

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

REQUESTS TO DEFER DELIVERY OF S106 PROVISIONS AS A RESULT OF THE IMPACT OF COVID-19

North West Leicestershire District Council recognises the importance placed by the government on supporting businesses during the COVID-19 pandemic and, where possible, the need to be flexible. However, it also recognises the need to be clear and consistent in a way that does not offer competitive advantage to one company over another.

In response to the spread of Coronavirus (COVID-19), the Ministry of Housing, Communities and Local Government (MHCLG) has published on 13 May 2020 an update on planning matters, including temporary measures related to the delivery of provision in S106 Agreements.

A copy of the guidance can be viewed at

<https://www.gov.uk/guidance/coronavirus-covid-19-community-infrastructure-levy-guidance>

The guidance is specifically aimed at providing assistance to small and medium sized developers, those defined as having a turnover of up to £45m.

The guidance says

“There are greater flexibilities within section 106 planning obligations than CIL. Where the delivery of a planning obligation, such as a financial contribution, is triggered during this period, local authorities are encouraged to consider whether it would be appropriate to allow the developer to defer delivery.

Deferral periods could be time-limited, or linked to the government’s wider legislative approach and the lifting of CIL easements (although in this case the government would encourage the use of a back-stop date). Deeds of variation can be used to agree these changes. Local authorities should take a pragmatic and proportionate approach to the enforcement of section 106 planning obligations during this period. This should help remove barriers for developers and minimise the stalling of sites.”

This note outlines how the District Council will deal with requests from small and medium builders to defer the delivery of provisions included in S106 Agreements. Such requests are likely to be a delay in the trigger for the payment (or delivery) or a request to renegotiate the amount of a financial contribution.

General Principle

Each request will be considered on its merits.

Please note, any triggers relating to the payment of monies related to the River Mease SAC which have to be paid prior to occupation, cannot be deferred unless the property concerned is not to be occupied. This is to ensure that the development does not contravene the Habitats Regulations provisions.

Principles regarding renegotiation of payment triggers

In general, the District Council will positively re-consider payment triggers. However, where a financial contribution was triggered prior to the COVID-19 crisis the expectation is that this should be paid in full, with any late payment interest.

In order to be transparent, the District Council will require the following information from developers:

- Explanation of the full impact of COVID-19 on the delivery of their development and the impact of this on their cash flow.
- Demonstration on a contribution-by-contribution basis why the change is justified based on the impact on their business.

The District Council will assess the proposals for deferral of a contribution and its implications for any scheme/project at risk, for example, when it has been programmed for delivery. This assessment will also look at where there is a co-dependency with other contributions.

If agreement to deferral is given, interest accrued on a contribution during the extended period must be paid.

Any changes to contributions can either be secured by a side letter or be secured through a Deed of Variation funded by the developer. Amending the payment trigger by letter will not affect the original S106 so whilst this may be a pragmatic approach it will not offer security to the developer.

Principles regarding renegotiation of a financial contribution

In general, the District Council is unlikely to accept a reduction in the financial value of a contribution. This is to ensure that no burden is placed on the taxpayers to meet shortfalls in funding. It is also to ensure that developers continue to mitigate, in full, the impact of their development on the infrastructure specified in the legal agreement and to ensure compliance with planning policy and the spirit of the decision that was made when the planning permission was determined. Where a financial contribution was due prior to the COVID-19 crisis the expectation is that this should be paid in full, with any late payment interest.

However, where a developer requests a renegotiation of a financial contribution, the following will be required:

- Evidence to enable a full independent viability review. The viability review will be funded by the developer.
- Any changes to the amount of contributions will also need to be considered by the relevant local planning authority.
- Any changes to contributions must be secured through a Deed of Variation funded by the developer.

Enquiries or requests should be sent to:

s106.monitoring@nwleicestershire.gov.uk

or call 01530 454677