

Meeting: OVERVIEW AND SCRUTINY COMMITTEE

Portfolio Area: Resources / Environment & Regeneration

Date: 15 June 2015

SCRUTINY REVIEW OF SECTION 106 AGREEMENTS

Author – Stephen Weaver Ext No.2332

Lead Officer – Jackie Cansick Ext No.2216

Contact Officer – Stephen Weaver Ext No.2332

Contributors – Councillor Lin Martin-Haugh, Chair of Overview & Scrutiny Committee

1 PURPOSE

- 1.1 To consider the recommendations of the scrutiny review into Section 106 Agreements that was undertaken by the Overview & Scrutiny Committee.

2 BACKGROUND & SCRUTINY ISSUE IDENTIFIED

- 2.1 At its meeting on 20 March 2014 Overview & Scrutiny Committee agreed to scrutinise Section 106 Agreements.

2.2 Scope and Focus of the review

- 2.2.1 During the scoping Members identified the following issues that they wished the review to address:

- Provide assurance that the Council has good governance with regard to its decision making processes with Section 106 Agreements
- Provide challenge around the on-going costs of schemes that are funded from Sec 106 Agreements, is the Council building in adequate revenue funding via commuted sums to maintain facilities?
- Clarify what the Council's position is re any external groups looking to secure Sec 106 monies for related activities such as Sports Clubs equipment/facilities etc
- Look at how decisions are currently published
- Establish how decisions are made regarding the spending of Sec 106 monies? Who decides? The decision making process regarding the spending of s106 monies, with particular regard to the input provided by Members, Community Groups and the public. Members wish to establish a mechanism to raise their interest in potential Sec 106 as they emerge – potentially via notice of forthcoming Sec 106 on Planning & Development agendas

- Establish how effectively Officers communicate with each other re the priorities for the Council across the departments i.e. the Officer negotiating the Section 106 Agreement wording is aware of all of the local needs/priorities. Members were keen to establish whether it is possible to future proof the legal agreements?
- Look at instances where agreed s106 projects had been renegotiated at a later stage

2.3 Process of the review

- 2.3.1 On 22 September 2014 the Chair of the Overview and Scrutiny Committee met with officers to discuss the content of the review and to agree a draft scoping document that would be presented to the O&S Committee for consideration.
- 2.3.2 The Committee met on 9 October 2015 to receive a briefing on Section 106 Agreements and to further refine the scope of the review with Members of the O&S Committee.
- 2.3.3 The Committee received a briefing paper on the Section 106 (s106) process from the Head of Planning, Regeneration and Transport and the Assistant Director Finance (this document is available as a background paper) with information on the following areas:
- Planning Obligations and monies allocated for HCC Calculation of Childcare Facilities Contribution, Education Facilities Contribution, Library Facilities Contribution and Youth Facilities Contribution
 - Sustainable Transport Contributions
 - SBC Children's Play Spaces Contributions and Outdoor Sports Facilities Contributions
- 2.3.4 At the meeting on 3 November 2015 the Committee received written and oral evidence from the following people the Head of Planning, Regeneration & Transport, Paul Pinkney and the Assistant Director Finance, Clare Fletcher.

3 REVIEW FINDINGS

3.1 Conclusions of the Overview and Scrutiny Committee review into Section 106 Agreements

- 3.2 Based on the input provided by officers and witnesses the Committee have made the following conclusions.

3.3 Background

- 3.3.1 The Committee was advised by the Head of Planning, Regeneration and Transport and the Assistant Director Finance, that s106 payments were a feature of more major developments and were usually provided to fund infrastructure improvements through either capital or revenue projects.

- 3.3.2 The Committee was further advised that a s106 payment should not

jeopardise the economic viability of the proposed scheme and that payments were time limited. If the monies had not been used within a five year period they were to be handed back to the developer. Members were also advised that there is an affordable Housing test that applications must meet but that the presumption is towards Development.

