

Scrutiny & Overview Committee

Business Improvement Working Group

Tuesday 12th January 2016 at 6.00pm
Lewes Room, Parkside, Chart Way, Horsham

Councillors: Brian O'Connell (Chairman)
John Chidlow (Vice-Chairman) David Jenkins
Paul Clarke Godfrey Newman
Jonathan Dancer Michael Willett
Tony Hogben

Co-opted Members:
Councillors: David Coldwell Matthew French
Nigel Jupp

You are summoned to the meeting to transact the following business

Tom Crowley
Chief Executive

Agenda

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1. Apologies for absence	
2. To approve as correct the minutes of the meeting held on 10th November 2015 (attached)	3
3. To receive any declarations of interest	
4. Announcements from the Chairman or the Chief Executive	
5. "Future Horsham: Transforming How We Serve" – Business Transformation Programme update from the Business Transformation Manager	
6. Property & Asset Management Review update	
7. Review of S106 Process	7
8. Member Overview of the Council's use of the Regulation of Investigatory Powers Act 2000	

Terms of Reference for Business Improvement Working Group

- Scrutinise business improvement proposals focusing on the most significant in terms of benefit, effect upon services and risk
- Encourage consideration of best practice
- Monitor progress including post-implementation review
- Report findings in terms of benefits, effect upon services, risk and progress to Scrutiny
- To investigate other matters related to operational effectiveness and business improvement that the Scrutiny and Overview Committee or the Finance and Performance Working Group might request be investigated
- To liaise with other working groups to avoid duplication of activity

Notes of the Scrutiny and Overview Committee
Business Improvement Working Group
10th 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 13TH OCTOBER 2015**

The notes of the meeting held on 13th 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 9th 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

LEGAL INSTRUCTION SCHEDULE S106 – PROCESS

TASK	RESPONSIBILITY	ACTION REQUIRED	TIME LINE
Validation of application	Team Leader/ Principal Officer	Check content of application and validate	Within 2 working days of receipt
Case Review	Team Leader/ Case Officer (TL/CO)	<p>TL/CO To identify likely recommendation and need for s106</p> <p>Instructions to be checked by Team Leader</p> <p>Send instructions to Legal Services via paper and or email including planning application, location plan, committee report (if any) and any other relevant information. Instruction memo to have determination date on it and details of agent and or solicitor.</p> <p>When instructions to Legal are sent, details of the Heads of Terms of the agreement to be sent to Ward Members also.</p>	<p>On Day 21</p> <p>By date 28</p>

Legal Instruction Schedule S106 – Process (Cont)

TASK	RESPONSIBILITY	ACTION REQUIRED	
Draft s106/ Unilateral	Legal	<p>Instructions given to Principal Planning Solicitor who will assign matter to lawyer or outsource matter and ask Admin to set up new paper file and file on CIVICA (case management and time recording system)</p> <p>Admin to set up new paper file and CIVICA file and send out client care letter to case officer</p> <p>Lawyer to advise if information is inadequate within two days of receipt of instructions</p> <p>Lawyer will endeavour to carry out the following tasks within three days of receipt of instructions</p> <ul style="list-style-type: none"> · Send out initial letter to applicant or agent or solicitor notifying of instructions to prepare legal agreement and requesting, within 7 days, the following information: <ul style="list-style-type: none"> • Office Copy Entries (to ascertain ownership of the site and any legal interests in it) • Undertaking for Costs (the Council’s legal, planning and monitoring costs must be paid). · Contact by email WSCC legal team manager notifying of new legal agreement and requesting that the matter is allocated to lawyer · Contact by email planning case officer confirming that legal agreement will be drafted and request further information if required 	

Legal Instruction Schedule S106 – Process (Cont)

TASK		ACTION REQUIRED	TIME LINE
Draft s106/ Unilateral (Continued)	Legal (Continued) Case Officer	Draft s106 – send to case officer, solicitor, WSCC and any other party Response/comments required from solicitor and WSCC Draft s106 to be available by Committee date where case is to be considered by committee (if possible). Lawyer to advise case officer when committee target cannot be met and why. To review content of draft s106	Within 7 days of receipt of draft agreement By Committee date or day 40 Within 7 days of receipt of draft 106 from Legal
Negotiate s106/UU	Legal	Conduct negotiations and seek agreement of draft, plans and conditions	Before determination date
Draft Decision Notice	Case Officer	Case officer to check all drawings and prepare draft decision notice	Within no more that 10 days of recommendation/ resolution to grant planning permission
Final s106/Unilateral	Legal	Legal to get s106/Unilateral engrossed and signed by all parties and costs paid within the statutory time period unless otherwise agreed. Seek extension of time if date is due to expire	Within 8/13/16 weeks (unless timescale extended in writing or subject to PPA)