planning policies and Council priorities.
3. To record Elected Member and public satisfaction with the current operation of Section 106 arrangements and identify any improvements.
4. To assess the existing Section 106 process, to include consultation with key groups, views from the Cabinet Deputy, and any models from other authorities.
5. To ascertain any issues relating to equalities and Section 106 Planning Agreements.

See Appendix 1 for details of the Scoping Document.

5. Methodology

- 5.1 This Scrutiny Review was undertaken by the Members of the Technical, Economic and Environmental Services Scrutiny Panel, who invited a representative from the Citizens' Panel, Mr Tony Moss, to assist in an advisory capacity.
- 5.2 The Panel commenced the Review by meeting with Councillor P Bibby, who provided information and advice on Section 106 Agreements, in his capacity as an independent expert in planning obligations, Mr Nigel Allen, Head of Planning, and Mr Keith Davy, Assistant Borough Solicitor. The Review was planned and scoped in conjunction with these officers and Councillor Bibby.
- 5.3 The Scrutiny Panel visited Oldham and Stockport Metropolitan Borough Councils and met with Officers who gave them an overview of their procedures regarding Section 106 Agreements and Commuted Sum Payments.
- 5.4 Individual Scrutiny Panel Members visited the following developments, which had contributed funds through Section 106 Agreements to projects in the vicinity of the sites.
- Hyde Clarendon College, Hyde
 - Victoria Street Playing Fields, Hyde
 - Harbour Farm Road, Newton
 - Redrow Development in Carrbrook (Calprina)
 - Barratt's Development in Droylsden, known as Holly Bank Chase
 - Reeb Development, Crown Point North, Denton
 - Carrbrook (Cheetham's Park)
- 5.5 The Deputy Chair, Councillor Shepherd and Councillor Seabourne, together with the Designated Research Officer, met with Mr Paul Harper, Director and Mr Tim Jones, Development Manager of Roland Bardsley Homes Limited, to discuss the developer's perspective of Section 106 Agreements, and the application of Commuted Sum Payments on new housing developments.
- 5.6 Information was received from the Council's Estates and Valuation Service, on the implications of requesting Section 106 Agreements and Commuted Sum Payments on single dwelling developments.
- 5.7 The Panel met with the Cabinet Deputy for Technical Services, Councillor Alan Whitehead.
- 5.8 Legal advice was sought from the Assistant Borough Solicitor, Mr Keith Davy on the possibility of the Council adopting a system of Commuted Sum Payments.
- 5.9 Information regarding equalities issues and Section 106 Agreements was provided by Mr Glenn Routledge, Local Agenda 21 Co-ordinator, in Strategic Planning.

6. Review Findings

6.1 The Planning System¹

- 6.1.1 A proper planning system is vital to our quality of life. People can be dramatically affected by the quality of their environment and they care deeply about new development and how it changes the surroundings in which they live and work.
- 6.1.2 A successful planning system will promote economic prosperity by delivering land for development in the right place and at the right time. It will encourage urban regeneration by ensuring that new development is channelled towards existing town centres rather than adding to urban sprawl.
- 6.1.3 A successful planning system will help to conserve greenfield land and re-use urban brownfield land. It will value the countryside and our heritage while recognising that times move on. It has a critical part to play in achieving the Government's commitment to sustainable development.
- 6.1.4 To be successful, the planning system needs to have the confidence of many different groups. These include almost half a million direct customers nationally, who are applicants for planning permission every year and who want a quick, predictable and efficient service; families and individuals affected by plans and planning applications; and the wider community who care about proposals for the future development of their area. All parts of the community - individuals, organisations and businesses - must be able to make their voices heard.
- 6.1.5 The customers of planning departments have a right to an efficient and user-friendly service. Business in particular, needs to know that their planning applications will be dealt with efficiently and predictably. Time delays caused by bureaucracy, lack of skilled staff or over complex systems are bad for business and do little good for anyone else. Delays in receiving a planning decision can mean a loss of competitiveness for business, something that we simply cannot afford in the modern global economy.
- 6.1.6 Development for business, housing, services and infrastructure are all vital to the health of our economy. The planning system needs to ensure that it is delivered in a way that is sympathetic to the environment and benefits the whole community.

¹ Source: Extracts from Office of the Deputy Prime Minister Website – “Planning; delivering a fundamental change”. *Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen’s Printer for Scotland.*
http://www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan605832-02.hcsp

6.1.7 Whilst some 90% of planning applications are eventually approved, we need to address the flaws and inefficiencies in the system that frustrate business and others seeking to develop land. Development for business, housing, services and infrastructure are all vital to the health of our economy. We need the planning system to ensure that it is delivered in a way that is sympathetic to our environment and that benefits the whole community. But we do need good development: planning must be about accommodating change not just resisting and stifling it.

6.2 Tameside's Unitary Development Plan

- 6.2.1 Tameside MBC sets out its framework for development and conservation for the whole of the Borough in its Unitary Development Plan. This is a land use planning document which each Council is legally required to produce, adopt and keep under review.
- 6.2.2 A proper planning system has a critical part to play in achieving the Government's commitment to sustainable development, and also ties in with Tameside's Community Strategy and the Council's Key Priority "An Attractive Borough"².
- 6.2.3 The latest Unitary Development Plan was adopted by the Council on the 17th November 2004.
- 6.2.4 It sets out the main considerations on which planning applications in the Borough are determined and to guide land use decisions by the Council and other agencies.
- 6.2.5 The UDP contains five clear themes and objectives which are:-
- Quality Jobs and Good Access;
 - A Stable Population;
 - A More Attractive and Enjoyable Borough;
 - Regeneration in the Urban Areas;
 - Protection of Green Spaces.
- 6.2.6 The Unitary Development Plan also contains background information about relevant local circumstances together with reasoned justifications for the general policies regarding the development and use of the land.
- 6.2.7 It explains the policies regarding the application of developer contributions for Type, Size and Affordability of Dwellings; Open Space Provision; and Education and Community Facilities.
- 6.2.8 The document takes into account both national and regional planning policy guidance issued by the Government, and relevant local strategies which have been established by the Council and its partners including the Vision for Tameside, the Community Plan and the Economic Development Strategy.
- 6.2.9 National Policies regarding planning matters are detailed in Planning Policy Guidance Notes (these are referred to in this report as PPG's).

Open Space Provision in Tameside

- 6.2.10 Members of the Scrutiny Panel have been keen to address the effects of new developments on open space provision in the Borough, and have sought guidance from information contained in the Unitary Development Plan.
- 6.2.11 The Tameside Unitary Development Plan - Adopted Plan November 2004 (page 69) - states "*In general terms, the overall amount of open space in*

² Source – Tameside Metropolitan Borough Council's Community Strategy

*the Borough is felt to be adequate, but there are deficiencies at district and local level, limited provision of equipped playgrounds and specifically designed children's playspace, and substantial under provision of playing fields.*³

The Panel feels that this deficiency is further exaggerated by the introduction of new developments.

- 6.2.12 The Unitary Development Plan attempts to address this situation, and an extract from Policy H5 Open Space Provision (page 50, paragraph 3) contains the following information:-

“Where there is a deficiency of children’s play areas, informal local recreational open spaces or sports pitches in an area, either prior to or as a result of the scheme involved, developers seeking planning permission for housing will be required to provide open space and facilities, proportional to the intended number of occupants, in a safe and convenient location within or in close proximity to the site, and to make suitable arrangements for on-going maintenance”.⁴

- 6.2.13 However, it must be noted that although Policy H5 states that **“This policy will apply to all housing developments**” and that no minimum dwelling figure is specified, it is recognised and acknowledged in the Unitary Development Plan, that *“in the past, this has been negotiated only for larger schemes alone ...”*. (page 51, paragraph 2).

Furthermore, the Unitary Development Plan does not identify any geographical references relating to the maximum distances to public open spaces, although it does state (page 51, paragraph 4):

“The amount of open space required and the extent of any facilities will be set out in the Supplementary Planning Guidance and will be proportional to the intended number of occupants”.

- 6.2.14 The Panel strongly believes that the policy previously adopted by the Council, which applied developer contributions only to larger housing schemes, ie. developments comprising 50 or more dwellings, has resulted in the council missing an opportunity to raise additional justified income.

- 6.2.15 Furthermore, although the latest Unitary Development Plan does attempt to address this issue (*see extract from Policy H5, page 51, paragraph 2 below), discussions with the Planners have highlighted that the current procedures are actually inconsistent with the Unitary Development Plan because contributions are not sought for Open Space Provision, from developments of less than 25 dwellings. This is an area of concern for the Panel.

