

# News

## Property



## Money for nothing - legitimate planning gain or planning guzzle?

Over the past few years, many developers will have been required to enter into commitments under planning, highways or infrastructure agreements that were necessary at the time in order to obtain or implement a planning permission.

However, the current economic realities are such that the level of commitment and/or the expressed purpose for which the payments were demanded may no longer be economically viable or relevant. Indeed, in many cases a developer may well have paid for something that has still not been provided years later.

In particular, section 106 Agreements and section 278 Agreements may have obliged a developer to make payments to the relevant authority for objectives that have not been delivered, or not been delivered in the manner originally envisaged. We are seeing a high number of instances where a developer was told that it would not be able to commence development prior to, for example, entering into an obligation in a section 278 Agreement to pay for off-site highways improvements that were then deemed essential but many years later have still not been provided. The development seems to be functioning properly without the highways improvements but what has happened to the monies paid by the developer on or since entering into that section 278 Agreement?

In addition to the usual obligations relating to affordable housing, most recent section 106 Agreements may have required payments to be made for public open spaces, public art, education provision and so on. The developer may have paid a sum of money to the local planning authority for such matters without any obligation on that authority to update the developer as to the delivery of such items. The terms of the section 106 Agreement may require the return of those sums of money in the event that the intended objectives have not been met within a certain time limit, but who is monitoring that? It is doubtful that the planning authorities will be chasing developers to ask them to accept repayments!

It could also be the case that monies collected for certain purposes have been used for other, possibly connected, purposes. This may or may not be legitimate under the provisions of the relevant planning or infrastructure agreement.

Another point worth considering is that many planning or construction obligations will have been supported by bonds, taken out (and maintained at considerable expense) by the developer. Have the bonds been cancelled promptly by the developer on completion of the relevant obligation? If the bond was required to support delivery of an obligation by a third party it may be the case that the developer is simply unaware that the bond is no longer required - but is still paying for it!

Hammonds is prepared to review such agreements on a no-cost basis. If our analysis shows that grounds to reclaim monies do exist and a decision is taken to proceed, then we will agree a sensible fee arrangement to ensure that the benefit isn't outweighed by the cost of recovery.

Hammonds  
is prepared  
to review  
agreements on a  
no-cost basis.

### FURTHER INFORMATION

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