

WILTSHIRE COUNCIL

OVERVIEW AND SCRUTINY ORGANISATION AND RESOURCES  
COMMITTEE  
15 JULY 2010

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SECTION 106 SCRUTINY TASK GROUP – INTERIM REPORT

**Purpose of Report**

1. To provide an interim update of the work of the Section 106 Scrutiny Task Group.

**Background**

2. The Committee Chairman & Vice Chairman met with the Service Director for Legal and Democratic Services on 11<sup>th</sup> March, 2010. Several issues were discussed; including the potential value scrutiny could add by considering the Section 106 agreement process.
3. The Overview & Scrutiny Organisation and Resources Select Committee on 25th March 2010 resolved:

**‘To agree that a Task Group be established to consider the responsibilities and pressures of S106 agreements with membership to be determined by the Chairman and Vice-Chairman subject to report to the next meeting.’**

**Membership**

4. Accordingly, a Task Group was formed with the following membership:

Cllr Philip Brown  
Cllr Bill Douglas  
Cllr Peter Fuller  
Cllr George Jeans  
Cllr Howard Marshall  
Cllr Anthony Trotman (Chairman)

**Meeting Dates**

- 5.

Date	Witnesses
10 May 2010	Scoping exercise with Brad Fleet
1 June 2010	Brad Fleet – Service Director, Development Control Debbie Evans – S106 Officer
14 June 2010	Georgina Clampitt-Dix – Head of Spatial Planning Janet Lee – Principal Solicitor, Legal Services

## Terms of Reference

6. (a) To review the Council's approach towards the Section 106 process, with particular focus on the utilisation of developer contributions.
- (b) To consider the impact of the new Community Infrastructure Levy and the ability of the Council to respond to this new legislation.

## Main Considerations for the Committee

### *Definition - Section 106 agreement? :*

*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*

7. Approximately 800 to 900 Section106 agreements have been created in Wiltshire over the last 10 years. Members learnt that at the inception of Wiltshire Council the management of these agreements was not seamless. The processes reflected the approaches adopted by Wiltshire's former councils. For example records were held in different sections - legal/planning/finance and they were not readily accessible. Additionally, many of the officers who had been responsible for the agreements and had knowledge of their content had left the work area.
8. In response the Development Service in Jan 2010 appointed a dedicated administrative officer to create a database of all existing and new section 106 agreements. 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.
9. The initial priority for the Section 106 officer has been to document the agreements finalised since April 2009. As part of this process positive working relationships have been developed with officers from services such as legal, finance and education. This work to date has been successful, although not without challenge. Cataloguing monies received/spent and locating funds has proven to be the hardest task. Partly due to the legacy of former district council officers moving on and also down to the individual approaches towards record keeping taken within the services and planning hubs. Once this work is completed the focus will be to catalogue agreements put in place by the former councils.
10. Development of the database is further complicated by the different approaches from Wiltshire's former councils to when an agreement's 5 year time line (to spend the money) starts. This ranged from when the agreement

was signed through to money being payable on completion of the development.

11. Councillors were given reassurance that currently resources were sufficient to complete the database. The concern for members was in relation to those agreements that were approaching the 5 year point, where developers could request unspent monies back. The lack of accessible records and the potential of missing trigger points, where developers are asked for further contributions was a further issue.

NB - Since January the Section 106 officer had received approximately 6 enquiries from developers checking on spend.

### **Community Infrastructure Levy**

12. During the evidence gathering members established that a new voluntary mechanism of capturing developer contributions came into effect in April 2010.

The Community Infrastructure Levy is a standard charge on most types of new development; ensuring infrastructure contributions do not only fall on major developments. To place this into context only 14% of residential and 7% of offices currently have planning obligations attached to them. In the past it has been difficult to demonstrate the cumulative impact of individual developments, resulting in under funding of infrastructure. The CIL by levying nearly all new development will ensure the lumpy flow of developer contributions is replaced by something more consistent.

13. CIL will take the form of fixed standard charges, levied as pounds per square metre of floor space. This will enable developers to predict the size of their potential liability to allow for future budget planning

Section 106 agreements will still be active but it is understood that government is considering whether restriction on the use of planning obligations should be made once CIL is introduced. For example affordable housing can not be funded through CIL.

The key challenge with CIL is setting the tariff; too low may lead to infrastructure projects being delayed, too high will put developers off, potentially leading to an increase in property prices, affecting 1<sup>st</sup> time buyers.

14. In Wiltshire current practice is to secure infrastructure through section 106, although some specific requirements exist within local plan policy, e.g. open space provision in South Wiltshire (policy R2, Salisbury District Local Plan). Officers are currently preparing the evidence base on infrastructure planning to form the Infrastructure Delivery Plan, which will support the core strategy. It is anticipated that this will identify a 'funding gap' demonstrating the need for CIL.

15. Wiltshire has not yet formally agreed to adopt CIL however in undertaking planning work officers are working towards the objective of realising CIL, or any other tariff system the new government may introduce; CIL is not mentioned in the coalition agreement.

## **Conclusions**

16. The Task Group has established that the management and monitoring of section 106 agreements at the inception of the new council was not seamless, resulting in the need for better central coordination. This has started to be addressed with the appointment of the new section 106 officer, who already has made positive strides towards the development of a central electronic database. However, the focus to date has been towards agreement post April 2009, therefore the task group has concerns that recording historic agreements (pre-Wiltshire Council) will be more resource intensive and also more of a priority because of the 5 year timeline to use funds.
17. Therefore, the Task Group proposes to meet with planning officers in October to assess whether additional resources are required and to continue to monitor the development of the section 106 database.
18. In parallel to this the Task Group has established that another system for developer contributions is potentially to be introduced in Wiltshire. The Community Infrastructure Levy will look to address the infrastructure deficit within the county and is an import area for scrutiny to continue to review.

## **Recommendations**

### **22. The Organisation and Resources Select Committee is asked:**

- (i) **To note the contents of the report**
- (ii) **To support the continuation of the Task Group**
- (iii) **To consider whether the Committee wishes to make any comments to the cabinet member with responsibility for planning on the interim findings of the Task Group.**

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