



OFFICER REPORT TO LOCAL COMMITTEE (MOLE VALLEY)

SECTION 106 MONITORING, CONTROL AND ACCOUNTABILITY

07 DECEMBER 2010

PURPOSE OF THE REPORT:

To provide Members with (i) information in relation to the current monitoring of s106 agreements and the proposals for the future monitoring of s106 agreements and the spending of monies and (ii) recommendations in relation to the alignment and integration of s106 requests and subsequent receipts with highways and other service provider schemes.

INTRODUCTION:

1. For many years the collection of s106 infrastructure contributions was undertaken upon an ad hoc basis with no overall monitoring and reporting back system.
2. As a result of the introduction of a number of policy initiatives and the Community Infrastructure Levy it became clear it was necessary to establish a system of monitoring and reporting back.
3. The first stage of the process was to establish an information baseline of all existing and outstanding s106 Agreements and related infrastructure contributions whether held, spent or yet to be received.
4. This information has been researched and collated and at the request of Cllr David Hodge was presented to informal meetings of all the Local Committees.
1. Following the discussions at the Local Committee Meeting held on 13th September 2010, relating to s106 expenditure in Leatherhead,

it was agreed that further reports should be prepared that addressed the results of the investigations of the Internal Audit team in relation to the s106 spending on highway schemes in Leatherhead, the integration of s106 monies with general highway schemes and clarification of the monitoring, control and accountability within those schemes.

2. This report seeks to address those issues and suggests how the concerns expressed by Members can be addressed.

BACKGROUND:

3. 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.
4. As a result of the introduction of the Community Infrastructure Levy, in April of this year, draft regulations were published which were intended to remove much of the ability to seek section 106 contributions, the majority of infrastructure contributions being sought in the future through the Levy, basically a charge on most types of new development in a LPA area.
5. In the light of the previously significant level of s106 contributions being secured from large developments, when added to the anticipated level of contributions likely to be received through the Planning Infrastructure Contribution tariff scheme and the Levy, a new post was created to enable a clear system of recording, monitoring and reporting back for all development related contributions across the County to be produced in addition to liaison with the planning authorities in relation to current and future contribution requests.
6. 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 and formed the basis of the information presented to the Local Committees, in addition to the amount of planning infrastructure contributions collected to date in those areas where the tariff scheme has been adopted.
7. All new agreements and undertakings are also now being tracked as they are completed in collaboration with the relevant LPA officers.

8. The planned spend of the various monies is now being considered and organised within each of the services who have benefited, in accordance with the terms of each legal agreement attached to the relevant planning permission and related legal advice.

SECTION 106 CURRENT POSITION:

9. The review of s106 agreements is still a work in progress but it was felt sufficient information was available for an initial presentation to be made to all Local Committees, between September and November of this year, the report being presented to the informal meeting of the Mole Valley Local Committee on the 2nd November 2010.
10. The exercise as a whole has been generally very well received but several Committees were very unhappy that historically the spending of a large proportion of the s106 money was undertaken without recourse to their Committee, this criticism relating to not only Highway schemes but also Education and Library spending.
11. Clearly this is a very difficult area to address given the s106 legal restrictions but where there is an opportunity to take Members aspirations into account this will be utilised when reporting the proposed spend to the Local Committees in the future.
12. In the long term the introduction of the Community Infrastructure Levy will, because it affects the ability of LPA's to collect s106 contributions, result in the County Council having to prepare spending plans for inclusion in the LPA's Infrastructure Schedules; these plans are required to be consulted upon and discussions with the Local Committees could take place as part of the process of preparing for the adoption of the Levy in each area.
13. In relation to the Planning Infrastructure Contribution monies it will be possible for the monies received in each area and the relevant officer recommendations in relation to the proposed spending plans, to be reported to the Local Committees in the future.
14. As regards the overall 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 and it is hoped the outcomes of these discussions will be reported to Members for consideration in a very short timeframe.

COMMUNITY INFRASTRUCTURE LEVY CURRENT POSITION:

15. Through the introduction of the Community Infrastructure Levy planning authorities have four years from April 2010 in which to adopt the Levy whereupon the ability to collect the Planning

Infrastructure Contribution will cease and the ability to collect s106 contributions will be severely reduced.

