

Report to Overview and Scrutiny Committee

30 January 2017

By the Cabinet member for Planning and Development

INFORMATION REPORT



**Horsham
District
Council**

Not Exempt

Response to the recommendation from the Overview and Scrutiny Committee to alter the procedure in relation to how Members are involved in the s106 process

Executive Summary

The Overview and Scrutiny Committee made some recommendations to change the procedures in relation to how Members are involved in the s106 process. The Committee suggested six changes to procedure that they consider will ensure Members can be involved more.

The response of the Cabinet Member for Planning and Development is as follows:

- i) Amends recommendation 1 of the Overview and Scrutiny Committee to remove the words '*this advice should also indicate if the application is likely to be subject of an S106 agreement*' and replace them with '*to improve the layout of the weekly list to make it more clear what applications are major, and therefore likely to be subject to a s106 agreement*'. And agrees recommendation 1 as amended.
- ii) Amends recommendations 2 and 6 of the Overview and Scrutiny Committee to form a single recommendation that "*The relevant Ward Members and Chairman of that Committee should be notified of the proposed "Heads of Terms Requirements" of the S106 agreement at the same time as the Legal Department are instructed to draft an agreement.*" And agrees recommendation 2 as amended
- iii) Agrees Overview and Scrutiny Committee recommendations 3 (on significant schemes), 4 and 5.

Reasons for Recommendations

- i) That the Cabinet Member considers and responds to the recommendation of the Overview and Scrutiny Committee to alter internal procedures
- ii) To ensure that Ward Members have the opportunity to get involved within the s106 process

Background Papers

Agenda and minutes of Working Groups and the Overview and Scrutiny Committee 2015/2016 are published on the Council's website

Wards affected: All Wards

Contact: Aidan Thatcher, Development Manager.

Background Information

1 Introduction and Background

- 1.1 In 2016/16, the Overview and Scrutiny Committee could create ‘working groups’ to ensure the effective, efficient and economic discharge of the Council’s overview and scrutiny function. Upon the receipt of a report from a working group, the Overview and Scrutiny Committee have recommended changes to internal procedures to improve the communication between Officers and Members during the course of preparation of a s106 agreement.

2 Relevant Council policy

- 2.1 Corporate Priority 2015/16 4, Living, Working Communities, HDPF.

3 Details

- 3.1 The Business Improvement Working Group initiated a review of the s106 process and this took place through a series of meetings between October 2015 and April 2016. This was to allow the Members of that Group to fully understand the current process from the initial stages of a s106 being prepared, through to it being finalised, and the subsequent monitoring process.
- 3.2 The outcome was six recommendations being made, to alter the internal procedures in dealing with s106 agreements. As such, I deal with each of these recommendations in turn below.

Recommendation 1:

1. *When members are notified of a major application (ie ten units or above) in their ward, this advice should also indicate if the application is likely to be subject of an S106 agreement. This would give the members an opportunity to take advice from Parish Councils as to opportunity and requirements and relay this information to the case officer before instructions are issued to the Legal Team to prepare draft agreement.*
- 3.3 Members are currently notified by planning application via the weekly list, and within this it details the application type. If the application is a Major, this is defined, and therefore, is likely to be subject to a s106 agreement. As such it not considered that a further entry setting out likely s106 requirements is reliable or necessary. However, officers are looking to review the format of the weekly list to ensure that the major schemes stand out on the list and this is currently progressing with the ICT team.
- 3.4 I am therefore happy to agree an **amended Recommendation 1** by removing the words *‘this advice should also indicate if the application is likely to be subject of an S106 agreement’* and replacing them with *‘to improve the layout of the weekly list to make it more clear what applications are major, and therefore likely to be subject to a s106 agreement’*.

Recommendations 2 and 6:

2. *Members should be notified of the proposed “Heads of Terms Requirements” of the S106 agreement at the same time as the Legal Department are instructed to draft an agreement.*

This would give the members a further opportunity to have discussions with the case officer. The member would also then be aware of the start of the “Consultation Period” and would have the opportunity to keep in touch with any responses to the consultation document.