3.3.3 Members raised a number of questions regarding Section 106 Agreements and gave notice to Officers that in advance of the main interview session with them they would be raising the following issues:

- The use of s106 monies to provide sustainable transport
- The monitoring of s106 spend
- Specific case studies of renegotiated agreements (the case referred to by the Member was Great Ashby)
- The ability to use s106 monies on either revenue or capital projects dependant on the project meeting the viability tests.
- The addition of s106 projects to the weekly planning list.

3.4 **Community Infrastructure Levy**

3.4.1 Members noted the decision of the Council not to pursue securing monies via the Community Infrastructure Levy (CIL). Following an analysis by officers of the benefits that CIL could provide to the Council in comparison with Section 106 Agreements, officers had concluded that CIL would not be suitable for this authority as the Council would in all likelihood receive less contributions than Section 106 Agreements. Also CIL is linked to the Planning Policy process and the Council does not currently have a local plan in place as would be required to receive contributions via CIL. Members were subsequently provided with a report circulated by the Head of Planning, Regeneration and Transport that had been presented to the Senior Management Board on why CIL was not practical for the Council.

3.5 **Officer/Member Communication re potential Sec 106s**

3.5.1 Members were of the view that consideration should be given to improving the current communications process around the proposed use of s106 monies for any given development. The Council's Planning Case Officer has responsibility for determining whether an application should attract a Section 106 planning gain to offset the loss of amenity in an area. Members suggested that there should be some mechanism whereby officers should alert Ward Members of potential Section 106 Agreements. The Head of Planning, Regeneration and Transport stated that Planning officers were always open to discussion with Members regarding any Planning Application that was linked to a Section 106 Agreement. However, Members were looking for a more systematic mechanism to highlight applications that may attract a Section 106 Agreement early in the process so they would have an opportunity to discuss with Planning officers what likely Section 106 Agreement infrastructure capital or revenue projects they would be

negotiating with the applicant so they can give their view on it. The Committee were of the view that there should be a greater role for Members and community groups in the decision making process.

3.5.2 Members concluded that, based on the written and oral evidence provided, overall the current mechanisms for negotiating Section 106 Agreements and the way the contributions are monitored through the Council's financial systems are providing good governance for the authority and the Council's decision making is sound. However, Members are keen for officers to investigate new ways that Members and the wider community can be kept informed of the likely contributions and infrastructure projects that may be delivered from these Planning agreements.

3.6 Internal Officer Communications regarding local priorities

3.6.1 The review discussed how effectively Officers communicate with each other regarding the priorities for the Council across different departments i.e. is the Officer negotiating the Section 106 Agreement wording always aware of all of the local needs/priorities. It was suggested by Members that in their view there had been instances when it appeared that communication between officers could be improved but these instances were isolated and therefore not reflective of the normal service.

3.6.2 During Members discussions with officers it became evident that there is a difference of understanding on this issue between Members and officers regarding local needs and priorities. During the review Members made it clear through their statements and questioning that they see Section 106s as an opportunity to enhance areas with much needed infrastructure or revenue projects but it would be wrong to view it as a "shopping list" for an area, as the Head of Planning, Regeneration and Transport was keen to demonstrate that the agreements had to be related to the Planning Application and to a specific loss of amenity.

3.7 Policy on Section 106 Agreements

3.7.1 Officers stated that it would not be possible for the Council to develop a Policy on Section 106 Agreements, as Members were requesting, as they were subject to Planning Law and could only be negotiated on a case by case basis on the merits of each application.

3.8 Greater involvement for Members in Section 106 Agreements

3.8.1 Officers cautioned that any further Member involvement in the deliberations on Section 106 Agreements would have to be carefully handled so that there were no risks that this could build in any delay to the determination of planning applications. However, it should be possible to arrange for the current message to Ward Councillors to be highlighted to indicate the period when Members can ask questions regarding an application and crucially whether the application is likely to attract a Section 106 Agreement with the caveat that this is down to the discretion of the Planning case officer.

