
**SECTION 106 LOCAL INFRASTRUCTURE PROPOSAL LISTS – MEMBER
BRIEFING NOTE**

Reason for the Report

1. A report titled 'Section 106 Local Infrastructure Proposal Lists' is due to be received by Cabinet in September 2018. The report has been submitted to Cabinet for the following reasons:
 - To respond to the report published by the Environmental Scrutiny Committee and presented to Cabinet in September 2017 entitled 'Management of Section 106 Funding for the Development of Community Projects';
 - To seek Cabinet approval to prepare the 'Section 106 Local Infrastructure Proposal Lists' and supporting process, which will enable all Councillors to identify local infrastructure projects that may potentially be funded through S106 contributions or other sources of funding.

Background

2. New developments can have an impact on local infrastructure. For example, growth in population arising from a new residential development can lead to greater pressure on community facilities, open spaces or neighbouring roads and pedestrian routes. In these circumstances, planning obligations (also known as Section 106 Agreements) are used to require developers to either provide infrastructure (i.e. build facilities) or to contribute financially towards projects that help to manage and mitigate the impact of their development.

3. The Council secures a wide range of developer contributions towards infrastructure provision each year. Most recently, the progression of Strategic Sites (identified through the Cardiff Local Development Plan) has secured significant planning obligations towards new infrastructure provision, including affordable housing, transportation, education, community facilities and open spaces, which will be brought forward over the lifetime of the developments as part of the 'master planning approach' to the delivery of these sites. For other non-strategic developments, the Planning Service has prepared a 'Planning Obligations' SPG which specifies the policy framework and requirements for infrastructure provision.
4. The use of Planning Obligations is governed by legislation. Detailed policy guidance is provided by Planning Policy Wales (2016), the Cardiff Local Development Plan 2006-2026 and other associated documents. They can only be used where the obligations would meet three 'legal tests', i.e. that they are:
 - Necessary to make the development acceptable in planning terms;
 - Directly related to the development;
 - Fairly and reasonably related in scale and kind to the development.
5. In the past, the level (financial sum) and broad scope of a S106 contribution sought would be negotiated as part of a "live" planning application, with the item(s) on which the contribution would then be spent being identified at a later date (i.e. once the money had been received). In some circumstances, this could be several years after the application had been determined. Following the introduction of the Community Infrastructure Levy (CIL) Regulations, (which govern how S106 contributions can be secured), there is now the need to more explicitly identify what S106 contributions will be spent on at the point at which they are being negotiated (i.e. before a planning application is determined and any contributions are secured).

Environmental Scrutiny Committee

6. In 2017, the Environmental Scrutiny Committee undertook a task & finish exercise to explore and consider how Section 106 funding can be used for the development of community projects. The inquiry included the review of:
 - The definition of Planning Obligations (S106 Contributions);

- The regulations governing what type of community projects can be funded through the S106 process;
 - The resources used by the Council in managing the S106 funding process;
 - The consultation and engagement which takes place between Councillors, officers and the public;
 - How community projects are identified through the Section 106 process and potential improvements that could be introduced; and,
 - Examples of good practice in using S106 funding to develop community projects.
7. Having considered the evidence provided during the inquiry, the Environmental Scrutiny Committee report identified a single process recommendation, which included the following basic elements:
- The creation of a project list;
 - A project point of entry;
 - Project validation and assessment;
 - Project decision (approval or rejection);
 - Geographically based project lists;
 - Use with complementary services;
 - Provision of supporting resources.
8. The principles of the process as set out in the Environmental Scrutiny Committee's recommendation were agreed by Cabinet in November 2017. This report sets out full details of how a more effective process can be established and maintained.

Issues

9. Having taken into consideration the changes to the S106 process brought about by the CIL Regulations, the relevant planning policy guidance / legislation and the recommendations of the Environmental Scrutiny Committee, it is proposed that 'S106 Local Infrastructure Proposal Lists' are prepared.
10. It is intended that the creation of the Ward-based Lists will provide Councillors with the opportunity to identify local infrastructure proposals (relating to Public Open Spaces, Community Facilities and Local Highway Improvements) in a more strategic

manner and as part of a formalised process. These lists can then be taken into consideration by officers when securing S106 obligations as part of live planning applications and will supplement the consideration of other relevant information such as extant plans, programmes and strategies.