**...It is a reasonable and generally accepted requirement that developers of housing schemes should directly provide or make a payment to the*

³ Footnote: All Italic Type on this page highlights extracts from The Tameside Unitary Development Plan Written Statement – Adopted Plan November 2004 Reasoned Justifications

⁴ Footnote: All Bold Type on this Page highlights extracts from The Tameside Unitary Development Plan Written Statement – Adopted Plan November 2004 Policies

local authority for the play area or local open space needs generated by their development. In the past this has been negotiated for larger schemes alone, taking account of existing provision in the area, whereas all new housing in fact places some demand on the facilities available in the Borough. This policy differs from the previous approach because, where a deficiency exists, virtually all new housing developments that result in an increase in residential capacity will now be expected to provide appropriate amounts of open space either directly on or adjacent to the site, or to contribute to provision elsewhere in the area”.

- 6.2.16 With this in mind, the Panel are keen to ensure that this issue is not overlooked, particularly as there are likely to be a further 800 new dwellings⁵ built in the Borough during 2005/2006 and then an average of 370 new dwellings per year, net of clearance, to March 2011.⁶

Conclusions

- 1. The current procedures used by the Planners to seek developer contributions for open space provision, are inconsistent with H5 of the Unitary Development Plan as they only apply planning obligations to housing developments comprising 25 or more dwellings. Policy H5 refers to all housing developments having to contribute to open space provision, and only excludes those developments which do not result in a net increase in the number of dwellings and specialised schemes where the occupiers will have no need for open space.**
- 2. Considerable funding can be sought from developers to improve and enhance the Borough’s current deficiency in informal local recreational open spaces, children’s play areas and sports pitches in the area, by rigorously applying the procedures contained in H5 of the Unitary Development Plan. This would significantly support one of the Council’s Key Priorities, “An Attractive Borough”.**
- 3. Some areas of the Borough have already been the subject of significant development and would be unlikely to benefit from enhanced developer contributions unless they were retained in a central budget and used throughout the Borough for the purposes specified.**

⁵ Source – Figure provided by The Head of Planning at Scrutiny Panel Meeting held on 4th April 2005 (Minute 42 refers)

⁶ Source – Tameside Unitary Development Plan Written Statement – Adopted Plan November 2004

6.3 The Concept of Planning Obligations (Section 106 Agreements)

- 6.3.1 One of the main aspects of the local authority planning system is the ability to provide sustainable developments through transparent methods of decision making.
- 6.3.2 When considering planning applications, local planning authorities must consider each application on its own individual circumstances, and thus make their decisions thereon.
- 6.3.3 Sometimes however, a development proposal might not meet the necessary requirements to make it acceptable in planning terms.
- 6.3.4 Nonetheless, rather than refusing the planning application, the planning authority might wish to invite the developer to enter into an obligation, which will make the development acceptable in planning terms.
- 6.3.5 Planning obligations (or Section 106 Agreements) were introduced by the Town and Country Planning Act 1990, as a means of safeguarding local amenities.
- 6.3.6 The principle of a planning obligation is that a developer enters into a legal agreement with a local planning authority, known as a Section 106 Agreement, in return for planning permission for a particular development. The planning obligation might involve the provision of facilities, improvements or a payment.
- 6.3.7 It is intended to compensate for any loss or damage caused by a particular development, or alternatively alleviate a development's impact on the local area.
- 6.3.8 The planning obligation should be:-
- (i) necessary to make the proposed development acceptable in planning terms;
 - (ii) relevant to planning;
 - (iii) directly related to the proposed development;
 - (iv) fairly and reasonably related in scale and kind to the proposed development;
 - (v) reasonable in all other aspects.
- 6.3.9 Although many Section 106 Agreements deal with matters in the immediate area of the development, they can also be applied to mitigate the borough wide effects of a particular development.
- 6.3.10 The costs associated with new housing, such as increased pressure on local services and infrastructure, or temporary disruption during construction, are often experienced directly at a local level.⁷
- 6.3.11 The Department of Transport estimate that a typical residential dwelling is likely to generate an additional 8-10 road trips per day. This information is based on Trip Rate Information Computer System data and is based on two people driving to work and back (4 trips), leisure trips, dropping

⁷ Source – Barker Review Final Report March 2004 –The Costs and Benefits of New Housing Development, (page 54, paragraph 3.3) *Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland.*

children at school, going shopping, visitors, etc. Consequently, the Panel feels that adequate consideration should be given to assessing the impact of a particular development on the wider infrastructure of the entire Borough.

- 6.3.12 Planning obligations are one of the main aspects of the local authority planning system, and the government intends to introduce a new approach, which will regularise the current uncertain system and use planning obligations as a positive planning tool.
- 6.3.13 The purpose of planning obligations will be refocused to deliver sustainable development, ensuring that development provides social, economic and environmental benefits to the community as a whole.⁸
- 6.3.14 Prior to November 2004, the Council's adopted policy was to seek developer contributions, towards any kind of provision from housing developments, comprising less than 50 houses.
- 6.3.15 The latest Unitary Development Plan, has reduced this figure, and indicates that developer contributions for Type, Size and Affordability of Dwellings and also Education and Community Facilities should be sought on developments comprising 25 or more dwellings. However, the Housing Demand and Needs Survey 2002, indicates that there is insufficient demand for more affordable housing developments in Tameside, to justify developers being required to make contributions through planning obligations. It is understood, that contributions for Education and Community facilities are only sought where appropriate.
- 6.3.16 Developer contributions are not sought for any form of provision on developments comprising less than 25 dwellings. This is an area of concern to the Panel.
- 6.3.17 With regard to commercial developments, the Council does not apply any particular formula in gauging the extent of any planning obligations required.
- 6.3.18 Mr Glenn Routledge, the Local Agenda 21 Co-ordinator in Strategic Planning advises that following discussions with his colleague, "we do not consider there to be any equality issues of particular relevance to 106 agreements".

Conclusions

- 4. **Planning obligations are one of the main aspects of the local authority planning system, and can be applied in accordance with Section 106 of the Town and Country Planning Act 1990, as Legal Agreements or, as Commuted Sum Payments.**
- 5. **Although the current Unitary Development Plan does not specify a minimum number of dwellings on a development before a contribution is made by the developer to Open Space Provision (H5), the Council however, does not seek such contributions on developments of less than 25 dwellings.**

⁸ Source – The Countryside Agency Website – “Reforming Planning Obligations”
Document:http://www.countryside.gov.uk/WhoWeAreAndWhatWeDo/boardMeetings/boardPapers/CA_AP02_06.asp

6.4 The Concept of Commuted Sum Payments

- 6.4.1 'To commute' means to pay (an annuity) at one time, especially with a discount, instead of in instalments (See Endnote⁹). Consequently, Commuted Sum Payments are¹⁰:-
- Intended to fund a stream of revenue payments, which will pay for the maintenance or establishment of a particular quantity of a particular form of provision over a number of years (which should be set out in policy or Supplementary Planning Guidance). Developers cannot be expected to fund maintenance in perpetuity.
 - Developers' contributions are capital, which are intended to fund a particular quantity of a particular form of new provision, usually off-site.
- 6.4.2 The Assistant Borough Solicitor advises that a system of planning development Commuted Sums can be utilised for the same purposes as funds received under Section 106 Agreements.
- 6.4.3 The main benefit of a Commuted Sum, is that a one off payment is paid on submission of the planning application. It does not require a legal agreement, provided that there is a clear and concise audit trail, and thus does not incur legal expenses, unlike a Section 106 Agreement. Payments must however, be based on tariffs set out in an adopted policy.
- 6.4.4 In comparison, a Section 106 Agreement requires a legally binding agreement which indicates when the completion of additional works should be undertaken, or when funding for works, should be paid. The funding or works are paid or completed in a series of instalments, when particular "triggers" or stages in the development are reached. Consequently, a monitoring system has to be introduced, which ensures that the developer pays for, or undertakes the necessary work, when required.

