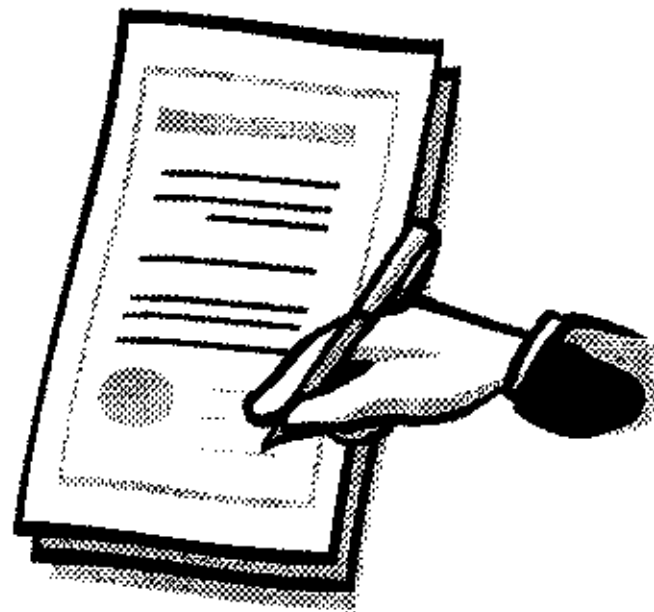


BRAINTREE DISTRICT COUNCIL

**REPORT OF THE OVERVIEW AND
SCRUTINY COMMITTEE**

**STUDY INTO THE WAY IN WHICH
CONTRIBUTIONS FROM SECTION
106 AGREEMENTS ARE MANAGED
BY THE COUNCIL, AND HOW THEY
ARE USED TO BENEFIT LOCAL
COMMUNITIES.**



JUNE 2010

REPORT OF THE OVERVIEW AND SCRUTINY COMMITTEE – STUDY INTO THE WAY IN WHICH CONTRIBUTIONS FROM SECTION 106 AGREEMENTS (WHETHER IN KIND OR IN THE FORM OF A FINANCIAL CONTRIBUTION) ARE MANAGED BY THE COUNCIL, AND HOW THEY ARE USED TO BENEFIT LOCAL COMMUNITIES.

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STUDY INTO THE WAY IN WHICH CONTRIBUTIONS FROM SECTION 106 AGREEMENTS (WHETHER IN KIND OR IN THE FORM OF A FINANCIAL CONTRIBUTION) ARE MANAGED BY THE COUNCIL, AND HOW THEY ARE USED TO BENEFIT LOCAL COMMUNITIES.

1. Introduction and Terms of Reference.

Introduction

One of the findings of The Audit Commission's report entitled 'Securing Community Benefits Through the Planning Process' indicates that '*A vital part of an organised approach to planning obligations is monitoring contributions and expenditure*'.

The Overview and Scrutiny Committee therefore decided to carry out a study to examine the Council's current guidance and working practices relating to implementing and monitoring agreements, to ensure that they were working effectively.

Terms of Reference

The Committee's specific terms of reference were as follows:-

(i) To investigate the way in which contributions from Section 106 Agreements (whether in kind or in the form of a financial contribution) are managed by the Council and how they are used to benefit local communities.

This included:-

- examining the Council's current guidance and working practices relating to implementing and monitoring agreements;
- identifying and examining examples of good practice;
- examining any government guidance.

(ii) to make recommendations to the Cabinet on any improvements that can be made to the Council's current practices and procedures.

2. METHODOLOGY.

We launched our study in September 2009 and sought information from the following:-

(1) BDC Officers

Sarah Burder, Section 106 Monitoring Officer (and Chair of the Section 106 Officers Group)

Paul Munson, Head of District Development;

Stuart Kay, Senior Planner

Tim Lucas, Housing Research and Development Manager;

Steve Miles, Accountant, Financial Services

Sharon Wood, Community Services
Russell Everard, Head of Enterprise, Culture and Leisure
Adam Davies, Assistant Development Control Manager
Juliet Strathern, Planning Policy/Cycling Officer
Jenny Claydon, Landscape Architect, Development Services
Abigail St. Aubyn, Landscape Officer, Development Services
Nick Day, Parks and Open Spaces Manager

To provide a foundation for the Committee's study, key information was provided by Sarah Burder, Section 106 Monitoring Officer (and Chair of the Section 106 Officers Group), Paul Munson, Head of District Development, and Stuart Kay, Senior Planner, and is set out in paragraphs 3 to 14.