3.9 Commitments that are sometimes avoided or negotiated away

3.9.1 There is a perception amongst Members that at times applicants appear to negotiate away their commitments following the delivery of a building scheme, the case of Great Ashby was provided by Members as an example of this where the provision of a surgery and enhanced access arrangements were promised but failed to be delivered.

3.9.2 The review did not look in any depth at whether sufficient provision is being made to cover the on-going costs of schemes that are funded from S106 Agreements, i.e. is the Council building in adequate revenue funding via commuted sums to maintain facilities? Therefore the challenge remains for officers to demonstrate that ongoing adequate financial governance is being provided to make sure that new schemes do not put undue pressure on the Council's revenue finances.

3.10 External groups accessing Section 106 funding

3.10.1 The review sought to clarify what the Council's position was regarding external groups looking to secure Section 106 funding for related activities such as Sports Clubs equipment/facilities etc. There is no formal policy on this but it is clear throughout the on-going period of austerity for local government the Council's Capital Programme is supported first.

3.11 Future proofing

3.11.1 Members were keen to establish whether it would be possible to future proof the legal agreements? Officers providing evidence stated that this would be very difficult to achieve given that each application needed to be considered case by case on its own merits, and it would not be possible for officers to predict the future viability of infrastructure provided by a commuted sum. Therefore it would be difficult to foresee circumstances where the provision, for example a bus shelter, is later not required if the bus service is subsequently removed.

4 RECOMMENDATIONS

4.1 That the Overview and Scrutiny Committee considers the conclusions of the review, contained within this report and the recommendations below be presented to Portfolio Holder for Environment & Regeneration and for Resources, and the Strategic Director (Environment) and Strategic Director (Resources) that a response be provided from these and any other named officers and partners within two months of the publishing of this report.

4.2 That officers investigate an improvement on the current arrangements for alerting Members to planning applications that may involve a Section 106 Agreement. Members would like officers to consider a mechanism to highlight such applications with ward Members, allowing a fixed timeframe

for responding to officers, so as not to delay any applications, but to invite Member input on possible enhancements to an area.

- 4.3 That officers make sure that the individual officer negotiating a Section 106 Agreement is aware of the local needs and priorities of the area where the planning permission is being sought, by in part undertaking consultation with the local Members and that the case officer adequately communicates with other colleagues internally and with the County Council in order that the best provision is negotiated for that area.
- 4.4 That although cases are rare, officers investigate ways of avoiding situations where the infrastructure projects that are delivered are not subsequently criticised for being either the wrong provision or in the wrong location as Members cited with specific cases such as the Van Hage, Bagbury Lane planning application which delivered a sustainable transport project of a bus stop been installed in a location where there is no bus route and a similar case in Gunnells Wood Road.
- 4.5 That SBC officers approach Hertfordshire County Council asking how they make their decisions regarding issues like the siting and provision of sustainable transport to help Members better understand their reasoning.
- 4.6 That officers provide Members with confidence that sufficient ongoing revenue funding is being provided to maintain capital infrastructure schemes funded by Section 106 Agreement monies.

5 IMPLICATIONS

5.1 Financial Implications

- 5.1.1 There are no direct financial implications for this report.

5.2 Legal Implications

- 5.2.1 There are no direct legal implications for this report. Planning obligations are set out in Section 106 of the Town & Country Planning Act 1990, as amended by Section 12 of the 1991 Planning and Compensation Act, and the Localism Act 2011.

5.3 Equalities Implications

- 5.3.1 During the scoping discussions with Members and throughout the review no specific equalities issues were identified.

BACKGROUND DOCUMENTS

Minutes of the Committee meeting held on 9 October & 3 November 2014
Briefing Paper provided to Members prior to the meeting held on 3 November 2014

APPENDICES

Appendix A – Scrutiny Scoping Proforma