Conclusions

6. **Although Commuted Sum Payments do not incur legal expenses, are easy to manage and can be sought on submission of the planning application, Tameside Planners only apply Section 106 Agreements, if deemed necessary, and do not seek Commuted Sum Payments independently of Section 106 Agreements.**
7. **Despite Conclusion 5 above, advice sought from the Assistant Borough Solicitor confirms that a system of planning development Commuted Sum Payments can be utilised for all developments, to which Section 106 Agreements would be applied.**

⁹ Collins English Dictionary

¹⁰ Source: Office of the Deputy Prime Minister Website "Assessing needs and opportunities; Planning Policy Guidance 17 Companion Guide"
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Commuted Maintenance Sums¹¹

- 6.4.5 Section 106 Agreements have the benefit of being flexible and can be used in a wide variety of circumstances whereas commuted sums, by their nature can only be used for the payment of ascertainable sums of money by developers. Even in these cases, a Section 106 Agreement is more appropriate where the applicant is the landowner and the payments will need to be secured on the land to ensure that the eventual developer pays the contributions.
- 6.4.6 Good planning requires that new open spaces and facilities are provided where they are needed, and that they are financially and environmentally sustainable.
- 6.4.7 The payment of a Commuted Maintenance Sum is appropriate when a developer hands over title and responsibility for the long term maintenance of on-site provision to a local authority or a third party such as a parish council or trust. The best and easiest way to express it is in terms of a sum per unit of provision, such as £ per hectare or £ per square metre.
- 6.4.8 Some councils simply multiply the typical annual cost of maintaining a unit of provision by a number of years to calculate commuted maintenance sums, for example £5,000 per year x 10 years = £50,000. It is fairer to developers, however, to calculate the net present value of the anticipated stream of revenue payments. This means Commuted Maintenance Sums should be based on:
- The estimated annual cost of maintenance - however, authorities should not always simply calculate an average unit cost based on their existing maintenance contracts, but consider whether this allows for an adequate level of maintenance. After years of declining expenditure on green space maintenance, many budgets are inadequate to maintain green space to an adequate standard. Rather than transfer the effects of past budget cuts to new provision, it may be better to estimate a more appropriate cost;
 - An assumed rate of inflation;
 - An assumed discount rate;
 - The number of years for which the authority requires the commuted establishment or maintenance sum to last.
- 6.4.9 Commuted Sums per Unit of Provision can easily be converted into Commuted Sums per Person or per house using the other elements of provision standards if required.

¹¹ Source: Office of the Deputy Prime Minister Website “ Assessing needs and opportunities; Planning Policy Guidance 17 Companion Guide”
http://www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_606788-06.hcsp Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen’s Printer for Scotland

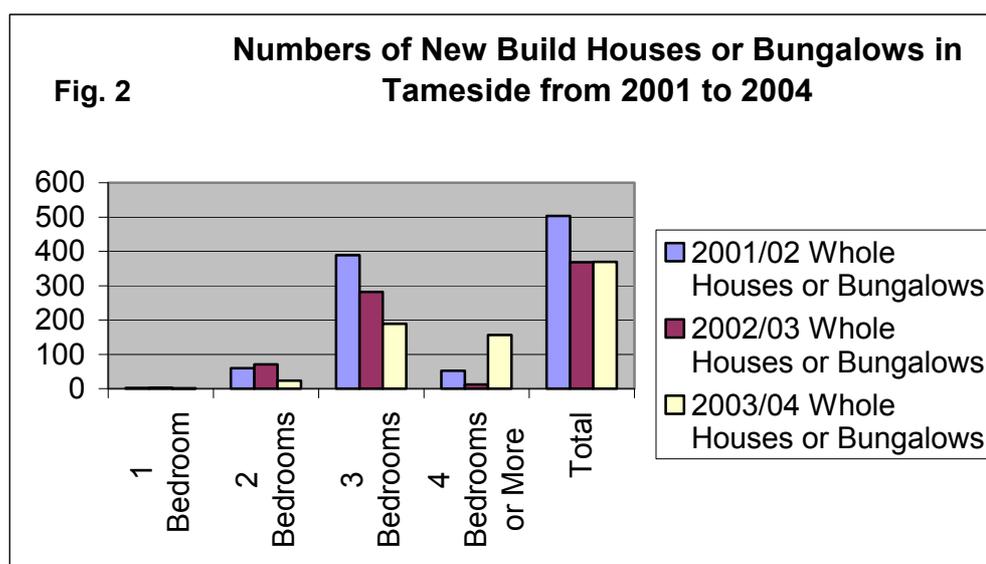
6.5 Summary of the Differences Between Section 106 Agreements and Commuted Sum Payments

	Section 106 Agreement	Commuted Sums
<p>Section 106 Agreements and Commuted Sums are intended to mitigate the detrimental effects caused by a particular development, or alternatively alleviate a development's impact on the local area.</p>		
Used For	Public open space, highway improvements, sport and recreation, continuing restrictions on the use of parts of the land, joint use arrangements, works to listed buildings and infrastructure, phasing, ecological provision, noise insulation works, marketing, car parking provision, pay and display, contributions to Metrolink and other public transport facilities, Green transport plans and other matters appropriate to the development.	Public open space, highway improvements, sport and recreation
When is it Paid	<p>Money paid by the developer in instalments, which are payable at various stages of the development.</p> <p>Work is undertaken by the developer in accordance with specifications made by the local planning authority.</p>	A lump sum payment, paid by the applicant, to the local planning authority, on submission of the planning application.
Costs Incurred	Requires a legal agreement and therefore incurs legal expenses of approximately £800 per agreement.	Does not require a legal agreement, therefore no legal costs incurred. A clear and concise audit trail must be available.
When Applicable	Currently Council policy requires a Section 106 Agreement on housing developments comprising 25 or more dwellings. (Prior to November 2004 this was 50 dwellings)	This could be applied for as little as one dwelling.
Long Term Maintenance	The Section 106 Agreement can include an element for long term maintenance.	The Commuted Sum can include an element for long term maintenance.
What is required to introduce	Identification of issues at individual development site and a legal agreement	<p>(1) Identifying quantity and quality deficiencies;</p> <p>(2) Supplementary Planning Documents;</p> <p>(3) Policy on Developer Contributions.</p>

6.6 Overview of Housing in the Borough

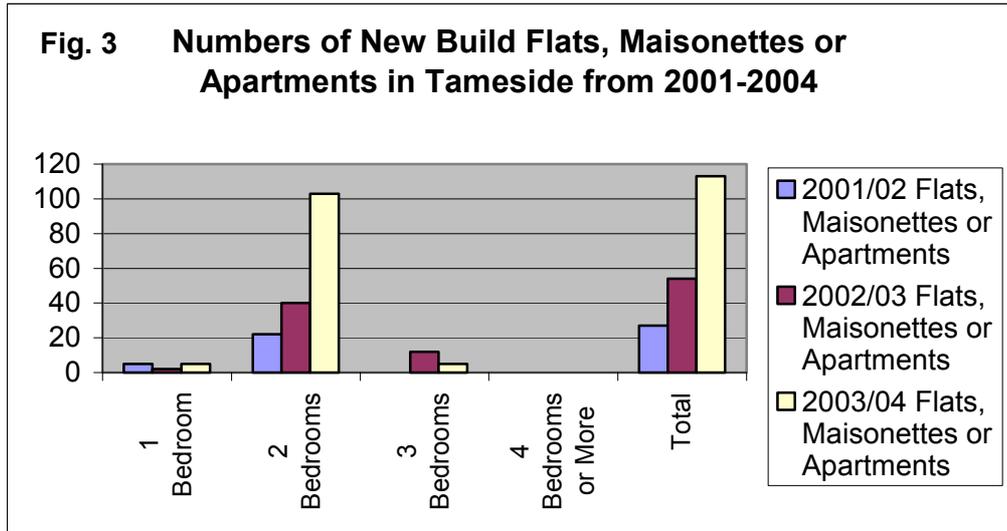
- 6.6.1 Tameside has been a popular area for house building for the past 20 years, and demand for new housing sites is buoyant.¹²
- 6.6.2 Housing development remains an attractive market for developers, who may have been restricted from building in neighbouring authorities, due to moratorium policies on new builds.
- 6.6.3 From July 1986 (the start date for the housing land policy in the previous UDP) to March 2003, a total of nearly 10,000 new dwellings have been built in the Borough. This is a gross average of nearly 590 per annum, although individual years have fluctuated from as low as 292 in 1997/98 to as high as 1167 in 1989/90. Figure 1 shows numbers of new builds in the Borough (excluding conversions of factories, mills etc). Figures 2 and 3 (detailed below and overleaf) display comparison charts of these numbers.¹³

Fig. 1	1 Bedroom	2 Bedrooms	3 Bedrooms	4 Bedrooms or More	Total
2001/02 Whole Houses or Bungalows	2	60	389	52	503
2001/02 Flats, Maisonettes or Apartments	5	22	0	0	27
2002/03 Whole Houses or Bungalows	3	71	282	12	368
2002/03 Flats, Maisonettes or Apartments	2	40	12	0	54
2003/04 Whole Houses or Bungalows	1	23	189	156	369
2003/04 Flats, Maisonettes or Apartments	5	103	5	0	113



¹² Source – Paragraph Extracted from Tameside Unitary Development Plan – Adopted Plan 17th November 2004 (page 40)

