



**Creating communities
for a better tomorrow**

Healthy New Town Case Study

Whyndyke Garden Village - Section 106 Agreement Learning

One of the key drivers for the Healthy New Town (HNT) pilot sites was to bring planning and health closer together, it was evident that there was, and probably still is on many developments, disconnect between the planning process and health requirements of the local community. One of the primary mechanisms that can help to formally bring health into the planning process is the Section 106 Agreement. The Whyndyke HNT pilot site had the unique advantage that at the time NHS England chose it as a pilot, the Section 106 had not been drafted but planning permission had been granted. The timing was ideal to examine how healthy living principles could be integrated into the Section 106 Agreement.

The Section 106 Agreement and in some cases the Community Infrastructure Levy (CIL), are powerful mechanisms to secure planning gains that will shape the nature of a development. The agreement influences the physical environment covering necessary infrastructure and community facility requirements. Without a Section 106 Agreement, a development cannot begin and the agreement requires the developer to deliver compulsory elements within the community. It is legally binding. If planning and health are to come together to create healthier environments that support healthier living, using the Section 106 to embed healthy living principles ahead of the development being constructed is essential.

The Whyndyke Garden Village (WGV) site found itself in an ideal position to pilot the integration of healthy living principles into a Section 106 Agreement, with the added challenge of the agreement involving three different local authorities, a district, a county and a unitary, as well as the Highways Agency due to the proximity of the M55 motorway to a cross boundary development. The added complexity of the different partners provided the opportunity for additional learning that can be shared through the pilot scheme benefitting future arrangements.



The Partnership Board established to deliver a Healthy New Town at Whyndyke Garden Village developed a number of healthy living principles designed to shape elements of the Section 106 Agreement, bringing planning and health together. The healthy living principles were developed in consultation with stakeholders from health, housing, planning, highways, education and the local community and are include below:

- Actively promoting and enabling community leadership and participation in planning, design and management of buildings, facilities and surrounding urban landscape to improve health and reduce health inequalities.
- Reducing health inequalities through addressing wider determinants of health such as the promotion of good quality local employment, affordable housing, environmental sustainability and education and skill development.
- Providing convenient and equitable access to innovative models of local healthcare services and social infrastructure, with the promotion of self-care and prevention of ill health.
- Ensuring the development embodies the principles of lifetime neighbourhoods and promotes independent living.
- Promoting access to fresh, healthy and locally sourced food (e.g. community gardens, local enterprise) and managing the type and quality of fast food outlets.
- Encouraging active travel, ensuring cycling and walking is a safer and more convenient alternative to the car for journeys within and without the development and providing interesting and stimulating cycle and foot paths.
- Creating safe, convenient, accessible, well designed built environment and interesting public spaces and social infrastructure that encourages community participation and social inclusion for all the population groups including, older people, vulnerable adults, low income groups and children.
- Embracing the Smart Cities agenda by incorporating and future proofing for new technology and innovation that improves health outcomes across a range of areas both at an individual level and also within the public realm.
- Ensuring workplaces, schools, indoor and outdoor sports and leisure facilities, the public realm and open spaces are well designed in ways which promote an active and healthy lifestyle, including regular physical exercise, healthy diet and positive mental health.

A private sector legal firm was commissioned to facilitate the Section 106 Agreement at a cost of £20,000, which is in excess of the average fee for a Section 106 but reflected the size of the development and the added complexity of the multiple compulsory partners. The agreement took two years to complete requiring significant time and resource from all partners in addition to the fee. The following sections of this case study include forthright and honest feedback from those involved in the process which is intended to provide insight, guidance, advice and tips for anyone involved, in the future, in developing an agreement designed to bring planning and health together to create a healthier community.

What Went Well

The fact the Section 106 Agreement was completed to the satisfaction of all parties is a success in itself, although it took almost 2 years due to the scale of the development and the number of partners. The agreement was complex, with the added challenge of being a pilot that sought to embed healthy living principles in the Section 106 legal agreement.

Everyone was engaged in something new, different and challenging that led to great relationships and new learning in an environment that was always positive, constructive and supportive despite the challenges and continual deadlines for completion being thwarted by fresh challenges.

