



Title: Select Committee Chairmen update on S106 investigations

Committee date: 17th June 2014

Background

1. Section 106 funding is an area of interest to the Environment, Transport and Locality Services and the Finance, Performance and Resources select committees. Both select committees received an information paper regarding S106 in autumn 2013. On the 6th November the ETL select committee agreed the next steps as below:

For the Cabinet Member for planning and service area;

- a) To complete the redesign of the S106 process, taking into account organisational changes and the loss of resources, to ensure S106 agreements are effectively monitored and that S106 contributions are paid and committed to scheme delivery in line with BCC Capital Programme.
 - b) To consider the creation of a new S106 Co-ordinator role within the Place Service, funded through the S106 monitoring fees, including a review of S106 monitoring fees and the brokering of internal agreements when viability constrains funding available.
 - c) To develop a more effective communication strategy during the Pre-Application, Planning and S106 negotiation process to consult with Local Members and ensure that local concerns are ideas are being considered as part of the process.
2. During work programming discussions, both select committees considered this area of Council business worthy of further investigation. The Select Committee Chairmen agreed that they would meet with relevant officers outside of select committee meetings to carry out this further work with a view to agree the approach going forward.
 3. Warren Whyte, Chairman of the ETL Select Committee and Brian Roberts, Chairman of the Finance Select Committee met with officers within Place on 21st May 2014 to discuss the Local Authority's approach to S106 agreements. The meeting opened with an update on the structure and resources within the Place team in relation to S106 agreements before moving into discussions around processes, structures, member influence, roles and responsibilities, and partnership working with District Councils.

Update on structure and resources

4. S106 agreements can be between the developer and either District or County, but are presently most likely to involve both parties. At county level, the major contributions necessary to mitigate developmental impact relate to the provisions of roads/schools, and as such, different service areas are involved even internally within the county structure.
5. Additional officer capacity (0.5FTE) has been allocated to ensuring best value from developments, including through S106 agreements. The Chairmen welcomed the creation of a new S106 Officer post within the Place Service and heard that this resource will initially be focussed on the commissioning and delivery, rather than monitoring, of S106 agreements.
6. A lot of work has taken place to pull together information to provide a clear picture of existing S106 agreements. Back office systems have been updated and organised so the agreements are all logged in one place with clear trigger points. A combined picture pulling together all of the agreements in one list, is 95% complete (although some pre-date the SAP system), providing a snapshot of what money is available and the negotiations made. They have moved towards a RAG system to monitor the agreements and trigger points.

Key themes in the discussion

Responsibility and co-ordination

7. The Chairmen were concerned that the Local Authority hasn't got a corporate approach to S106 and that there is a lack of central coordination, oversight, and monitoring. They asked who at the Local Authority has overall responsibility for the coordination of S106 agreements.
8. It became clear that there is no significant county-wide coordination of S106 agreements or negotiations. Individual service areas consider their respective parts and negotiate them in isolation. There is not a central coordination and monitoring function. There is no single officer assigned to schemes in order to monitor, review, chase payments etc. The Chairmen raised the question around who at County then takes the lead to promote the County Council's best interests when talking with the developers and Districts. For example, when there is a problem in terms of the viability of a scheme is there a debate about what takes precedence? How does/should this take place?
9. The Chairmen and Officers discussed ways to resolve this, considering assigning officers to developments, capturing S106 in a more central coordinated function, reporting S106 alongside capital within the MTP process, and quarterly monitoring of the S106 agreements.

Policy and process

10. The Chairmen heard that the Local Authority does not currently have a clear policy or structure around the best way to achieve the mitigation through S106 negotiations with developers in order to achieve the best outcomes for local communities. (For example, at the early stages of a project, some measures often funded as part of s106 mitigation could be designed in, therefore releasing s106 funding for better mitigation measures). A clear policy needs to be developed which incorporates the below points raised by the committee chairman.
11. The Chairmen are concerned that the Local Authority's negotiations with developers are not as robust as they should be due to the fact that our involvement is not at an early enough stage to lead negotiations along with District Planners. Currently, developers tend to draw up very detailed plans before the Local Authority becomes involved in seeking mitigation for these developments. The Chairmen felt that if the Local Authority became involved earlier in the process when a site masterplan is being developed, local needs could be taken into account in their design, the need for mitigation could be reduced, and available S106 money could be used more efficiently.

Responsibility for the local authority's approach to S106 agreements should sit with an identified senior officer.

(Consideration should be given to the development of a corporate S106 policy which gives clarity over the points raised such as, how the council coordinates negotiations, ties together individual service area negotiations, and who the responsibility sits with).

Local influence

A key concern is around developments being designed and built that may be technically correct but are considered to be conceptually wrong for the local community. For example, issues such as schools being built in the wrong places with poor local connectivity may have been avoided with local member input at an early stage.

Local members should be able to input into discussions around the best way to achieve mitigation as a matter of course. This will help to ensure that mitigation is more nuanced, taking account of local views.

It was considered that S106 agreements could be more joined up with schemes funded by Local Area Forums (LAFs). When thinking about mitigation measures officers could sense check LAF plans for things that are within them that haven't been funded and consider whether funding these from s106 agreements would adequately mitigate the impact of development.

Consideration should be given to how intelligence gathered by LAFs can be utilised when officers are considering schemes.

Monitoring of S106 agreements

A suggestion was made that the monitoring of S106 agreements should be incorporated into the Local Authority's MTP Capital Programme and quarterly Balanced Scorecard and Joint Monitoring Report. It was considered that closer monitoring and improved visibility of S106 agreements, together with better co-ordination, would bring benefits in terms of identifying synergies and improving commissioning. Improved monitoring is essential if the process is to be enhanced. If trigger points are not regularly and robustly checked, then there can be a significant gap between triggers and the Council doing what it says it will deliver.

S106 agreements should be incorporated into the Local Authority's MTP process and monitored quarterly (could this sit in a commercial plan or alternative form in Future shape?)

The role of finance should be considered within this – their role in overseeing all s106 capital expenditure.

Technical advice

It was felt that the technical advice that the local authority receives in relation to mitigation is often 'gold plated'. Department for Transport guidance, for example in relation to the installation of traffic lights, is often followed to the letter. However, this may be more costly and less suitable for a particular locality than alternative forms of mitigation that could make the money available go further.

The local authority should consider taking a more flexible approach to ensuring that the right types of mitigation are sought depending on local considerations.

Next steps summary

The Select Committees will be asked to consider the S106 proposed scope and the update report from the chairmen and agree whether the topic is worthy of further investigation by the committee chairman, or whether the findings be presented to the cabinet member and service area at this stage. If agreed, the Select Committee Chairmen will continue investigations into the Local Authority's approach to S106, and will report back to the Select Committees. **Therefore, the committee are asked to consider the following options to decide next steps:**

1. The committee resolves to do no further research and pass the summary paper on to Cabinet Member with a covering letter of committee recommendations (from those areas highlighted to date).
2. The committee agree that the topic is worthy of further investigation and agree that the committee chairmen continue their investigations in line with the proposed inquiry scope.