¹³Source - Tameside MBC Planning and Development Service

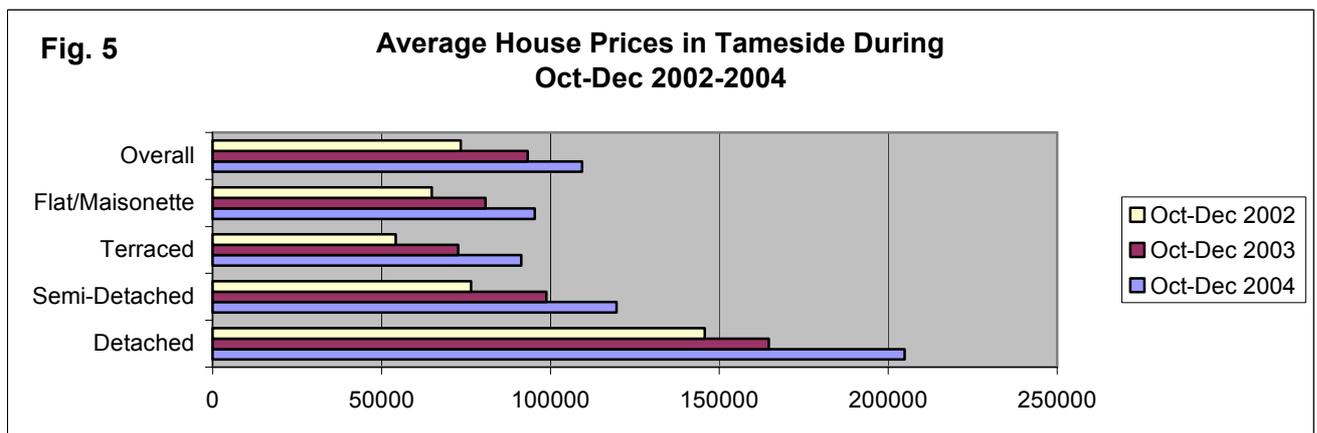


6.6.4 After taking account of clearance, net completions in the same period were 7650 or an average of 450 per annum.

6.6.5 Although new house building rates in the Borough are lower than in the late 1990's and Government projections forecast a slight fall in the Borough's population, the rate of new house building has increased again recently.

6.6.6 Furthermore, the house prices in Tameside have steadily increased during the last three years, thus ensuring that house building in Tameside remains an attractive proposal for developers. See Figures 4 and 5 (Source:- HM Land Registry - *Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland*).

Fig. 4 Oct -Dec	Detached	Semi-Detached	Terraced	Flat/Maisonette	Overall
	Av.Price £	Av.Price £	Av.Price £	Av.Price £	Av.Price £
2004	204800	119552	91387	95355	109378
2003	164645	98790	72738	80835	93309
2002	145675	76504	54236	64901	73468



6.7 Summary of Current Planning Procedures in Tameside

- 6.7.1 In Tameside, Planning Officers assess applications and conduct an agreed programme of consultations, which include the recommendation of fully specified conditions required to make the application acceptable in planning terms.
- 6.7.2 Councillors are kept informed of planning applications in their Wards, via the list of applications sent to them each week. They are also consulted specifically about major and contentious applications in their Ward.
- 6.7.3 The Head of Planning has confirmed that with regard to Section 106 Agreements, consultation is not consistent and the views of Ward Councillors are not always sought. He added that it would be helpful if the views of Ward Councillors were sought, as a matter of routine.
- 6.7.4 During the Panel's consultation with other Councillors, it was reported that they have little knowledge of the types of works that they can obtain from a particular development, and do not have any ideas of the costings, of such works in order that when consulted by the Planners, they can submit any meaningful proposals.
- 6.7.5 The Members of the Speakers' Panel approve planning applications, some of which are conditional and subject to the inclusion of a Section 106 Agreement.
- 6.7.6 Although the High Court has decided that a Section 106 Agreement is material to the determination of a planning application, it is for the Speakers Panel to determine whether additional work is required and its level of importance in making a planning application acceptable. It is understood however, that the current procedures do not inform the Members of the Speakers' Panel of the terms of the individual Section 106 Agreements.
- 6.7.7 Consequently, the Speakers Panel is unable to demonstrably consider or weigh the importance of a yet-to-be-determined agreement and thus cannot consider whether the planning obligations will make the planning application acceptable in planning terms. This is an area of concern to the Scrutiny Panel.
- 6.7.8 Work has commenced within the Environmental Services (Planning Service Area) on a Tameside Metropolitan Borough Council Local Development Scheme 2004 - 2007. The Council is required to prepare the scheme to inform the public about the current planning policies for Tameside as well as to set out the programme for preparation of the Local Development Framework. It will contain new planning documents to progressively replace existing policies over the next three years.
- 6.7.9 The Panel understand that the scheme will include "A Guide To Developer Contributions", which will contain policy guidance to developers, Elected Members and members of the public. It will detail the extent and type of elements developers should normally be expected to contribute to, or provide in mitigation of the impact of their development proposals. The scheme will also include a Greenspace Strategy.
- 6.7.10 The Greenspace Strategy is being prepared in parallel with the Developer Contribution Strategy, as part of the Local Development Scheme. It will help provide the evidence to justify the payments that will be sought from

developers. The Unitary Development Plan concludes (page 69 paragraph 3) that the “overall amount of open space in the Borough is felt to be adequate” but points to local deficiencies and problems with play areas and playing fields. Ongoing work is pointing to problems of quality rather than quantity. Demand for playing fields is falling and the strategy is likely to concentrate on larger groupings of high quality grass pitches, and greater use of multi-sport facilities and artificial pitches, at the expense of any existing small sites.

- 6.7.11 The timetable for the draft scheme was approved by the Executive Cabinet in February 2005. The estimated date of adoption of the Greenspace Strategy, which will help justify developer contributions, is March 2006.
- 6.7.12 Notably, Tameside Local Planning Authority only requests developer contributions when applying a Section 106 Agreement. They do not use a system which requests developer contributions based solely on stand-alone Commuted Sum Payments. Consequently, legal expenses from the drafting of Section 106 Agreements, are always incurred when applying developer contributions. Commuted Sums are however, sometimes included in formal Section 106 Agreements to provide for maintenance of schemes.

Conclusions

8. **Members of the Speakers Panel have insufficient information regarding the details of each Section 106 Agreement, to demonstrably consider and weigh the importance of a yet-to-be-determined agreement in order to make an unacceptable planning application acceptable in planning terms. The provision of this information, together with consultation at an early stage with local Ward Councillors with regard to planning obligations would be a welcome improvement.**
9. **Written planning guidance within Tameside, for Section 106 Planning Obligations, is currently fragmented and is drawn from Circular 1/97 from Dept of Environment and Planning Policy Guidance Notes (referred to as PPG) issued by the Office of the Deputy Prime Minister, e.g. PPG 3 (Housing); PPG 13 (Transport) and PPG 17 (Sport and Recreation).**

District Assemblies

- 6.7.13 The Head of District Assemblies, Mr Andrew Mason, reports that his staff are informed of all planning applications, and where these involve Section 106 Agreements, they request £350 per new dwelling towards children’s play facilities. At this stage of the planning procedure he is not aware of any Elected Member involvement in the process and funding contributions are not sought for developments of less than 25 dwellings.
- 6.7.14 The District Assemblies are finding it increasingly difficult to fund long term maintenance works for schemes which have been introduced from Section 106 Agreements, as an element for the long term maintenance of each scheme, is not generally included within the agreement.

Elected Members

- 6.7.15 All Elected Members were sent letters asking them to provide any comments or raise any issues, which they would like the Panel to consider during this Review.
- 6.7.16 Responses were received from 12% of the Council. (7 Elected Members).
- 6.7.17 Four out of seven responses raised common themes which were:-
- Lack of consultation with Ward Members;
 - Lack of transparent process;
 - Apparent lack of controls.
- 6.7.18 Suggested areas of improvement within the current procedures include:-
- Consultation with Members of the details of the Section 106 Agreements as a matter of routine;
 - Introduction of a tariff system which clearly details the cost implications payable by a developer per dwelling.

Local Developer

- 6.7.19 Councillors Shepherd and Seabourne, together with the Designated Research Officer, met with Mr Paul Harper, Director of Roland Bardsley Homes Limited, and Mr Tim Jones, Land Development Manager of Roland Bardsley Homes Limited, to discuss the planning procedures within the Borough and the potential for improving the current process.
- 6.7.20 Roland Bardsley Homes Limited develop housing sites in the North West, including Tameside, Stockport and Oldham Metropolitan Borough Councils.
- 6.7.21 The developer considers Section 106 Agreements to be an acceptable element of the planning procedure. Confusion arises however, when neighbouring local planning authorities apply different formulas for developments. The developer believes that this could be resolved by the application of a well documented, open and transparent uniform policy, shown to developers prior to the commencement of the planning process. This would then be used in the developers' calculations for their profit margins.