11. In terms of process, it is anticipated that the project will comprise three main elements as shown below (and covered in greater detail in **Appendix 1**):
 - A S106 handbook for Councillors;
 - A dedicated form (and an associated assessment and validation process) for submitting local infrastructure proposals;
 - The publication and maintenance of 29 Ward-based local infrastructure proposal lists.
12. It should be noted that having an item included on a Proposals List does not guarantee S106 funding will be secured. Whilst a proposal may be broadly eligible for S106 funding, it would need to directly relate to a proposed development (the need for the infrastructure having been generated by that development) and be consistent with Council policies and strategies before a contribution could be sought. The lists will however clearly help inform both Councillor observations on future applications and overall considerations of potential S106 requirements.
13. The cost to deliver an infrastructure project may be greater than the amount of S106 monies available from any single development. In these cases, contributions could be “pooled” to allow future developments to also contribute towards a larger community project. There are however rules with regard to the number of times contributions can be pooled for a single project (no more than five), and there may be limited opportunities to secure future funding if other qualifying developments are not forthcoming in the ward.
14. However, by identifying local infrastructure proposals in a more strategic manner, there will be enhanced opportunities for alternative funding sources to be explored, rather than being solely reliant upon S106 / developer contributions, which are limited, market-dependent and may not come forward within the required timescales for the projects.

Process Going Forward

15. As part of the preparation of the Proposal Lists, an officer-facilitated workshop is being arranged with volunteering Councillors (four Members of the Environmental Scrutiny Committee have currently volunteered for this role). The workshop will provide the opportunity for Councillors to undertake a trial run at completing the Proposal Lists and to share their views on the work that has been completed to date.
16. Following completion of the workshop and taking on board any associated feedback, it is anticipated that the project will be launched in the autumn. As part of the project launch, a series of workshop sessions will be provided for Councillors to introduce the Local Infrastructure Proposal Lists and to offer broader guidance and training on the S106 process.
17. Alongside the Proposal Lists, the Planning Transport and Environment Directorate are also preparing Ward Action Plans, which look at more day-to-day issues such as fly-tipping / graffiti and which will be provided as part of a coordinated process for Councillor dialogue and engagement.

Recommendations

18. The Cabinet report recommends that S106 Local Infrastructure Proposal Lists are prepared. Once the lists are created they will create an opportunity for all councillors to contribute to the identification of local infrastructure projects that may potentially be funded through Section 106 contributions and / or other sources of funding.

Financial Implications

19. The Cabinet report states that no direct financial implications are expected to arise as a result of the new process for the identification of eligible local infrastructure projects. The delivery of successful local infrastructure projects will continue to be dependent on securing appropriate levels of S106 resources and / or alternative external funding sources. The management of the S106 proposal list outlined in the report will be met from within existing resources.

Legal Implications

20. The Legal Implications contained within the Cabinet report are:
- Welsh Government Circular 13/97: Planning Obligations sets out the Welsh Government's policy for the use of planning obligations. The Community Infrastructure Levy Regulations 2010 (as amended) places statutory restrictions on the use of Section 106 planning obligations. Section 106 agreements assist in mitigating the impact of unacceptable development to make it acceptable in planning terms.
 - Any planning obligations in the section 106 agreement must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. There are also restrictions on the number of s106 contributions that can be pooled to pay for new infrastructure.
 - Any relevant legal implications will be identified in the recommendations that are part of the planning report for consideration by Planning Committee which is the regulatory committee established by the Council to discharge its planning functions

Way Forward

21. Members are to note the contents of the Member briefing note.

Legal Implications

22. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on

behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

23. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Committee is recommended to:

- i. Note the contents of the Member briefing note.

DAVINA FIORE

Director of Governance & Legal Services

27 June 2018