16. If the County Council have not prepared the necessary spending plans by the time each planning authority adopts the Levy then the level of contributions that the County Council services can expect to secure will be dramatically reduced.
17. If the new government decide not to support the Levy as they have suggested it will still be necessary for a revised tariff system to be introduced and as a result any work undertaken to produce spending plans will not be wasted and indeed could be quickly revised to meet the requirements of any new tariff scheme that is eventually introduced.
18. The s106 review is almost complete and it is intended that the updated schedule will be made available to the Local Committees on a regular basis in the future until such time as the information is available via an overarching monitoring system.
19. The work undertaken to date will form the basis for the future overarching monitoring system which, it is hoped, will be available to Members and the public alike through the County Council website.
20. Once all outstanding contributions are received and monies currently held are spent we will have achieved a significant milestone and will have dealt with the criticism that the County Council often received from local authorities that we do not efficiently spend the developer contributions that we have previously requested.

BACKGROUND - THE ALIGNMENT AND INTEGRATION OF S106 REQUESTS, SUBSEQUENT RECEIPTS WITH HIGHWAYS AND OTHER SERVICE PROVIDER SCHEMES:

21. As a result of the reduction of grant monies the ability to plan and implement capital schemes has been severely compromised which will have an effect on the ability of officers to integrate s106 monies into the funding streams for those capital projects.
22. Indeed it is not common for any s106 monies to cover the total costs of any scheme due to the requirement that s106 monies must be a contribution towards the proposed scheme and are not to be seen as the main funding, unless the development proposed is of such a size that schemes are required to mitigate all the effects of that development on the local infrastructure.

23. It has always been difficult to align the s106 monies being sought with existing schemes unless those schemes are locationally close to the development or likely to be utilised by the residents of the development.
24. Often when s106 monies are sought where no capital scheme exists the monies are directed to improving local transportation facilities or introducing measures which will support the sustainability objectives of the County Council.
25. The s106 monies are sought as part of the planning application process on an application by application basis by officers from within Transportation Development Planning who draw upon all available scheme information that is local to the proposed development and from scoping visits to the site and liaison with the planning authority case officer and external consultants, if employed.
26. Such work has to be undertaken within the local planning authorities strict time deadlines, often 21 days, and formal responses lodged with the planning authority within that timeframe.
27. Should the planning authority or developer wish to negotiate the level of contribution or explore the spending plans referred to an extension of time is often agreed that allows such negotiations to take place before a decision is made as to whether planning permission should be granted or refused.
28. Section 106 monies are not treated in the same way as normal capital schemes; they are developer contributions secured by the Local Planning Committee to ameliorate the impact of the development proposals upon local infrastructure.
29. It is rare for such monies to finance a complete piece of infrastructure, perhaps a new signalised junction to serve a development site, but such monies are often a financial contribution towards such infrastructure, often comprising an enhancement such as a new pedestrian or cycle network.
30. The monies are rarely sufficient in themselves to finance a scheme and officers must look to a variety of other funding streams to secure sufficient monies to enable the scheme to go forward resulting in the monies sometimes having to be held until the additional funding is secured, often for many years.
31. There is a further difficulty that often arises in relation to such monies in that there is often no previously developed scheme for such monies to be spent upon, the initial request often being based upon a scoping of a feasible scheme, and as a result it is only at the

stage that the monies are received that the necessary design and other work can be undertaken.

32. The developer contributions sought through s106 do not normally include monies for such things as scheme design or staff time in implementing the proposals, which it is considered should be met from local revenue income.
33. It then becomes the responsibility of the Project Engineer in conjunction with the Area Highway Manager to interpret exactly what the Planning Committee intended when granting planning permission and how the scheme can be taken forward, given the financial constraints and the requirements of Circular 05/2005 and Regulation 122 in relation to what the monies are able to be spent upon.
34. It is also worthwhile remembering that such monies arise as a result of a successful planning application and the Local Committee are often unaware of the proposals unless any of its Members sit on the relevant local authorities Planning Committee; as a result it can often be a surprise to find that thousands of pounds worth of transportation benefits may have accrued without the Members prior knowledge or consideration, sometimes only becoming aware of the scheme when a report is presented in relation to a proposed Traffic Regulation Order or authority to advertise proposed traffic signals.
35. However as a result of the presentations to all Local Committees this process will now be informed by the regular reporting back of developer contributions as part of the monitoring role of the Infrastructure and Agreement Officer.
36. Some of the practical difficulties that arise from the fact that:-
 - the County Council's Transport Development Planning team are required to respond to the majority of planning applications within 21 days and as a result there is little time to seek the Local Committee's views on proposed development related schemes (at the scoping stage)
 - there is a lack of previously agreed schemes that such monies can be reasonably applied to
 - the Local Committee's aspirations may not always be in harmony with that of the Planning Authority, particularly given the advisory tests in Circular 05/ 2005 and the statutory tests in Regulation 122 of the Community Infrastructure Levy (CIL), which determine whether a particular scheme is in accordance with such tests and, as a result, it is lawful for the LPA to request the contributions sought, and
 - the schemes and the contributions are often the subject of detailed negotiations between the Developer, the LPA and County officers

and, if not successful, will often then be considered at an Informal Hearing or Public Inquiry where the reasonableness of the contributions sought are considered by an independent Inspector who, experience tells us, have been very difficult to convince since the introduction of the CIL regulations.

