



ENVIRONMENT & TRANSPORT SELECT COMMITTEE

30th JUNE 2011

S106 & CIL - MEMBER TASK GROUP

PURPOSE OF REPORT:

To receive an interim report in respect of the work undertaken to date by the s106 & CIL Member Task Group.

Introduction:

1. For many years the collection of s106 developer contributions was undertaken upon an ad hoc basis with no overall monitoring, control and reporting back system.
2. Upon the appointment of an officer to both set up and maintain a monitoring system, in addition to ensuring that the contributions were spent correctly, it became clear that the scale of the monies secured and the lack of systems and protocols to manage and control the spending of such monies required Member involvement.
3. Members agreed proposals to work with the officer, and his colleagues in a number of services, to address the wide range of issues that had become evident from the work that had been undertaken.
4. In addition, the introduction of the Community Infrastructure Levy (CIL) in April 2010 increased the need for the County Council to ensure it was in a position to both assist and support the local planning authorities in their work which is required in order to prepare for the adoption of CIL, before April 2014.
5. The Environment and Economy Select Committee meeting on 19th January 2011 set up the Task Group to focus on the work and

resources required to establish a robust framework in which efficient and streamlined working practices could operate, and where Members involvement and local knowledge could be utilised, in order to maximise the income from developer contributions both now, through s106, and in the future through CIL.

Background

6. The ability of local authorities to secure development related contributions through the planning application process is currently enshrined within:
 - s106 of the Town and Country Planning Act 1990, as amended by subsequent legislation,
 - the supporting advice in Circular 05/2005,
 - case law and
 - Regulation 122 of the Community Infrastructure Levy.
7. As a result of the introduction of CIL, draft regulations were published which were intended to remove much of the ability to seek section 106 contributions.
8. The majority of infrastructure contributions will in the future be sought through CIL, which is basically a charge on most types of new development in a local planning authority (LPA) area.
9. Given the significant level of s106 contributions previously being secured from development in Surrey, coupled with the level of contributions being received through the Planning Infrastructure Contribution (PIC) tariff scheme and the Levy in the future, a new post was created to provide a clear system of recording, monitoring and reporting back for all development related contributions across the County.
10. A full audit of all available records, to establish and schedule the amounts of contributions outstanding and payable to Surrey CC, pursuant to completed s106 agreements and unilateral undertakings throughout the County, was undertaken in liaison with the planning authorities.
11. The audit formed the basis of the information subsequently presented to the all Local Committees since early 2010.
12. As a result of the audit, and the information that was secured, the Environment and Select Committee set up a Task Group to investigate, report and make recommendations in relation to both the current position and the processes that need to be introduced in the future.
13. The Task Group's members are Cllr Steve Renshaw (spokesperson), Cllr John Orrick, Cllr Chris Norman and Cllr Bill

Chapman.

Task Group

14. The Task Group scoped the necessary work and agreed its aims following its first meeting on 1st March 2011. The Group's full scoping document is attached as annex 1.
15. The Task Group agreed that answers would be sought to the following questions –
 - Where are we, how have we got here and what have we learnt on the way as regards s106 monies.
 - How can the County Council improve its procedures with District and Borough partners around the collection and allocation of Section 106 monies, and better inform Members of the process and outcomes.
 - What does the County Council need to do to develop effective plans for the Community Infrastructure Levy in conjunction with its District and Borough partners.
16. The Task Group's aim is to ensure that clearly defined and agreed procedures are in place with all District and Borough partners in Surrey in relation to seeking and securing developer contributions through Section 106 currently and through CIL in the future.
17. The Task Group's objective is to ensure that the County Council is able to effectively monitor, manage and spend the monies it has secured through such procedures.
18. It was also agreed that the scope of the Task Group's work would include –
 - Implementation of all necessary processes and procedures to monitor, manage and spend all developer contributions secured, in addition to auditing the work and processes.
 - Creation of a database and a countywide accepted system for recording all data and monitoring the monies due to the County Council from its District and Borough partners and from Developers.
 - Development of the necessary processes, procedures and spending plans to support the County Council services, and their requirements under the Community Infrastructure Levy, to ensure adoption of such spending plans by its District and Borough partners.
19. Further it was agreed that the work of the Task Group should be divided into different elements namely-
 - the first element would be to consider why s106 monies have not

yet been spent and why spending plans have not as yet been developed for the majority of the monies.

- the second element will be to monitor the work relating to the creation of a Section 106 Agreement web based database that it is hoped all District and Borough partners will be able to utilise.
 - the third element of the review would look at the work being undertaken in relation to the preparation of spending plans, being developed with District and Borough partners, to ensure a smooth introduction of the Community Infrastructure Levy prior to April 2014.
20. The Group have met regularly since 1 March 2011, and a meeting has also taken place with Waverley Borough Council to discuss any inter authority issues that may need to be considered as part of the Task Group's work.
21. To inform the work of the Task Group, a number of Officers have attended, and Members and additional Officers will be asked to attend future meetings, to give evidence in relation to those services that currently receive the benefit of such monies, and issues that have arisen as a result of the Task Group's work, to date.

