

Briefing Note to Overview Select Committee – 10 March 2020

Section 106 Review

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1. This briefing note has been prepared in response to an item placed on the OSC work programme by former Councillor Dingemans in respect of section 106 agreements. At the outset, it should also be stated that an annual section 106 monitoring report was also requested by Cabinet and this was presented at the Cabinet meeting on 9 December 2019. This report contained details in terms of receipts and project spends on obligations related to planning permissions so there will obviously be a degree of overlap between this requested Briefing Note and that report.
2. The OSC Chairman has confirmed that the scope of this Briefing Note should be as follows;
 - i. Have there been any issues with s106 monitoring processes since the Committee were last updated?
 - ii. The recruitment of s106 data and monitoring post – has this resolved the issues of delays and oversights as described at 12 March meeting
 - iii. Former Councillor Dingemans made a suggestion regarding placing bonds (PGB) on developers – what is the update on this suggestion/ is it/has it been considered

Dealing with each in turn.

Have there been any issues with s106 monitoring processes since the Committee were last updated?

3. At the outset it is important to recognise that the obligation for confirming when triggers are reached with a certain development, and therefore when an obligation is due, falls on the developer. That is what they agree to when signing the s106. However, they very rarely undertake this obligation, and this then leaves the Local Planning Authority on the back foot.
4. The Group Head of Planning took up his position in April 2017. Approximately 3 years ago a new officer took up post dealing solely with s106 monitoring and reporting. It is acknowledged that monitoring processes were not satisfactory between around 2013 and 2017 and that resources were insufficient to be able to adequately monitor all planning obligations which resulted in the potential loss of some funds and non-financial obligations not being adhered to sufficiently and timely. This is set out in the report to Cabinet (December 2019).
5. There are now new monitoring systems and processes in place together with additional resource obtained for monitoring the strategic site non-financial obligations. All historic cases have been investigated and are resolved or in

hand to resolve. Therefore, such delays and oversights are very much less likely now.

6. In January 2017, a report was presented to Cabinet in order to secure additional resources for Monitoring within the Strategic Team relating to strategic development. This was in order to be closer to the implementation requirements/obligations on these sites. The department has two members of staff in post on these matters. However, these are concentrated on the strategic sites within the District. To put the scale of this work in context;
 - The Council currently holds £8.426m on deposit for s106 agreements in addition to £2.455m for other organisations (e.g. the NHS). The total held on deposit is £10.881m.
 - As at the end of September 2019 (and only including agreements logged up to the 31st March 2019) there is 112 live Section 106 Agreements with 481 financial and 237 non-financial obligations agreed and being monitored by Arun and WSCC.
 - Since 2013, over £23 million has been received in s106 contributions.
7. On 9 December 2019, a report was presented to Cabinet outlining the current position on s106 agreements. This set out the amount of contributions we have by category, the scale of payments that are overdue/outstanding, some current issues as well as specific projects for which contributions have been collected and that need to be progressed. Members raised no questions on the content of this report and noted its content.
8. With the introduction of the Community Infrastructure Levy, the number of s106 agreements will significantly reduce as most applications will be covered by CIL and will need to make payments for infrastructure through a standard process. Therefore, there will be a very small amount of s106 agreements prepared (relative to CIL) when CIL is adopted. However large and complex Section 106 Agreements will still be required on the Strategic site applications so there will still be a significant monitoring requirement for many years to come on strategic sites and all the existing sites with S106.
9. As part of these recently amended CIL regulations (Part 10A -121A) which came into force on 1st September 2019, the Authority will be required to report to Government (starting in December 2020) an Annual Infrastructure Funding Statement which must amongst other things, include S106 Agreements signed in the reporting year, a list of live Obligations and a list of Obligation transactions (i.e. secured, received, spent).

The recruitment of s106 data and monitoring post – has this resolved the issues of delays and oversights as described at 12 March meeting?

10. This has helped by assisting the S106 monitoring officer in dealing with the non-financial elements of the strategic site S106 agreements, which are time consuming to deal with. The new monitoring officers deal with strategic condition monitoring as well as Steering groups/Advisory meetings and the new Strategic Web site pages. Having this extra resource has enabled the

monitoring officer to keep much more on top of the latest status of sites and to liaise with developers in a more-timely matter to ensure they comply with obligations and conditions at the right times.

11. The 'oversight' referred to dated back to 2014. At that time, monitoring processes and databases were inadequate and poorly managed. Since that time, significant improvements have been made (see paras 4-6). That said, there are an enormous number of obligations to monitor at any one time and our resources for this are limited.
12. The report to Cabinet (December 2019) sets out the extent of obligations that are currently being monitored and the status of those. There are no outstanding obligations where an invoice has not been issued.

Former Councillor Dingemans made a suggestion regarding placing bonds (PGB) on developers – what is the update on this suggestion/ is it/has it been considered

13. Officers have investigated the current use of these measures and have only been able to find one council that requires a surety for all of the obligations within a section 106 agreement. In applying these, the Council can find the power to require a surety under Section 111 Local Government Act 1972 or Section 1 Localism Act 2011.
14. Essentially, this measure would require a developer to provide an undertaking shortly after commencement of the development to provide a surety to bind it to the payment of the contributions within a s106 agreement. The surety would be a sum equivalent to any expenditure which the Council may incur in carrying out completing and/or implementing the works and/or sums of money in a s106. These are likely to be substantial sums of money.
15. If we take a recent example of a relatively small-scale application for 23 dwellings in Aldingbourne (AL/3/19/PL), the total value of the obligations within the s106 could be around £550,000.
16. These measures would essentially add a further cost to a s106 agreement, and it is likely that applicants will wish to 'off-set' this cost against other obligations. It may also make attracting smaller scale developers to the District much more difficult as these matters would be more onerous than adjoining areas of the country. It should also be noted that, after 1 April 2020, there will be significantly fewer s106 agreements.
17. It is considered that, if this is likely to find support to begin to include within s106 agreements that it is used for only a small number of strategically important elements of infrastructure. Applying it to all obligations would create a complex system and will mean that agreements take much longer to conclude.