37. The matters that need to be dealt with before any works can progress consist of preparing the detailed scheme, both internal and external consultations, safety audits, Local Committee and local Member consultations, drafting of traffic orders, Health & Safety scoping, NRSWA, updating of web sites, public notifications and liaison with emergency services, scheme programming and liaison with the Contractor and Area Highways Managers.
38. As part of the preparation of any scheme which utilises s106 monies Surrey County Council has to be very mindful of what is acceptable in terms of the tests of reasonableness in Circular 05/05 and Regulation 122 the scheme having to encompass capital works and not revenue, unless the works are a revenue consequence of a capital spend.
39. Sometimes the 106 scheme cannot be effectively delivered without preventative maintenance first taking place i.e. the existing highway drainage has to be cleaned and improved to ensure it works effectively before any new highway scheme is implemented and any new drainage is connected, again something that has to be funded from Council revenues and not the s106 monies.
40. Sometimes s106 monies are sought where there is a specific County Council scheme requiring additional funding but if the scheme is not completely funded, for whatever reason, then the Council can find itself in a position where perhaps hundreds of thousands of pounds have been secured but they are still, in themselves, insufficient to fund the scheme resulting in situations where the developer contributions are required to be returned or an alternative scheme has to be suggested to the Developer for the monies.
41. This has arisen in the past and in some cases alternative schemes were accepted by the Developer, in others the Developer required the monies to be repaid a situation which is far from acceptable to the Planning Authority, to Members and the public alike.
42. As a result it is considered that a process template needs to be prepared for consideration by the relevant Committees of the Council to establish and maintain a system of consultation with the Local Committees as regards the spending of developer contributions.

43. Clearly this is a very difficult area to address given the s106 legal restrictions but where there is an opportunity to take Members aspirations into account this will be utilised when reporting the proposed spend to the Local Committees in the future.
44. In the long term the introduction of the Community Infrastructure Levy will, because it affects the ability of LPA's to collect s106 contributions, result in the County Council having to prepare spending plans for inclusion in the LPA's Infrastructure Schedules; these plans are required to be consulted upon and discussions with the Local Committees could take place as part of the process of preparing for the adoption of the Levy in each area.
45. In relation to the Planning Infrastructure Contribution monies it will be possible for the monies received in each area and the relevant officer recommendations in relation to the proposed spending plans, to be reported to the Local Committees in the future.
46. As regards the overall 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 and it is hoped the outcomes of these discussions will be reported to Members in a very short timeframe.

FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:

The introduction of a formalised monitoring system will assist in ensuring the County Council and its residents receive and benefit from the necessary level of developer contributions across Surrey.

[other implications]

EQUALITIES AND DIVERSITY IMPLICATIONS:

None

CRIME AND DISORDER IMPLICATIONS:

None

IMPLICATIONS FOR THE COUNCIL'S PRIORITIES OR COMMUNITY STRATEGY/LOCAL AREA AGREEMENT TARGETS:

The work will inform and assist the oversight of planning and alignment of resources.

CONCLUSIONS:

47. The thorough agreement review is almost complete and it is hoped that the resulting information will be available for Members and their Local Committees in the New Year.
48. The work undertaken to date will form the foundation for the future overarching monitoring system which it is proposed will be available to Members and the public alike through the County Council website, such a system being dependant upon IT resources being made available in the coming months.
49. Expenditure of s106 monies secured through development must align with the terms of the legal agreements through which they are secured and the financial constraints and the requirements of Circular 05/2005 and Regulation 122 of the Community Infrastructure Levy.
50. Active involvement of Services with the Local Committee and Members is important to ensure s106 monies are spent correctly and for maximum benefit within the area they are intended.

RECOMMENDATIONS:

The Local Committee is asked to adopt the following recommendations:

- the contents of this report are noted,
- the proposals contained in the Mole Valley Total Place Pilot as regards s106 monies be supported as the way forward in aligning and integrating s106 monies secured through development including active involvement of the Local Committee and Members.

NEXT STEPS:

Present regular reports to all Local Committees upon a regular basis following completion of the historic review of s106 contributions.

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Background papers : None

