

**Wiltshire Council**

**Cabinet Capital Assets Committee**  
**10 January 2011**

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## **Scrutiny of Section 106 Agreements**

### **Executive summary**

To highlight the work of Overview & Scrutiny in supporting the Council's management of its Section 106 agreements and to request the Capital Assets Committee to agree the recommendation identified to mitigate the current risks linked to this area.

### **Proposal**

The Committee is asked to:

identify and implement an action plan that will lead to a completed corporate Section 106 database by May 2011.

### **Reason for proposal**

Failure to catalogue all Wiltshire S106 agreements on a single database may lead to the council being asked to return developer contributions and planning gain not being materialised.

**Author:** Ceri Williams

Contact details: 01225 713079

## **Purpose of the Report**

1. To highlight the work of Overview & Scrutiny in supporting the Council's management of its Section 106 agreements (S106's) and to request the Capital Assets Committee to agree the recommendation identified to mitigate the current risks linked to this area.

## **Background**

2. In March 2010 the Organisation & Resources Select Committee created a scrutiny Task Group to review the Section 106 Process; including how developer contributions were being used to provide infrastructure improvements for Wiltshire.

## **Main considerations for the committee**

3. As part of its work the Task Group learnt that from January 1<sup>st</sup> 2005 to October 2010 there were 820 Section 106 Agreements across Wiltshire; 14 of which have been classed as significant i.e. planning gain of approx £300k +. (The Director for Planning has confirmed that details of these 14 agreements will be provided to the Task Group by early December.)
4. The former district & county councils operated individual approaches to the management of S106's, with records held in different sections such as legal, planning and finance. Post unitary accessibility was difficult and made more challenging because many of the officers who had been responsible for the agreements and had knowledge of their content had left the work area.
5. In response the Development Service in January 2010 appointed a dedicated administrative officer to create a database of all existing and new S106's. This aimed to ensure knowledge of what developer contributions had, or needed to be made, where the money had been directed, what money had been spent and the trigger points for future contributions.
6. Over 3 meetings, building up to July 2010, members learnt that the initial priority for the S106 officer had been to document the agreements finalised since April 2009. This work had been successful but not without challenge. Cataloguing monies received/spent and locating funds had proven to be the hardest task. Development of the database was further complicated by the different policies from Wiltshire's former councils to when an agreement's timeline (to spend the money) started. This ranged from when the agreement was signed through to money being payable on completion of the development.
7. The Task Group in July 2010 agreed to not meet for 5 months to allow the S106 officer time to further develop the database.

8. When the Task Group met in November it was provided with the following data to illustrate how much progress had been made; the Cabinet Member also thanked the members for their positive contribution:

|           | On database     | Triggers | Hyperlink | On Web |
|-----------|-----------------|----------|-----------|--------|
| North     | 12%             | 12%      |           | 95%    |
| East      | 1.5%            | 1.5%     |           | 1.5%   |
| South     | 2.5%            | 2.5%     |           | 2.5%   |
| West      | 11%             | 11%      |           | 11%    |
| Education | On own database |          |           |        |
| Highways  | On own database |          |           |        |

9. Members were told at the meeting that in order to accelerate progress a request had been made by the Service Director for Development for an additional temporary resource (18 hours per week for 3 months at a cost of £1810) to complete the data entry task of the S106 agreements. The Task Group was extremely supportive of the proposal.

10. On 18<sup>th</sup> November the Task Group updated the Organisation and Resources Select 'parent' committee. During the subsequent debate concern was raised in relation to the two key risks of not having a single up-to-date corporate database:

- Infrastructure improvements not taking place
- Developer contributions being returned because not used within designated time

11. The Committee was also concerned that employing one part time member of staff for 12 weeks would not be enough time to make a major impact, when considering the % progress made to date. They also felt that because of the financial significance of the agreements, and to mitigate the risks, the database should be completed by the May 2011, 12 months since scrutiny started its work (see appendix).

12. The Scrutiny members are conscious of the difficult current budget situation. However, members would support the proposal to identify resources to have a fully functioning single database because it could be seen as 'invest to save project'. For example there is the potential that infrastructure contributions have not been sought from developers, as the contents of the agreements are not accessible currently and trigger points have been missed.

