



Member Briefing Note

Title: Section 106: Status Update and Next Steps

Committee date: 18th November

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The purpose of this briefing is to:

- To outline the key areas/terms of reference for the committee to agree, refining the original scope following initial exploratory work.
- To recommend next steps for the inquiry (approach and timings).
- To recommend that the evidence sessions be undertaken through ETL committee in the New Year (inviting the Chairman of the FPR committee).

Background

1. On the 6th November 2013 the ETL select committee agreed the following recommendations for next steps as highlighted by the service area within their overview paper:

The service area is to:

- 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. Both the ETL and FPR select committees considered this area of Council business worthy of further investigation within their work programme discussions. The Select Committee Chairmen agreed that they would meet with relevant officers outside of select committee meetings to carry out exploratory work with a view to agree the approach going forward and refine the scope (attached appendix A).
3. Due to member commitments with other inquiries it was agreed that further work on S106 would be undertaken following completion of ongoing inquiries. This also provided the service areas with time to make some initial improvements highlighted by the Chairmen within the early explorative sessions.

Status update from the service area: structure and resources

4. John Rippon will be attending committee to provide members with a brief status update on development and discussions that have taken place within the service area to date in relation to the recommendations highlighted above and areas raised by the committee chairmen. He will also be able to discuss with members the key areas for further examination highlighted below.

Key areas for further examination (suggested inquiry terms of reference)

5. During initial exploratory discussions between the Chairmen and officers on 21st May there were a number of key areas where the Chairmen felt improvements to the Council's current approach and process in relation to s106 negotiations needed to be made. A summary of the discussions was circulated to the committee as an update in June along with a scope which was agreed by both committees (attached as appendices).
6. In order to refine the lines of inquiry within the scope the committee are asked to consider the below areas as the key terms of reference for further inquiry work, agreeing all or some of them for the committee inquiry. The key areas highlighted within the initial discussions fell under the following categories:

1) Governance: Internal Policy and Process:

- how can we ensure robust process and governance structure for the creation and monitoring of S106 agreements including financial transactions and reporting (this involves education, legal services, finance and the Highways DM)

2) Commissioning and Delivery of S106 schemes

- How can we develop an effective programme and manage delivery? Historic S106 contributions are blocked up in the system and funds are at risk of having to be repaid.

- What are the best ways to achieve the mitigation through S106 negotiations with developers in order to achieve the best outcomes for local communities? Particularly around early intervention at the planning stages to reduce need for mitigation

3) Councillors and local Influence in s106 agreements/contributions.

- How can we ensure that we are asking for the right sorts of improvements that meet local aspirations? How do we know what local communities want?
- There is a need for better local insight and influence in terms of future requirements of s106 funding and early intervention in the planning process.
- How intelligence gathered by LAFs for example, can be utilised when officers are considering schemes.

4) Community Infrastructure Levy (CIL) and partnership working:

- The role of the community CIL process needs to be considered in more detail as the Districts are the leaders in this process. What is the relationship between CIL and S106 and role/impact of the county council?
- Since BCC are not a CIL collecting authority – how can we best ensure that we are able to continue to drive the right transport outcomes and secure funding for services and infrastructure if the District Planning Authorities hold the purse strings?
- To what extent is there a need for an improved partnership approach between the County Council and District Councils to reconcile this? (The County Council has to bid to compete with others in this process and as such has a limited degree of influence).
- How are local needs and aspirations captured within this process?

Recommendations:

- **Committee to agree** all or some of the above key areas as general terms of reference for inquiry refining the scope, as agreed in June into clear work streams.
- **Committee to agree** that the inquiry evidence will be received through ETL committee, inviting the chairman of FRP select committee and will be added to the committee work programme for February/March 2014. All evidence will be heard in the one committee meeting.
- **Committee to agree that in Dec-Jan** Policy Officer to undertake desk research on behalf of the committee, collating background information, identifying key witnesses and other Local Authority processes and to develop inquiry timetable/plan and arrange evidence session for Feb/March.

Appendix A: Initial Inquiry Scope



Buckinghamshire County Council

Select Committee

Environment, Transport and Locality Services

Buckinghamshire County Council's approach to S106

A joint select committee inquiry proposal (initial)

Subject of Inquiry	An examination of the County Council's approach to s106 negotiations and agreements.
Inquiry Membership	Exploratory work carried out by Warren Whyte (Chairman of ETL) and Brian Roberts (Chairman of FPR).
Officer contact	Kama Wager: kwager@buckscc.gov.uk ; 01296 382615. Andrew Brown: andbrown@buckscc.gov.uk ; 01296 397048
Background	<p>Joint Committee Examination</p> <p>In the process of examining the council's approach to s106 agreement both the ETL and the FRP committees agreed in the autumn of 2013 that members considered this area of Council business worthy of further investigation and was to be included on the 2014/15 work programmes of both committees.</p> <p>Within both committees members raised concerns around the council's process and approach to s106 agreements, stalled developments, the recording and monitoring of agreements, lack of member influence in the negotiation stages (leading to a lack of local intelligence informing the agreements) and missed opportunities (through inefficient processes) to achieve the best mitigation measures for communities.</p> <p>The select committee chairman agreed that in order to bring together the interests of both committees in the most efficient way, they would meet with relevant officers outside the committee meetings to carry out further examination of the topic area.</p> <p>Background</p> <p>Section 106 agreements are legally binding private agreements made between planning authorities and developers. They are termed planning obligations under Section 106 of the 1990 Town & Country Planning Act.</p> <p>They are used to make development acceptable in planning terms. The land itself, rather than the person or organisation that develops the land,</p>

is bound by a Section 106 Agreement – so this is something any future owners will need to take into account. The obligations are registered as a local land charge against the piece of land.

