

Briefing – s106 and s278 planning contributions

Reference Number: CPSC/10/22

Report title: Briefing – s106 and s278 planning contributions	
Report to: Corporate Policy and Scrutiny Committee	
Report author: Graham Hughes, Senior Democratic Services Officer	
Date: 28 April 2022	For: Consideration and identifying any follow-up scrutiny actions
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County Divisions affected: Not applicable	

1. Introduction

This is a report of a private briefing convened to understand more about the s106 and s278 processes for developer contributions to local infrastructure.

2. Action required

The Committee is asked to consider:

- (i) **This report; and**
- (ii) **Identify any follow-up scrutiny actions**

3. Background

- 3.1 During various discussions in recent months, members had raised issues around developer contributions and had requested a briefing to further understand the legal framework and process. This was an issue identified of wider interest than just to this Committee and so it was agreed that the invite to attend any briefing on the matter also be extended to members of the other three scrutiny committees.
- 3.2 Consequently, an introductory briefing with L Wagland (Cabinet Member - Economic Renewal, Infrastructure and Planning), Matthew Bradley - Strategic Development Manager (North), and Alethea Evans - Strategic Development Lead was held on 31 March 2022 which was attended by most of the Committee together with some members from other committees (attendees listed in Appendix 1).

4. Report of the briefing session held

Session content

- 4.1 Members were briefed on the responsibilities of Essex Planning Services, the

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role of Local Plans in connection with developer contributions, planning obligations under s106 and s278 of the Town and Country Planning Act 1990 (as amended).

4.2 It was explained that Essex Planning Services was responsible for (i) Infrastructure Planning and ensuring development in Essex mitigated the impact on community infrastructure and (ii) Strategic Development and System Leadership and co-ordinating across Essex to establish better ways of working.

4.3 The important role of Local Plans was highlighted:

- Determines the location of the new development.
- Can engage developers and infrastructure providers.
- Can enable the infrastructure needs of an area to be shared between developers and priced into land cost.
- Local infrastructure is not always priced into initial costings for developments and sometimes developers are not aware of the need to mitigate the impacts of a proposed development. Each area's Local Plan has role to help do that.

4.4 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) were outlined:

- Commonly known as s106 agreements.
- A mechanism which makes a development proposal acceptable in planning terms, that would not otherwise be acceptable.
- Focussed on site specific mitigation of the impact of development and make a development acceptable in planning terms.
- Directly related to the development.
- Fairly and reasonably related in scale and kind to the development.

4.5 The provisions of Section 278 Agreements (Highways Act 1980) were also outlined:

- Allows developers to enter into a legal agreement with the County Council (in its capacity as the Highway Authority) to make permanent alterations or improvements to a public highway, as part of a planning approval.
- This may be the creation of a new access but often highway mitigation is required across a wider area and may include new or upgraded junctions,

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new roads, cycleways, crossings, bus stops or works to the Public Rights of Way network.

- These works are secured by the Local Planning Authority in the first instance by a planning obligation, (Section 106 Agreement) or a planning condition(s) attached to a grant of planning consent.
- The mechanism then for delivery of the highway works secured through the planning process is a legal agreement under Section 278 of the Highways Act 1980.
- The Highway Authority are a statutory consultee to planning applications that impact on highway e.g. by the formation of an access or alteration of an existing access or where development will result in a material increase in or the change in the character of traffic entering or leaving the highway.
- With s278 Agreements all the risk in delivery of the works rests with the developer and not the County Council.

4.6 During subsequent discussion the following key points were clarified, highlighted, acknowledged and/or agreed:

- The largest impact on ECC from new housing development is on the highway network and education capacity.
- ECC has a team to look at planning applications and "combined asks and wider impact". This is often easier to do if there is a Local Plan in place.
- An Infrastructure Delivery Plan can run alongside the Community Infrastructure Levy.
- There was ongoing liaison with Highways and Passenger Transport Teams.
- The Essex Developers' Guide for Infrastructure Contributions related to infrastructure which is the responsibility of the County Council and gave very detailed guidance on contributions. It also draws attention to developers' need to engage with Health and the 'blue light' services.
- Careful balance was needed to maximise developer contributions whilst ensuring the ongoing viability of the proposed development/schemes.
- In terms of private estates, most developers ensured that they exited from ongoing service obligations and looked for other stewardship. Stewardship models for developments could be investigated at an early stage during district planning meetings.
- Generally, s106 monies belong to the planning authority granting the planning permission but where, for example, ECC was a party to a specific agreement then the proportion of the contributions allotted for the ECC part of the scheme then belongs to ECC.

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- Parish Councils cannot be party to a s106 agreement and funding is collected by the local district council on their behalf and distributed.
- Sustainable urban water systems should be in place as part of the planning application to ensure adequate drainage was in place and to make sure flooding did not happen. There should be engagement with the Essex Flood team where necessary as part of the submission process but this is largely outside of the usual s106 discussions and issues would usually be taken up by the district council during the process. Reference was made to a London Borough which had put a requirement into their Local Plan for local developers to contribute to the costs of addressing drainage issues resulting from washing building waste into the drains.
- Officers were intending to issue some planning guidance notes stressing ECC's limited role in connection with contributions for Health services.
- Local members were copied in on ECC responses to consultations under the planning process. Parish Councils also had the opportunity to comment.
- There was an appetite to further encourage the wider use and application of the Community Infrastructure Levy. It was possible also to have it in place with s106 contributions in a hybrid-type arrangement.

5. Conclusions and recommendations

Members were very grateful for the comprehensive presentation and briefing given.

It was **agreed** that more information should be provided to the full committee:

- (i) On how members can get involved in developer contributions and mitigating impacts on development;
- (ii) Clarifying the County Council's role and interactions with Health and NHS;
- (iii) Clarifying the data held on specific s106 holdings and the status of planned projects.

6. Appendix

Attendees at briefing with L Wagland (Cabinet Member - Economic Renewal, Infrastructure and Planning), Matthew Bradley - Strategic Development Manager (North), and Alethea Evans - Strategic Development Lead which was held virtually on 31 March 2022.

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Appendix C - Attendees

County Councillors from Corporate Policy and Scrutiny Committee:

C Pond (Chairman),
T Cunningham
J Fleming
P Gadd
M Garnett
I Henderson
Sam Kane
M Mackrory (Vice Chairman)
A McGuiggan
C Siddall,
M Steptoe
M Vance

County Councillors from other scrutiny committees:

S Barker
L Bowers Flint
A Goggin
C Guglielmi
P Honeywood (part)
P May
R Playle
M Skeels

L Wagland (Cabinet Member - Economic Renewal, Infrastructure and Planning)

Supporting officers:

Matthew Bradley - Strategic Development Manager (North)
Alethea Evans - Strategic Development Lead
Graham Hughes (Democratic Services)
Daniel Maclean (Cabinet adviser)