- 3.5 It is clearly possible that when the case officer instructs the legal department, they can also provide that same information to the Ward Members to facilitate increased awareness of the s106 process.
- 3.6 It is noted that recommendation 6 is similar, in that this suggests the Chairman of the relevant planning committee should be copied into that same email to allow for wider circulation to other Members where appropriate, e.g. where a scheme is close to a Ward boundary. Recommendation 6 reads as follows:
 6. *The Chairman of the relevant planning committees would be sent copies of all the Heads of Terms at the same time that they are sent to Local Members. It would then be at the discretion of the Chairmen whether members from other wards should be sent the information as well.*
- 3.7 I am therefore happy to agree that **recommendations 2 and 6** of the Overview and Scrutiny Committee **are merged to form a single recommendation** that *“The relevant Ward Members and Chairman of that Committee should be notified of the proposed “Heads of Terms Requirements” of the S106 agreement at the same time as the Legal Department are instructed to draft an agreement.”*

Recommendation 3:

3. *That a “Clawback” clause be included in all future S106 agreements where the proportion of affordable housing does not meet the required level, following negotiation through a viability agreement.*
- 3.8 This is something that can be inserted into the draft s106 template to ensure that where viability does not meet the policy requirement in significant development proposals, it is captured if the viability of the scheme subsequently changes.
 - 3.9 This will have an impact on staffing, as additional resource will be required to monitor this, from the Planning Obligations Officer. However, this is considered reasonable and can be supported on **significant** schemes.

Recommendation 4:

4. *At briefings on planning applications the officers will present a summary of the Heads of Terms within current S106 agreements being negotiated*
- 3.10 This usually happens but can be absorbed into the briefing process formally so that Members have increased knowledge of the s106 package as it becomes known.

Recommendation 5:

5. *Heads of Terms within committee reports should be explained in more detail than currently is the practice*

3.11 This recommendation will require the committee report templates to be altered to allow for this information to be captured consistently within committee reports. As such it is relatively straightforward and can be done.

4 Next Steps

- 4.1 Consequential to the Cabinet Member's decision on the recommendations from the Overview and Scrutiny Committee, the following steps will need to be taken:
1. A change of internal procedure and instruction to planning staff to advise the relevant Ward members and Chair of Committee of the proposed Heads of Terms at the same time as the legal team are instructed;
 2. A review of the standard s106 templates to include a clawback mechanism where the affordable housing secured is lower than policy requirements on significant schemes;
 3. Include a discussion on the s106 offer at all planning briefings; and
 4. Reviewing the Planning Committee report template to include a section to clearly set out the Heads of Terms of any s106 agreements.

5 Outcome of Consultations

- 5.1 The Overview and Scrutiny Committee, Finance and Performance Working Group and the Business Improvement Working Group formed the consultees in the preparation of the recommendations to Cabinet.

6 Other Courses of Action Considered but Rejected

- 6.1 The Council could choose not to amend its procedures. This course of action was rejected due to the Council seeking to improve the collaborative working relationship between Members and Officers.

7 Resource Consequences

- 7.1 The Council's robust reporting of financial and performance information has enabled Members to consider how to address the financial implications of planning decisions on the Council. The recommended process enables the Council to mitigate the financial risks appropriately.
- 7.4 There will be staffing implications for the Development Management and Legal officers in setting up the new processes and procedures, templates and undertaking the requirements of the new working practices but these are not considered to be significant.

8 Legal Consequences

- 8.1 These recommendations demonstrate the effective discharge of the Overview and Scrutiny functions provided by the Local Government Act 2000 as amended by the Localism Act 2011, by the Council's Overview and Scrutiny Committee.

9 Risk Assessment

- 9.1 The recommendations within this report are part of mitigating risk that Members feel detached from the s106 process and to improve on joint working and collaboration.

10 Other Considerations

- 10.1 The consequences of these recommendations in respect of Crime & Disorder; Human Rights; Equality & Diversity and Sustainability have been actively considered and it is considered that there are no specific issues in this respect.