Estates and Valuation Services

- 6.7.22 Consultation with Estates and Valuation Services concludes that "the imposition of a 'Commutated Sum' on single plot developments would not make the land less desirable : the demand for such plots is strong enough at present to ensure they would still be sold".

6.8 Planning Matters in the North West Region

- 6.8.1 As part of the Regional Spatial Strategy, the Government Office North West sets new house build targets based on Housing Land Supply details provided by each planning authority.
- 6.8.2 Local planning authorities are encouraged to monitor and manage the availability of land in development plans, to achieve the annual average rates of housing provision set out in the guidance.
- 6.8.3 In doing so, local planning authorities should seek to minimise the amount of land needed for new housing by various means.
- 6.8.4 Consequently, some of the local authorities in the region, have placed moratoriums, which restrict new builds. These local authorities include Stockport Metropolitan Borough Council and Macclesfield Borough Council.
- 6.8.5 Information received from the Head of Planning indicates that in Tameside the current policy is to promote new building and because of the amount of clearance since 2002 this policy is unlikely to change. Furthermore, the value of land in Tameside, is currently quite high.
- 6.8.6 The target for Tameside is 370 houses per year for the period 1st April 2002 - 31st March 2011. This is a net figure, which has to take into account the total number of completed dwellings less the amount of demolished dwellings. The figure may vary as a result of policies adopted as part of the Unitary Development Plan, eg regeneration areas. In total, it is anticipated that there will be approximately 800 new dwellings in Tameside during 2005/06.

6.9 Summary of Good Practice in Other Local Authorities

Stockport Metropolitan Borough Council

- 6.9.1 Stockport's adopted policy regarding Open Space and Recreational provision incorporates the National Playing Fields Association minimum standards.
- 6.9.2 Consequently the Council has prepared a Planning Guidance Paper to supplement the Unitary Development Plan, which further explains the operation of their Policy UL1.3 'Provision of Recreation and Amenity Open Space in New Developments'.
- 6.9.3 For all new developments, whether commercial or residential, landscaped amenity areas are expected to be provided, which are necessary and fairly and reasonably related in scale, and kind to the proposed development.
- 6.9.4 With regard to commercial developments, Stockport Metropolitan Borough Council always applies Section 106 Agreements, due to the complexities and intricacies of each planning issue. Stockport Metropolitan Borough Council also applies Section 106 Agreements to the more complex housing developments.
- 6.9.5 Notably however, the main element used by Stockport Metropolitan Borough Council, to mitigate the impact of new residential developments, is the payment of a Commuted Sum.
- 6.9.6 In order to ensure that adequate provision is made for recreation and amenity open space in any new residential development, where there is a proven deficiency, development proposals should include provision within an agreed timescale in accordance with an agreed policy.
- 6.9.7 Developers of new housing, excluding those with particular exemptions, will be expected to make adequate provision for formal and children's/casual recreation either on or adjacent to the site or in the form of a Commuted Sum Payment.¹⁴
- 6.9.8 Contributions towards children's/casual provision are required where a scheme for the provision of new facilities or the enhancement of existing facilities is identified, when applying the terms of a three tiered structure for children's play. The three tiered structure is as follows:-
- (i) A Local Area for Play (known as a LAP) within 100 metres;
 - (ii) A Local Equipped Area for Play (known as a LEAP) within 400 metres;
 - (iii) A Neighbourhood Equipped Area for Play (known as a NEAP) within 1000 metres.

¹⁴ Source: Stockport Metropolitan Borough Council's document entitled Recreational Open Space Provision and Commuted Payments

- 6.9.9 The policy requires that all proposed developments are assessed to establish their open space needs. Larger housing developments likely to accommodate about 100 people or more will be expected, in most circumstances, to provide both formal and casual open space on site in accordance with the Council's adopted standards, ie. Neighbourhood Equipped Area for Play within 1000 metres. A proposed residential development would need in excess of 1210 persons before a Neighbourhood Equipped Area for Play would be required on site. However, a scheme with capacity in excess of about 50 persons would be required to include a Local Area for Play. A commuted sum is only required for any part of a facility which is not justified on site eg. ½ a Local Area for Play.
- 6.9.10 Medium sized developments likely to accommodate between 50 and 100 people will be expected, in most circumstances, to provide children's/casual open space on site, ie. Local Equipped Area for Play within 400 metres. A proposed residential development would need in excess of 510 persons before a Local Equipped Area for Play would be required on site. However, a scheme with capacity in excess of about 50 persons would be required to include a Local Area for Play.
- 6.9.11 In the case of smaller developments likely to be occupied by less than 50 people, contributions towards children's/casual provision will be required where a scheme for the provision of new facilities or the enhancement of existing facilities can be identified under the terms of the three tiered structure detailed in paragraph 6.9.8.
- 6.9.12 Many residential developments during the plan period are of a small scale. In these cases, it would be impractical or unreasonable for a development to accommodate useful areas of open space within one of the three tiered rates (described in paragraph 6.9.8), which is particularly the case with regard to formal open space. The Council accepts that provision of some or all of the recreational open space is to be covered by contributions, which are calculated in accordance with the tariffs specified in the following paragraph.
- 6.9.13 In Stockport, the standard for open space provision is based on population. The total population per dwelling is decided by assuming 2 persons in the first bedroom and only one person in each of any additional bedroom. Therefore, the following population per dwelling is used for calculating the contribution, which will make up the Commuted Sum. Furthermore, in 2001, the estimated costs relating to the provision of facilities for recreational requirements per 1000 population were as follows:-

Formal Open Space	£175.32
Children's/casual play	£147.89
Total cost per person	£323.21

Subsequently, Stockport Metropolitan Borough Council receives £323.21 per person for each dwelling, (the number of persons per dwelling is calculated in accordance with the table of occupancy of dwellings detailed overleaf, together with the sum payable by the developer in respect of the Commuted Sum Payment). This formula appears to be based on the example provided by the Office of the Deputy Prime Minister: Provision Standard per Person or per House:- (The Council developed this formula itself as there was little guidance in 1993/94)

	Table of Occupancy of Dwellings	Commuted Sum Payable Per Dwelling £
1 bedroom dwelling	2 persons	646.42
2 bedroom dwelling	3 persons	969.63
3 bedroom dwelling	4 persons	1292.84
4+ bedroom dwelling	5 persons	1616.05

- 6.9.14 Where a single dwelling house is converted into two or more self-contained dwellings or flats a calculation is made to assess the net increase in population.
- 6.9.15 Some Commuted Sum Payments, in themselves, are not adequate to bring about improvements immediately. However when the funds are added to by other Commuted Sum Payments, and thresholds are reached, monies will be employed as soon as possible to improve facilities. The Council will agree to refund any monies, which remain unspent after eight years from the date of payment.
- 6.9.16 On the 19th April 2005, Mr Bruce Child, Stockport Metropolitan Borough Council's Senior Policy Officer (Recreational Open Space) advised this Scrutiny Panel's Designated Research Officer that £5-6 million had been raised in Stockport since 1994, solely from new residential developments, in respect of Public Open Space provision.
- 6.9.17 Of significant interest to the Panel, is that approximately 90% of this money was raised by means of a voluntary contribution by the developer, (ie. the Commuted Sum Payment was not covered by a Section 106 Agreement).
- 6.9.18 The developer is given the choice of making a contribution via a Section 106 Agreement, which will incur an additional several hundred pounds in legal costs, or a Commuted Sum Payment, which does not attract any additional charges. Consequently, the developer usually elects to make a voluntary payment.

Conclusions

- 10. That by adopting a tariff system for planning obligation contributions on housing developments, based on a sum which is calculated per person per dwelling, and is payable as a Commuted Sum Payment, significant resources could be raised to support the “Appearance of the Borough”, which is a key priority in the Council’s Corporate Plan.**
- 11. That use of Section 106 Agreements should be applied only to the retail, commercial and more complex housing developments, which require conditions identifying Site Specific Issues, in order to minimise costs.**
- 12. That the introduction of a Corporate Supplementary Planning Guidance Document for Developers’ Contributions, would ensure all developments, including single dwelling developments, contributed to the provision of open space in the Borough.**
- 13. Stockport Metropolitan Borough Council, by utilising the system of planning obligations through Commuted Sum Payments, recommended for adoption in Tameside, has raised the sum of £5-6 million, since 1994, from housing developments alone.**
- 14. The table overleaf indicates that had Tameside applied a system of Commuted Sum payments for the developers’ contributions on all residential developments during 2001-2004, based on the figures used by Stockport, the total possible revenue could have been £1,810,299.21.**

In comparison, the actual revenue received by this Council during 2001-2004, for Public Open Space, Community Facilities and Recreation Facilities, from the application of Section 106 Agreements, was £280,863.