Issues

22. There have been a number of issues and common themes that have arisen from the Task Group's work, which can be summarised as follows:-
- A lack of understanding of s106, PIC, CIL and the legislation, limitations and complex rules and procedures underpinning each.
 - The inability to match fund developer contributions resulting in monies being unspent, often for a considerable period of time.
 - Lack of spending plans for monies sought and secured across County services.
 - Lack of Member involvement in the planning and spending of developer contributions, and knowledge of developments planned or taking place in their areas.
 - Inconsistency of decision making by the Planning Inspectorate at appeal.
 - Lack of consistent, clear procedures and protocols at all stages of the developer contribution process, from request to spend.

- Differences in working relationships with local planning authorities.
 - Information held in many different and non-compatible systems.
 - Resource issues in respect of preparing detailed spending plan evidence to both support s106 requests and currently to populate LDF Infrastructure Schedules.
 - A need to improve cross service liaison and ensure closer officer working relationships at all stages of the process both now and in the future.
23. In the interim the following actions have been undertaken to address those issues where immediate resolution is required:-
- Inability to match fund developer contributions – planning systems are being introduced and developer contributions are being integrated to enable funding to be applied where available (particularly in relation to highways schemes).
 - Lack of spending plans - officer discussions are currently taking place as to what resources and organisational changes are required to undertake the necessary work across the organisation.
 - Lack of Member involvement in planning spend – this is being addressed as part of the Mole Valley Total Place Pilot and will cover issues such as governance and response timescales
 - Inconsistent decision making by Inspectorate – representations being made to the Inspectorate
 - Lack of consistent procedures and protocols – this will be addressed by the s106 Rapid Improvement Event (RIE) which is due to be held between the 11 and 15 July 2011.
 - Differences in working relationships with LPA's – also to be addressed by the RIE where representatives from three LPA's will be in attendance.
 - Resource issues as regards detailed spending plans – this issue is currently being scoped and addressed by the CIL Project Team.
 - Cross service liaison – also being addressed by the CIL Project Team.
24. As regards the lack of understanding of s106, PIC and CIL briefings will be prepared for Members in addition to presentations, where considered necessary, when the new processes and protocols have

been put in place.

25. A further issue is the creation of a database and a countywide accepted system for recording all data and monitoring the monies due to the County Council from its District and Borough partners and from Developers.
26. This project has recently received priority status within the IT service and a small team are currently working on the systems and supporting IT infrastructure that is required to support such a system.

Conclusions:

27. The Environment & Infrastructure Directorate has identified that CIL, the successor to s106, is a strategic risk to the Council, but that if it is successfully managed would significantly help the Directorate achieve its target of increasing developer contributions post 2013, the earliest it is anticipated any LPA in Surrey will introduce it.
28. For the County Council to provide the local planning authorities with our service requirements and spending plans for the next 15 years will require major changes to our operational systems and forward planning practices.
29. Without this information the LDF Infrastructure Schedules will not adequately represent the County Council's infrastructure requirements and as a result less developer contributions will be secured.
30. The same work will also underpin the infrastructure charging schedules required for the introduction of CIL by the local planning authorities.
31. Any failure to meet the LPA's often limited and varied timescales will result in a dramatic reduction in developer contributions to mitigate the demands and related costs arising from both residential and commercial development in Surrey.

Financial and value for money implications

32. The need to maximise developer contributions in whatever form, to ensure sufficient developer contributions are secured to mitigate the demands and related costs arising from new residential and commercial development in Surrey, is imperative if such demands and costs are not to become a burden upon future Council tax income.
33. The availability of a clear and transparent public database for

monitoring both s106 monies, from planning permission through to spend, and CIL in the future, will give confidence to Members and stakeholders that such monies are being used for identified schemes that mitigate the effects of new development on the local area and its residents.

Equalities Implications

34. There are no implications that arise from this report but any new processes, procedures or systems that are proposed will need to address any that arise as a result.

Risk Management Implications

35. The Environment & Infrastructure Directorate has identified that the Levy is a strategic risk to the Council, but that if it were successfully managed would significantly help the Directorate achieve its target of increasing developer contributions post 2013.

Implications for the Council's Priorities or Community Strategy/Local Area Agreement Targets

36. The work will also include liaison with the County Council representatives on the Local Strategic Partnerships, which have statutory duties as regards an oversight of planning and alignment of resources, in addition to an oversight of, and co ordination of, community consultation.

RECOMMENDATIONS:

- (a) That the Select Committee considers the interim findings of the S106/CIL Task Group and endorses the proposals to address those issues for which immediate resolution is required.
- (b) That the terms of reference and duration of the S106/CIL Task Group be reviewed once the outcomes of the Council's Rapid Improvement Event are known.

Next steps:

Further reports be brought to this Committee to update the Committee on the Task Group's work and the solutions that are proposed to address the issues arising from such work.

To continue to monitor the creation of a database and a countywide accepted system for recording all data and monitoring the monies due to the County Council from its District and Borough partners and from Developers until such time as the system is live.

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Sources/background papers : Minutes of the meetings of the Environment and Economy Select Committee meetings on 30 November 2010 and 19 January 2011