## **Equality and diversity impact of the proposal**

13. Section 106 Agreements provide infrastructure improvements to the benefit of the wider community.

## **Risk assessment**

14. Failure to have a fully operational single S106 database may lead to the council returning contributions and planning gain not materialising.

## **Financial implications**

15. Overview and Scrutiny has not been provided with indicative information at this stage, although we know that there are 14 S106 Agreements classed as significant i.e. £300,000 +.

## **Legal implications**

16. Section 106 (S106) of the Town and Country Planning Act 1990 allows a local planning authority (LPA) to enter into a legally-binding agreement or planning obligation with a landowner in association with the granting of planning permission. The obligation is termed a Section 106 Agreement.

These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms. They are increasingly used to support the provision of services and infrastructure, such as highways, recreational facilities, education, health and affordable housing.

## **Options considered**

17. Due to the risks identified Overview and Scrutiny supports the proposal that extra resource is made available to urgently complete the corporate S106 database.

## **Recommendation**

18. The Committee is asked to:

identify and implement an action plan that will lead to a completed corporate Section 106 database by May 2011.

**Ian Gibbons**

**Service Director – Legal & Democratic Services**

Report Author

Ceri Williams – Senior Scrutiny Officer

## Appendix

### Draft minute form Organisation and Resources Select Committee 18/11/2010

#### Section – 106 Task Group Update

In addition to the information provided with the Agenda, the Chairman of the Group clarified that 4 meetings had taken place to date and that the Task Group had concluded that an increase in resource was required in order to ensure the completion of the database that would store complete details of the anticipated 820 agreements in existence.

The importance of completing this task was highlighted as currently there was no consistency over the approach to payments made in relation to S106 agreement across the County.

14 agreements had already been identified as significant with approximately £300k planning gain per agreement. The Task Group were concerned that the S106 Officer estimated the exercise of sourcing the relevant details and updating the database with this information alone would take approximately one month to complete and the impact that could have on the organisation.

Ensuring discussion included that as part of the 'invest to save' approach providing additional resource in this area would prove of future benefit to the organisation and that the potential merging of hubs could result in the sourcing of the necessary information required becoming more problematic in the future.

Due to the concerns raised by the Task Group and Select Committee, a motion was proposed and endorsed by the Committee as follows:

#### **Resolved:**

- 1) To thank the Task Group for its continued good work in scrutinising Wiltshire Council's management of Section 106 agreements since receipt of its interim report in July 2010.**
- 2) To support the ongoing work to create a Corporate database to monitor Section 106 Agreements since the inception of Wiltshire Council.**
- 3) To request that the Cabinet Member note the concern of the Committee on the progress made towards cataloguing S106 Agreements approved by the 5 former councils and the potential risks this presents to:**
  - i) infrastructure developments not taking place due to funds not being used; and**
  - ii) developers requesting their contributions back as they have not been used in the designated time.**

- 4) To endorse the Task Group's recommendation to the Cabinet Member with responsibility for Development to ensure adequate resources were put in place to complete the cataloguing of historic S106 agreements and to ensure that the balance of information on S106 agreements with financial conditions is available to the Task Group within 12 months of its formation (May 2011).**
- 5) That the Scrutiny Committee is kept fully up to date on the development of the work undertaken.**
- 6) To note the S106 Officer's commitment to circulate to the Task Group details of the 13 largest S106 agreements on or before 8 December 2010.**
- 7) To note the recent establishment of the Cabinet (Capital Assets) Committee which has within its terms of reference responsibility for the strategic overview of the Council's policy on S106 funding and the use of funds;**
- 8) To advise the Cabinet (Capital Assets) Committee of the Task Group's concerns including the recommendation to the cabinet member to identify sufficient resources to complete the database;**
- 9) To received the Task Group's final report in due course to include the Council's approach to any potential 'roof tax' based tariff and the encouragement of future development within Wiltshire; and**
- 10) That the Cabinet Member, Corporate Director and Head of Planning be invited to appear and report on this matter at the next Committee in January 2011.**