It is recognised however, that significantly larger sums have been obtained for other purposes such as highway and school improvements.

	Table of Occupancy Of Dwellings	Commuted Sum Payable Per Dwelling	Total Numbers of New Builds (as detailed in Figure 1 of this report)	Examples of what Tameside might have received during 2001–2004 based on Stockport's figures of £323.21 per person per dwelling
1 bedroom dwelling	2 persons	646.42	7	2001/02 £4,524.94
			5	2002/03 £3,232.10
			6	2003/04 £3,878.52
2 bedroom dwelling	3 persons	969.63	82	2001/02 £79,509.66
			111	2002/03 £107,628.93
			126	2003/04 £122,173.38
3 bedroom dwelling	4 persons	1292.84	389	2001/02 £502,914.76
			294	2002/03 £380,094.96
			194	2003/04 £250,810.96
4+ bedroom dwelling	5 persons	1616.05	52	2001/02 £84,034.60
			12	2002/03 £19,392.60
			156	2003/04 £252,103.80

The Borough of South Tyneside

- 6.9.19 The policy adopted by South Tyneside has been highlighted as an example of Good Practice, by the Office of the Deputy Prime Minister.
- 6.9.20 South Tyneside's UDP¹⁵ which was adopted in 1999, sets a target for recreational open space, consisting of informal open grassed, wooded or landscaped land, local parks and small amenity areas of incidental public space, of 3.78 hectare per 1000 population. Although including playing fields in dual use, this standard specifically excludes golf courses, allotments, all open spaces of less than 0.2 hectare in size, highway verges, cemeteries and hard-landscaped areas. The UDP also promotes a "Hierarchy of open space accessibility" consisting of:-

¹⁵ Source: Office of the Deputy Prime Minister Website - 'Assessing needs and opportunities: Planning Policy Guidance 17 companion guide' *Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland*

- District parks and open spaces: all dwellings should be within 3 km of an open space of at least 30 hectare which provides general facilities for recreational activity within a landscaped setting;
- Neighbourhood Parks and Open Spaces: all dwellings should be within 1 km of an open space of between 10 and 30 hectares which provides general facilities for recreational activity within a landscaped setting.
- Local parks and small open spaces: all dwellings should be within 200m of a small formal or informal area of open space of between 0.2 and 2 hectares that is suitable for informal use and has a high amenity value.

Conclusions

15. **That the inclusion of a hierarchy of open space accessibility (as detailed in the Office of the Deputy Prime Minister’s Planning Policy Guidance No. 17) within a Supplementary Planning Document for Tameside’s Unitary Development Plan, would contribute to openness and transparency of planning guidance and assist in the justification of the request for a planning obligation.**
16. **That in the interests of good practice, the Supplementary Document Notes take account of examples of best practice from other authorities.**

7. Borough Solicitor’s Comments

Section 106 Agreements can be a flexible and powerful tool in Development Control. For the reasons set out in Appendix 3, the controls and contributions that they aim to secure need to be well founded in adopted planning policy and to have regard to individual circumstances of the proposed development. The recommended route of bringing forward supplementary planning guidance is the legally appropriate way forward and should provide a robust and transparent policy foundation to secure planning obligations in connection with future developments.

8. Borough Treasurer’s Comments

The receipts from commuted sums and section 106 agreements should be optimised in line with best practice in other local authorities. The use of receipts is a policy issue for direction in principle terms by the Executive Cabinet, but regard should be had to the need to make community facilities provided sustainable. This means the use of part of the receipts over a period of time to support the running costs of facilities provided by capital contributions.

9. Summary Of Conclusions

- 9.1** The current procedures used by the Planners to seek developer contributions for open space provision, are inconsistent with H5 of the Unitary Development Plan, as they only apply planning obligations to housing developments comprising 25 or more dwellings. Policy H5 refers to all housing developments having to contribute to open space provision, and only excludes those developments which do not result in a new increase in the number of dwellings and specialised schemes where the occupiers will have no need for open space.
- 9.2** Considerable funding can be sought from developers to improve and enhance the Borough's current deficiency in informal local recreational open spaces, children's play areas and sports pitches in the area, by rigorously applying the procedures contained in H5 of the Unitary Development Plan. This would significantly support one of the Council's Key Priorities, "An Attractive Borough".
- 9.3** Some areas of the Borough have already been the subject of significant development and would be unlikely to benefit from enhanced developer contributions unless they were retained in a central budget and used throughout the Borough for the purposes specified.
- 9.4** Planning obligations are one of the main aspects of the local authority planning system and can be applied as Section 106 Agreements or as Commuted Sum Payments.
- 9.5** Although the current Unitary Development Plan does not specify a minimum number of dwellings on a development before a contribution is made by the developer to Open Space Provision (H5), the Council however, does not seek such contributions on developments of less than 25 dwellings.
- 9.6** Although Commuted Sum Payments do not incur legal expenses, are easy to manage and can be sought on submission of the planning application, Tameside Planners only apply Section 106 Agreements, if deemed necessary, and do not seek Commuted Sum Payments independently of Section 106 Agreements.
- 9.7** Despite Conclusion 7.5 above, advice sought from the Assistant Borough Solicitor, confirms that a system of planning development Commuted Sum Payments can be utilised for all developments, to which Section 106 Agreements would be applied.
- 9.8** Members of the Speakers Panel have insufficient information regarding the details of each Section 106 Agreement, to demonstrably consider and weigh the importance of a yet-to-be-determined agreement in order to make an unacceptable planning application acceptable in planning terms. The provision of this information, together with consultation at an early stage with local Ward Councillors with regard to planning obligations would be a welcome improvement.

- 9.9** Written planning guidance within Tameside, for Section 106 Planning Obligations, is currently fragmented and is drawn from Circular 1/97 from Dept of Environment and Planning Policy Guidance Notes (referred to as PPG) issued by the Office of the Deputy Prime Minister, e.g. PPG 3 (Housing); PPG 13 (Transport) and PPG 17 (Sport and Recreation).
- 9.10** That by adopting a tariff system for planning obligation contributions on housing developments, based on a sum which is calculated per person per dwelling, and is payable as a Commuted Sum Payment, significant resources could be raised to support “An Attractive Borough”, which is a key priority in the Council’s Corporate Plan.
- 9.11** That use of Section 106 Agreements should be applied only to the retail, commercial and more complex housing developments, which require conditions identifying Site Specific Issues, in order to minimise costs.
- 9.12** That the introduction of a Corporate Supplementary Planning Guidance Document for Developers’ Contributions, would ensure all developments, including single dwelling developments, contributed to the provision of open space in the Borough.
- 9.13** Stockport Metropolitan Borough Council, by utilising the system of planning obligations through Commuted Sum Payments, recommended for adoption in Tameside, has raised, the sum of £5-6 million, since 1994, from housing developments alone.
- 9.14** The table overleaf indicates that had Tameside applied a system of Commuted Sum payments for the developers’ contributions on all residential developments during 2001-2004, based on the figures used by Stockport, the total possible revenue could have been £1,810,299.21.

In comparison, the actual revenue received by this Council during 2001-2004, for Public Open Space, Community Facilities and Recreation Facilities, by the application of Section 106 Agreements, was £280,863.

It is recognised however, that significantly larger sums have been obtained for other purposes such as highway and school improvements.

	Table of Occupancy Of Dwellings	Commuted Sum Payable Per Dwelling	Total Numbers of New Builds (as detailed in Figure 1 of this report)	Examples of what Tameside might have received during 2001–2004 based on Stockport’s figures of £323.21 per person per dwelling
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4+ bedroom dwelling	5 persons	1616.05	52	2001/02 £84,034.60
			12	2002/03 £19,392.60
			156	2003/04 £252,103.80

9.15 That the inclusion of a hierarchy of open space accessibility (as detailed in the Office of the Deputy Prime Minister’s Planning Policy Guidance No. 17) within a Supplementary Planning Guidance for Tameside’s Unitary Development Plan, would contribute to openness and transparency of planning guidance and assist in the justification of the request for a planning obligation.

9.16 That in the interests of good practice, the Supplementary Guidance Notes take account of examples of best practice from other authorities.

