

**Notes of the Scrutiny and Overview Committee**  
**Business Improvement Working Group**  
**10<sup>th</sup> November 2015**

**Present:** Councillors: Brian O'Connell (Chairman), John Chidlow (Vice-Chairman), Paul Clarke, Nigel Jupp, Godfrey Newman, Michael Willett

**Apologies:** Councillors: David Coldwell, Jonathan Dancer, Matthew French, Tony Hogben, David Jenkins,

**Also present:** Councillors: Leonard Crosbie (Chairman of Scrutiny & Overview Committee), Christian Mitchell

**Officers:** Aidan Thatcher, Development Manager

1. **TO APPROVE AS CORRECT THE RECORD OF THE MEETING HELD ON 13<sup>TH</sup> OCTOBER 2015**

The notes of the meeting held on 13<sup>th</sup> October were approved as a correct record, subject to an amendment to the terms of reference for the S106 Review on page 3. The second point should read 'Review West of Horsham strategic site...' instead of 'West of Southwater'.

2. **DECLARATIONS OF INTEREST**

There were no declarations of interest.

3. **ANNOUNCEMENTS FROM THE CHAIRMAN OR CHIEF EXECUTIVE**

The Chairman announced that three additional Members had been co-opted to the Business Improvement Working Group for the duration of the S106 Review, and welcomed David Coldwell, Matthew French and Nigel Jupp to the working group.

4. **REVIEW OF THE S106 PROCESS**

The Chairman advised that the working group should aim to complete the review by the end of April 2016 and additional meetings would be scheduled so that there were monthly meetings from January to April.

The Scrutiny & Overview Committee, which had met on the 9<sup>th</sup> November, agreed that two additional items should be added to the terms of reference for the review:

4. Review of the s106 Process (Cont.)

- Financial appraisal of S106 outcomes in relation to affordable homes ratio;
- Commission an immediate comparison analysis of S106 agreements, supported by contributions from officers and a specialist firm of suitably qualified external legal advisers.

The Chairman advised that the purpose of this meeting was to concentrate on establishing and clarifying the existing process, with a view to producing a briefing that could be issued to Parish Council Clerks and District Councillors.

The Development Manager presented a S106 Schedule outlining the existing process from receiving a planning application through to the grossment of the finalised S106 agreement.

Once finalised, the S106 agreement had to be monitored for trigger points within the agreement (eg for financial contributions). The Development Manager advised that a new post of Planning Obligations Officer was being recruited shortly, which would provide a dedicated resource for monitoring.

Members talked through the Schedule, in particular the 21 day consultation period after which instructions were sent to Legal for the drafting of the agreement. During this period consultation responses from both external and internal consultees should be received. It was noted that the 21 days was best practice but not always practicable and an extension was often agreed with the applicant.

Members discussed aspects of the process and sought clarification on a number of points. It was noted that whilst it was appropriate for Members to contact the Case Officer during the consultation period to put their comments forward and discuss the proposed terms of any S106 agreement, this was not widely known by Members.

- It was therefore recommended that Members should be reminded of their right to contact the Case Officer of an application in their Ward during the consultation period.
- It was also recommended that when Members are advised of planning applications in their Ward they should be advised if the application were likely to be subject to an S106 agreement.

The discussion highlighted the need for an opportunity for Ward Members to discuss the proposed contents of a S106 agreement before it was drafted by the Legal Department.

4. Review of the s106 Process (Cont.)

- It was therefore recommended that Ward Members be given the proposed heads of terms requirements of the S106 agreement at the point when the Legal Department are instructed to draft an agreement.

Other issues discussed included the extent to which Members could influence the terms of a S106 agreement. Financial contributions and the proportion of affordable homes were calculated through formula relating to the scale of a development to establish maximum requirements which must relate in scale and kind to the development, and the proportion of affordable homes were a planning policy requirement. Thus Member involvement would be limited to establishing these facts.

The working group discussed occasions where a developer submitted a viability study to justify a reduction in the number of affordable homes or size of a contribution. The Development Manager confirmed that viability studies, which were technically complex documents, were reviewed by a professional outside body and that Members were entitled to look at a viability study and its review and discuss it with a Case Officer.

The Chairman reminded Members that any renegotiated S106 agreement would be open to scrutiny and Members would have the opportunity to comment during the consultation period or when considered by Committee.

- The working group agreed that the S106 Schedule that had been considered by the meeting would be amended to reflect the conclusions of the meeting, in particular the need for the Heads of Terms of the agreement to be circulated to ward Members at the point of instruction to Legal.
- The amended schedule would be brought to the next Business Improvement Working Group meeting in January for approval for submission to the Scrutiny & Overview Committee. Once agreed, the document would be shared with Parish and District Councillors.

The meeting finished at 7.40pm having commenced at 6.00pm

CHAIRMAN