We were successful in incorporating the healthy living principles. This should ensure that future developments benefit from this pilot under the HNT banner. It was achieved principally because the principles were incorporated into Local Plan policies and the National Planning Policy Framework. It was then possible to include reference to the site as a HNT through a modification to the Local Plan as part of health and wellbeing.



The Challenges

Tracking changes and co-ordinating comments on the master document was haphazard and confusing leading to duplication, waste, errors and frustration amongst partners, most of whom were anonymous faces at the end of an email so it was easier to get frustrated. The usual way to amend Section 106 Agreements is through tracked changes. Each party amends the draft in turn – to avoid multiple drafts circulating – and the document evolves so that if you approve of someone's changes you don't amend it, and if you don't approve, you make the amendment. These are all then visible in different colours on the draft. In this instance, all the legal bodies were asked to make their comments

and the commissioned external solicitor confirmed that they would make a composite draft incorporating them all. This is not the way it is normally done and the composite draft when it eventually came through missed out some amendments which, in turn, shook confidence in what was, in any event, an unaccustomed procedure. In hindsight the lead legal officer should have set out a framework for the process and secured agreement from all partners to deliver this.

Some partners had not been briefed about the details of the pilot, the healthy living principles or the HNT project resulting in the Section 106 being seen as 'just another agreement' rather than an innovation, as a consequence everything took too long. This has a further impact in that partners did not dedicate enough time and resource to this element of the pilot through a properly agreed plan with mutually acceptable milestones. The result was a mix of lack of leadership with no clarity of purpose or objective resulting in individuals from different organisations with different cultures, values, beliefs and attitudes criticising or pointing out errors, none productive and negative behaviours which simply added to the challenge.

The different hierarchical structures of the partner organisations resulted in differences in terms of delegation, empowerment, confidence and decision making. As the agreement involved a county, a unitary, a district council and central government Highways Agency, it was not recognised in advance that all of those employees operate in different work environments shaped by different governance, managerial arrangements, organisational behaviours and cultures. As a consequence the ability to get tasks completed and the expectation of time frames or deliverables were all different. There was little co-ordination and communication between the individuals responsible for action in each organisation. The difference was sometimes evident within the same organisation with different service areas demonstrating different attitudes and approaches to the same project.



What Could Have Been Done Better?

The project would have benefitted from early engagement between all partners to agree common goals and understand fully the uniqueness of the pilot. It would have also been beneficial to have agreed the methodology across all partners.

An agreement made at the outset on how to manage the master document and how to track all edits, share updates, control deadlines and connect and involve individuals across organisations simultaneously. This would have introduced measures that promoted an environment of co-operation, trust, priority and team work. Instead, despite being formal partners on a development and national pilot scheme, the perception was that organisations were working against each other.

The decision to appoint an external legal practice to facilitate and co-ordinate the agreement did not enhance the experience and was, on occasions, contributing to the challenges. An agreement that is part of a national pilot and involves so many local authority partners probably should not have been led by a Manchester based private legal practice.

Triggers in the agreement were not agreed prior to drafting resulting in negotiation taking place after drafts had been produced which lead to further confusion. An arrangement between the partners prior to the start of the process to agree to deadlines and milestones would have saved considerable resource. A dedicated task and finish group with an agreed scope to project manage the agreement would have proved useful and would have negated many of the challenges.



The Key Learning Points

The experience of drafting what was a complex and unique Section 106 Agreement has drawn out several learning points that would support a more efficient and effective process in the future:

- **It is essential that the objective to create a healthier community than those that have been built before is clearly articulated and agreed with all partners in advance of starting the process.** This would have saved a significant amount of time. The lack of clarity amongst some partners was evident and was a direct result of those engaged in the strategic vision of delivering a healthy new town not having the 'buy in', commitment or support from the leadership of their organisation. The use of a memorandum of understanding signed between the partners would have articulated and formalised the commitment that could have been shared across the various organisations and with employees responsible for doing the work on the ground.
- **Employees in the various organisations responsible for delivering the agreement on the ground must be fully and appropriately briefed on the strategic outcome and objectives.** A communication plan, agreed by the partners at the pre-planning stage, with key messages on the corporate importance of the project, would have achieved this ensuring that the necessary commitment, enthusiasm and importance is achieved from all the participants in each organisation.
- **Set key milestones which partners commit to communicating in person through face to face meetings.** A significant amount of time and resource was wasted because of the reliance on emails which led to long gaps before responses and were sent, ad hoc, and as and when someone had completed their task or identified the need to gather additional information. It is necessary for the importance of the agreement to be made explicit and a priority by organisational strategic leaders so that the employees responsible for delivering on the ground will give it the required priority and fully commit to appropriate deadlines and meetings set in the communications plan.
- **Consider in advance how to pitch or 'sell' the healthier principles and associated additional or different requirements that make the development unique, or the future of communities, to the developers.** There is no avoiding the fact that there has to be profit margins, the developers and the Housing Associations are not charities. In the pre-planning stage, ensure that all partners are on message with the benefits, to the developer.
- **Know the individuals involved in the process from each organisation.** It is important at the outset to set up an initial face to face meeting or conference call to make a connection with those you will be emailing, to build a relationship and start a rapport that will facilitate and accelerate the process of dealing with any differences. This will save time, resource and cost and reduce frustration in the future. Establish a 'team' ethos with shared values, objectives and priorities for the project and perhaps even arrange a team building session. The investment in people at this stage of the process will reap significant benefits at later stages.
- **Challenge the local authority to have planning policy that incorporates the healthy living principles through supplementary guidance or corporate priorities associated with health and wellbeing.** This provides an evidence base when introducing healthy living principles into Section 106 Agreements. This is necessary for health and planning to come together to create healthier communities and embeds the behaviour change and prevention for future planning and developments. It ensures that the wider determinants of health are able to positively influence future health outcomes

- **Build relationships and develop an effective collaborative attitude.** Property development is a competitive environment driven by margins and one of the most influential elements of the national and international economy, a primary reason that planning and health have moved so far apart as recognised by the HNT pilots. The success in bringing health and planning together will depend on the value to the developer which starts with the Section 106 Agreement and provides the opportunity to shape the health and wellbeing of future and existing communities through legal requirements. If negotiation of the Section 106 is approached by all stakeholders with a collaborative attitude the process of moving from a competitive paradigm to one of co-operation can begin.
- **Innovation is required in the Section 106 Agreement to embed healthy living and lifestyle principles because some elements are not tangible.** However, it is challenging to innovate in a framework founded on contractual and legislative requirements. The WGV Section 106 was restricted in terms of innovation because of legislation but this pilot has started to point towards change. Don't underestimate the important and influence of the Section 106 which shapes the development on the ground.
- **To achieve step change leaders need to have the integration of health and planning on the strategic agenda at sub regional and regional level.** It was the experience of the Whyndyke Garden Village HNT that not all leaders in the partner organisations involved were cognisant of the pilot. Communication cannot be left to each organisation's representative as once they leave the meeting, officers go back to the day job. A clear communication strategy needs to be prepared at the outset and agreed to and supported by every partner at the highest level of leadership.

Many of the key learning points above are integral to essential pre-planning arrangements that will save considerable time, resource and cost by investing in a pre-planning process which includes communications, memorandum of understanding, agreed outcomes, committed deadlines and shared objectives, as well understanding the culture of the various partner organisations. The WGV Partnership signed up to a partnership protocol in a bid to get different organisations with different cultures and values to work towards a common goal. Partnership working is essential to develop new communities therefore goal setting can only be achieved through consensus. Achieving this was challenging because partners held different values, came from different cultures and placed different levels of importance and value on the pilot and the Section 106. The partnership would have benefited by establishing shared values, beliefs and objectives at the outset.

In conclusion, despite the clear challenges highlighted in this case study, it is essential that Section 106 agreements and CIL policies embed the principles of healthy living. This will ensure that these are then credible tools that are able to influence not only the physical and built environment but also the behaviours within the local communities, and the attitudes and actions of those who will populate tomorrow's healthy towns and villages. **By learning from the experience of this pilot agreement it will be possible to reduce the time, cost and resource to reach innovative agreements that put health at the core of communities that developers can deliver.**

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