Planning obligations enable a council to secure financial contributions to services, infrastructure and amenities in order to support and facilitate a proposed development.

S106 obligations must be evidence based and justified in planning terms. Supporting BCC Policies and adopted strategies are a material consideration, such as the Local Transport Plan.

The Government's policy on the use of planning obligations is set out in Circular 05/05. Planning authorities must take this guidance into account in their decisions on planning applications and must have good reasons for departing from it.

Planning obligations are used for three purposes:

- Prescribe the nature of development (for example, requiring a given portion of housing is affordable),
- Compensate for loss or damage created by a development (for example, loss of open space), or
- Mitigate a development's impact (for example, through increased public transport provision).

Community Infrastructure Levy (CIL)

In April 2010 a number of measures within the Community Infrastructure Levy Regulations came into force. These reforms restricted the use of planning obligations and clarified the relationship between planning obligations and the Community Infrastructure Levy – the levy is a new local charge that local authorities in England and Wales can choose to charge on new developments in their area to fund infrastructure.

The County Council is not a CIL collecting authority under the new scheme, since this role falls to District Council's in two-tier areas. Close collaboration is therefore essential between County and District Councils in order to ensure that the potential for Planning Obligations is utilised effectively.

Planning obligations cannot be used to double-charge developers for infrastructure. Once an authority has introduced the levy in its local area, it must not use obligations to fund infrastructure they intend to fund via the levy.

Planning obligations will no longer be the basis for a tariff. Once a local authority introduces the levy in their area, or if sooner after April 2014, it can no longer pool more than five contributions for infrastructure capable of being funded by the levy.

	<p>However, planning obligations will continue to play an important role in making individual developments acceptable. Affordable housing will continue to be delivered through planning obligations rather than the levy. Local authorities can also continue to pool contributions for measures that cannot be funded through CIL.</p>
<p>Objectives</p>	<ul style="list-style-type: none"> • To examine the authorities policy and process in relation to s106. • To determine how the relationships between the County Council and Districts and other partners in Bucks could be enhanced to improve ensure the best outcomes for Bucks residents. • To identify what the underlying principles should be in relation to new s106 arrangements. • To establish more effective ways of monitoring planning obligations so that processes and procedures may become more transparent. • To understand the impact of the CIL regime.
<p>Key areas of inquiry undertaken and to be examined further</p>	<ol style="list-style-type: none"> 1. To gain an understanding of Section 106 Agreements and the processes and procedures surrounding the requirements for planning gain; and how are they determined and monitored; 2. To gain an understanding of the roles and responsibilities of the County Council and District Councils in Bucks in relation to Section 106 Agreements; 3. To clarify the potential benefit to County Council services and the users of funding received; 4. To determine how the County Council and District Councils can work effectively in partnership on Section 106 Agreements 5. To examine whether the county council needs to work more closely with District, Town and Parish Councils and local partnerships and voluntary agencies to establish the scope and content of s106 agreements and how money and other benefits are allocated? 6. To determine what the process for the County Council (elected members) to be able to exercise their influence over CIL and S106 negotiation processes, inputting local intelligence; 7. Does the council benchmark against other council's policies and procedures are there innovative ways to learn from? 8. To identify whether s106 monies could be better utilised by combining them with other sources of finance to deliver increased benefits for local communities.
<p>Link to BCC Strategic Plan priorities</p>	<ol style="list-style-type: none"> 1. To ensure Bucks has a thriving economy that is creating jobs. 2. To improve transport networks within Buckinghamshire and the surrounding areas. 7.To provide excellent value for money 8. To ensure your local Council and its Councillors protect the interests of Buckinghamshire residents at local, regional and national levels

Methodology	<ul style="list-style-type: none"> • Information gathering working group sessions to be held with relevant officers and committee chairman to explore issues raised • Desk Research to identify practice from other Local Authorities. • Witness evidence from District Councils.
Next steps	The Chairman will report their findings to their respective committees to be agreed before being presented to Cabinet.
Outline timetable	<ul style="list-style-type: none"> • Exploratory evidence meetings to be carried out May - August • Initial findings to be reported to committee to agree in Autumn • Committee to agree findings or scope for further work Autumn • Dec-Jan – Desk research if scope agreed • Feb – Final detailed evidence sessions to be held

Appendix B: Chairman summary of initial discussions

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;

- d) 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.
 - e) 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.
 - f) 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

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 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.