10. Recommendations

- 10.1** That developer contributions be maximised for all building developments in Tameside in accordance with the open space and green space policies contained in the Unitary Development Plan, in order to provide support for the Council's Key Priority "An Attractive Borough".
- 10.2** That best practice from other local authorities, in seeking developer contributions, be adopted and adapted for use in Tameside to the benefit of the Borough.
- 10.3** That a system of tariffs for Commuted Sum Payments, for housing developments, based on per person per dwelling, be introduced for developments of one property upwards.
- 10.4** That Section 106 Agreements be applied only to retail, commercial and larger more complex housing developments that require conditions identifying site specific issues.
- 10.5** That local Ward Councillors be always consulted on the provision to be made under Section 106 Agreements where they are considered, due to local circumstances, to be the most appropriate means of achieving appropriate developer contributions.
- 10.6** That a hierarchy of open space accessibility, as detailed in the Office of the Deputy Prime Minister's Planning Policy Guidance No. 17, be included in a Supplementary Planning Document for the Tameside Unitary Development Plan, in order to contribute to the openness and transparency of planning guidance and justify the request for planning obligations.
- 10.7** That comprehensive Supplementary Planning Guidance relating to developer contributions be produced and adopted as soon as possible and preferably before the proposed date of March 2006.
- 10.8** That Supplementary Planning Guidance referred to in Recommendation 7 above, be transparent, easy to understand and include:-
- (a)** Details of the Council's Planning Policy and related Key Priorities;
 - (b)** Reasons why the Planning Authority's request developer contributions;
 - (c)** What facilities and/or services the developer will be expected to contribute to;
 - (d)** How the amount of contribution is calculated.
- 10.9** That an outline of the proposed requirements of any Section 106 Agreement be submitted to the Speakers Panel at the same time as the associated planning application.
- 10.10** That consideration be given to the income received through Commuted Sum Payments, associated with planning applications being retained in a central budget for use throughout the Borough, with a proportion specifically allocated to District Assemblies, to enable them to improve the appearance of the Borough in their area.

Technical Economic And Environmental Services Scrutiny Panel
Review Of Section 106 Agreement (Policies And Processes)

Scope January 2005

Aim Of The Scrutiny Review Exercise

To review the Council's current policies and processes surrounding Section 106 Planning Agreements with a view to recommending improvements/updates to the Council.

Objectives

1. To produce accurate information on the selected Section 106 Agreements and schemes – past, present and planned (to include e.g., quality of work undertaken by developers, quantity of schemes, location and comparisons with other local authorities).
2. To assess the Council's existing policy in relation to Section 106 Planning Agreements, to include if/how it links to other local planning policies and Council priorities.
3. To record Elected Member and public satisfaction with the current operation of Section 106 arrangements and identify any improvements.
4. To assess the existing Section 106 process, to include consultation with key groups, views from the Cabinet Deputy, and any models from other authorities.
5. To ascertain any issues relating to equalities and Section 106 Planning Agreements

Timescale

It is anticipated that this review will be completed by May 2005.

Detailed Action Plan

	Action	Objective met	Timescale	Lead Scrutiny Panel member(s) and/or Scrutiny Support Officer(s)	Monthly update
1	Site visits to Tameside Section 106 Agreements to be arranged	1; 2 & 3	To enable visits to be carried out by 7 th February 2005	David Nicholson	
2	Briefing Paper outlining current policy and procedures	1; 2; & 4	Briefing Paper for Panel meeting 7 th February 2005	David Nicholson	
3	Site visits to existing schemes in Tameside (Panel members to visit schemes in their own wards wherever possible)	1; 2 & 3	Panel members to relay information obtained from individual visits to Panel meeting 7 th February 2005	Panel members	
4	Site Visits to other Local Authorities – Stockport provisionally on 7 th February 2005	1; 4	Discussion relating to visits at Panel meeting 7 th February 2005	Panel members	
5	Briefing Paper outlining the information obtained to date, to include details of revenue implications of agreements.	1; 2 & 4	Briefing Paper for Panel meeting 28 th February 2005	David Nicholson	
6	Meet with local developers	4	Feedback to Scrutiny Panel meeting 28 th February 2005	Panel members	
7	Meet with Chair of Speakers Panel (Planning)	2	Feedback to Scrutiny Panel meeting 28 th February 2005	Panel Members	
8	Draft Report		Scrutiny Panel Meeting 4 th April 2005	Panel Members	
9	Meet with Cabinet Deputies for Economic Services and Technical Services	2 & 4	Scrutiny Panel Meeting 4 th April 2005	Panel Members	
10	Final Report		Scrutiny Panel 18 th April 2005	Panel Members	

Appendix 2

Planning Procedures of Neighbouring Authorities

Oldham Metropolitan Borough Council

- 1 • On the 7th February 2005, the Panel Members met with Planning Officers from Oldham Metropolitan Borough Council, and compared the types of schemes in Oldham, with those in Tameside.
- 2 • Following a “Review of Probity in Planning” in 1999, Oldham introduced a procedure, and related Guidelines for dealing with Section 106 Planning Agreements.
- 3 • The Guidelines contain information about when a Section 106 Agreement is required and of any financial contributions payable on new developments, particularly where Public Open Space is involved. These Guidelines also refer to the use of Commuted Sum Payments.
- 4 • ¹⁶In Oldham, where a housing proposal contains 30 or more dwellings, or occupies a site of 1.2 hectares or more, the Council will only permit the development where:-
 - (i) provision is made on site for publicly available and useable amenity space at not less than 30m² per dwelling; and
 - (ii) part of this provision is suitable for, and laid out as, children’s play space.
- 5 • Where on-site provision is not in the Council’s view practicable, or desirable, and on all sites for the development of between 10 and 30 dwellings, or between 0.4 and 1.2 hectares, the Council will seek the provision of a Commuted Sum Payment for the improvement of an existing area of public amenity open space in a suitable location.
- 6 • Contributions towards public open space potentially comprise of two elements:- laying-out costs and maintenance costs.

Laying-out Costs

Size of Dwelling	Lay-out Contribution per Dwelling
2 bedroom house	£421 per dwelling
3 bedroom semi-det house	£523 per dwelling
3 bedroom detached house	£644 per dwelling
4 bedroom detached house	£765 per dwelling

¹⁶ Source: Oldham Metropolitan Borough Council Section 106 Planning Obligations Good Practice Guide

- 7 • Oldham Metropolitan Borough Council use these contributions to either enhance existing specific public open spaces near the development site or to fund the cost of laying out new facilities in the area.
- 8 • The maintenance costs are related to the size and content of the public open space, which is assessed by the Council's Department of Operational Services. The costs cover the first 12 years of maintenance and include an annual percentage increase to ensure that the real value of the contribution does not decline over the 12 year period.
- 9 • Contributions are refunded if not spent within 5 years of receipt, unless otherwise agreed by the developer.
- 10 • For developments of under 10 dwellings, the Council does not presently apply any charges, however, the current Unitary Development Plan is being updated, and this may change in the near future.

Stockport Metropolitan Borough Council

- 11 On the 28th February 2005, the Elected Members met with the following officers from Stockport Metropolitan Borough Council, to discuss their procedures relating to Section 106 Agreements and Commuted Sum Payments:-
 - Mr Steve Lamb - Head of Development and Control •
 - Ms Ruth Child - Team Manager Development Control •
 - Mr Nick Whelan - Principle Highways Specialist•
 - Mr Bruce Child - Senior Policy Officer (Recreational Open Space)•
 - Mr Geoff Taylor - Senior Policy Officer (Affordable Housing)•
- 12 • In 1991, a comprehensive survey of recreational and other types of open space was carried out in Stockport, and the survey showed that provision for formal sports in the Borough was below the National Playing Fields Association standards.
- 13 • The standards of the National Playing Fields Association, seek to ensure an overall minimum standard of formal open space, per thousand population.
- 14 • Stockport's Policy has been adopted in line with the policies of the National Playing Fields Association and consequently the Council has prepared a Planning Guidance Paper to supplement their Unitary Development Plan, which further explains the operation of their Policy UL1.3 "Provision of Recreation and Amenity Open Space in New Developments".
- 15 • Notably, the preferred method of developer contribution used by Stockport Metropolitan Borough Council to mitigate the impact of developments, is the application of Commuted Sum Payments on all housing developments.

- 16 • The Commuted Sum Payments are used to introduce area and borough wide facilities such as public open space, public transport and highways issues, in order to mitigate the effects of a new housing development.
- 17 • The policy adopted by Stockport Metropolitan Borough Council, includes the application of Commuted Sum Payments to housing developments from one dwelling upwards, and Section 106 Agreements to commercial and retail developments.
- 18 • This policy has secured the Council £5-6 million since 1994, from housing developments alone, and 90% of this was received from Commuted Sum Payments, which has earned £500,000 interest. The Council has agreed that the money obtained be used mainly on providing public open space.
- 19 • With regard commercial developments, Stockport Metropolitan Borough Council always apply Section 106 Agreements, due to the complexities and intricacies of each planning issue.
- 20 • They have recently been successful in securing £7 million for highways schemes and £340,000 for CCTV security, which includes funding for long-term maintenance.
- 21 • Formal sports provision is the principal component of the National Playing Fields Association overall standard, and the Council have sought to achieve an overall minimum standard for the Borough of 2.4 hectares per thousand population, for active recreation. Stockport Metropolitan Borough Council's policy has been to strongly resist the loss of any existing public or private sports grounds. Therefore, within the overall standard of 2.4 hectares per 1,000 population, 1.7 hectares should be for formal sports provision.
- 22 • In line with a policy decision, developers of new housing, are expected to make provision for formal and children's/casual recreation, either on or adjacent to the site or in the form of Commuted Sum Payments.
- 23 • All proposed developments are assessed to establish their open space needs.
- 24 • Larger housing developments likely to accommodate about 100 people or more are expected, in most circumstances, to provide both formal and casual open space on site in accordance with the Council's adopted standards, ie. Neighbourhood Equipped Area for Play (referred to as NEAP) within 1000 metres
- 25 • Medium sized developments likely to accommodate between 50 and 100 people will be expected to provide children's/casual open space on site, ie. Local Equipped Area for Play (referred to as LEAP) within 400 metres.
- 26 • In the case of smaller developments, likely to be occupied by less than 50 people, contributions towards children's/casual provision will be required where a scheme for the provision of new facilities or the enhancement of existing facilities can be identified under the terms of a three tiered structure for children's play, ie. Local Area for Play (referred to as LAP) within 100 metres; LEAP within 400 metres or NEAP within 1000 metres.

- 27 • Where a new development is not of a size to require all categories of facilities it is necessary to provide as much as possible of the standard. Therefore a development accommodating approximately 50 people would be required to provide a LAP.
- 28 • Opportunities to combine a LEAP and a NEAP in the same locality can be done to achieve considerable savings in the amount of land needed for the buffer zone, and marginal savings in activity zone land use.
- 29 • However, a LAP is never combined with a LEAP or a NEAP because the combining of the significant different age groups and their facilities is not appropriate.
- 30 • Stockport Metropolitan Borough Council consider that although the provision of amenity open space has little active recreational benefit, it is important in enhancing the environment of local communities and the Borough as a whole.
- 31 • Developers are required to provide appropriate amenity areas and landscaping within new residential and non-residential development schemes. These areas are designed positively as an integral part of the scheme and are not added as an afterthought or made up of residual or inappropriate pieces of land.
- 32 • In large retail or business development proposals, the Council encourages the provision of recreational open space within the development. They consider it appropriate that opportunities exist for workers and visitors to have access to areas of public open space.

Appendix 3

Advice to the Scrutiny Panel from the Assistant Borough Solicitor

Section 106 Planning Agreements

Thank you for your e-mail of 28th February,

Briefly, I see no legal or policy reasons why this Council should not adopt an approach similar to Stockport's.

Section 106 of the Town and Country Planning Act 1990 itself sets out that planning obligations under it can restrict the use of land and require the payment of sums of money to the Council.

The extent and reasonableness of such obligations is more a matter of planning policy. Current Government Policy is set out in Circular 1/97, however as you know, changes are proposed.

Circular 1/97 and indeed all of the circulars that it has replaced, whilst providing a number of tests for the reasonableness of planning benefit, concludes with a single overriding test. Even if the planning benefit offered or sought satisfies one or more of the tests, a further test has to be applied namely:

‘Whether the extent of what is sought or offered is fairly and reasonable related in scale and kind to the proposed development as well as being reasonable in all other respects.’

This test returns to the thrust of general policy namely that the planning benefits offered by a developer as part of the planning application package, must be relevant to the development proposal itself. If they go beyond this, then they will not necessarily be unlawful, but they will not constitute ‘material considerations’ for the LPA when determining the application. In other words it is entirely reasonable for a developer to be required, or to offer, to replace facilities, resources and amenities ‘to a quality equivalent to that existing before the development’. In addition, it would also be reasonable for a developer ‘to pay for or contribute to the cost of infrastructure which would not have been necessary but for their development’. If in addition that infrastructure confers wider benefits on the community than necessarily flows from the development, then that benefit on its own does not render the offer to require the investment unlawful or indeed irrelevant. The benefit, however, must be ‘directly related in scale to the benefit to which the proposed development will derive from the facilities to be provided’.

This point is emphasised in the circular as follows:

‘Developers should not be expected to pay for facilities which are needed solely in order to resolve existing deficiencies nor should attempts be made to extract excessive contributions to infrastructure costs from developers.’

In addition, the guidance also accepts that in those cases where a major development is proposed for a large area, it may also be **‘reasonable for a number of developers to contribute jointly to an improved facility** which will be of benefit to all of them and to the community at large’. Even then, the local authority must take care to ensure that the level of contribution sought from each of the developers who may be contributing jointly, is fairly and reasonable related ‘to the level of demand created by their development.’ **Planning obligations should never be used as a means of securing for the local community a share in the profits of development, ie. as a means of securing a ‘betterment levy’.**

The learned editors of Butterworth’s Planning Law Service offer the following advice, with which I agree:

“One way in which a local authority may avoid an allegation of unreasonable behaviour in the context of planning benefit, particularly where they intend to implement specific criteria for planning benefit as part of their overall planning policies, is to ensure that the relevant policy documents provide guidance to this effect. Incorporation of such policies in relevant plans will probably help to remove any argument that the requirement of a planning benefit is invalid in cases where the plan provides for it. Neither, provided that the planning advantage sought satisfies the tests cited above, is the practice in any way improper.”

The approach by Stockport seems to accord with this advice. It is founded on National Policy and standards. It is based on empirical evidence about its subject matter. It is based on adopted UDP policies, which have survived the rigour of the full statutory process including scrutiny at a public inquiry, consideration by Government Office, and unsuccessful challenge to the process in the High Court.

In our case, I agree with the approach suggested by the Strategic Planning Manager, (Environmental Services).

Keith Davy
for Borough Solicitor

Appendix 4

Advice to the Scrutiny Panel from the Strategic Planning Manager, (Environmental Services)

In principle the approach taken by Stockport, to set out in very clear terms the local standards for greenspace provision and the level of contributions they require from new developments, is an approach we intend to take to a wider range of issues which would include greenspace provision. We would seek also to adopt a simple process which is easy to understand and put into practice. The local standards and the level of contributions Tameside may wish to adopt are matters that need careful consideration not least by the Planning Service and Legal Services but by District Assemblies, Education, Housing & Highways. We will be consulting closely with other services to find the right balance. The government are due to produce new regulations and guidance associated with Planning Obligations, which will to a large extent shape our thoughts on this matter.

What works in Stockport, which has a more buoyant market for new housing and commands higher house prices may or may not be appropriate in Tameside. We must be concerned to find the right level of contributions to maintain a healthy market for new housing in Tameside whilst securing a meaningful contribution to the social and community costs associated with new development.

Schedule Of Information of Sample of Current/Existing Schemes

Date of Visit	Scheme	Contribution		Leisure	Highways	Comments
		Education	Community Facilities			
26th Jan 05	Hyde Clarendon College					A sports hall for the college/community has been provided by the developers as payment for the land used to erect a new Police Station. This is an excellent facility for the whole community
26th Jan 05	Victoria Street Playing Fields					The developer has refurbished the football pitches and playing fields at Victoria Street Hyde as part of the planning agreement for a nearby housing development. New drainage has been provided as well as the levelling of the area and re-laid grass surface. Again this is an excellent use of Section 106 monies to benefit the community
26th Jan 05	Harbour Farm Road					Provision of an all weather pitch (MUGA). A very useful facility but it is already showing signs of vandalism
4th Feb 05	Calprina	£90,000	£42,160	£2,500	£45,000	Work has started on the Leisure aspect (Duck Pond) and appears to be to a high standard. The remaining works had not yet commenced
4th Feb 05	Barratts Droylsden	£57,096		£17,000	£110,500	The additional classrooms are an excellent addition. The highways works were necessary to relieve traffic flow from and to the development, however work had not commenced on the Public Open Space element, although Planning are still in negotiation with the developer.