In addition, individual responses were provided by those Officers who are a member of or have some input to, the Section 106 Responsible Officers Group (This included the provision of a spreadsheet setting out the balances on Section 106 Agreements). This information was very useful in helping us to understand how the system worked in practice. These responses and the spreadsheet are not included in the report, but are available on request.

(2) BDC Councillors (see response contained in Appendix A - Part 1)

(3) Parish and Town Councils (see responses contained in Appendix A - Part 2)

Following consideration of the written submissions we subsequently arranged Scrutiny Hearings with Officer representatives on 31st March 2010 and with Parish/Town Council representatives on 7th April 2010. The purpose of these hearings was to seek further information and clarification on a number of issues by working through a series of questions at each of the sessions.

The minutes of the hearings are set out in Appendix B.

3. **A BRIEF INTRODUCTION TO SECTION 106 AGREEMENTS – WHAT THEY CAN AND CANNOT DO, AND THE GOVERNMENT GUIDANCE THAT APPLIES.**

Section 106 of the Town and Country Planning Act 1990 (as amended) allows a local planning authority (LPA) to enter into a legally-binding agreement or planning obligation with a landowner in association with the granting of planning permission. The obligation is termed a S106 Agreement. These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms. They are increasingly used to support the provision of services and infrastructure, such as highways, recreational facilities, education, health and affordable housing. They may also restrict the use to which development may be put, e.g. to ensure that a granny annexe is not sold off separately, or that retirement flats are not occupied by people under a specified age.

Planning obligations may be used for a wide range of purposes and cover one or more of the following:

- Restricting the use of the land or the way in which a development is carried out;
- The kinds of specific operations and activities to be carried out;
- Requiring the land to be used in a specific way;
- Requiring a sum or sums of money to be paid to the local planning authority for a specific purpose.

However, current government policy gives a clear set of rules to which planning obligations must adhere. The scope of such agreements is laid out in the government's Circular 05/2005. Matters agreed as part of a Section 106 Agreement must be:

- relevant to planning;
- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development;
- fairly and reasonably related in scale and kind to the proposed development; and
- reasonable in all other respects.

A council's approach to securing benefits through the Section 106 process should be grounded in evidence-based policy.

Section 106(A) creates rights to modify or discharge a Section 106 agreement with the agreement of all the parties to the agreement, and for a party to apply to the local planning authority to modify or discharge the agreement after a period of 5 years provided that it would not be enforceable against other parties to the agreement.

Section 106(B) gives a right of appeal to the Secretary of State against a decision or non-determination by a local planning authority.

4. **A SUMMARY OF THE COUNCIL'S OVERALL POLICY ON SECURING CONTRIBUTIONS FROM DEVELOPERS THROUGH SECTION 106 ARRANGEMENTS, AND THE SPECIFIC POLICY DOCUMENTS THAT APPLY.**

The Braintree District Local Plan Review has the following policies which apply to developer contributions. The main overarching policy is:

RLP 163 Infrastructure and Community Facilities

Developments are expected to provide improvements to infrastructure and community facilities appropriate to the location, density, scale and nature of the development. Planning agreements will be sought in appropriate cases for developments to include

(a) Safe pedestrian access, amenity space and open areas for the use of the public, including formal recreation space, together with

- commuted sums for their maintenance;
- (b) Community facilities including community premises, healthcare, education facilities, children's play space and equipment, crèches, public toilets and recycling facilities;
- (c) Affordable housing;
- (d) Access, public transport improvements, shopper's parking and provision for pedestrians and cyclists, and green travel plans;
- (e) Conservation and enhancement of historic buildings, open space and the natural environment;
- (f) Improvements to utility infrastructure.

Other relevant policies are:

RLP 138 Provision of Open Space in New Housing Developments

The Council requires land to be made available for open space for play areas, play equipment or for formal recreation. Where the open space is for the benefit of the development itself and is to be dedicated to the Council, a commuted payment will be required to cover future maintenance costs. The policy allows for financial contributions to provide open space off-site. This policy is to be read in conjunction with the Open Space Supplementary Planning Document.

RLP 5 Affordable Housing in New Developments

In new developments of 15 dwellings or more or residential sites of 0.5 hectares or more, provision should be made for up to 30% of the total number of dwellings to be in the form of affordable housing. This policy is to be read in conjunction with Affordable Housing Supplementary Planning Document (adopted April 2006).

RLP 6 Affordable Housing in Rural Areas

Affordable housing may be provided in rural areas subject to meeting set criteria.

RLP 27 Location of Employment Land

The Council may require applicants to enter into S106 agreements to provide off-site works (typically new roads or road improvements, provision of pedestrian and cycle links, provision and maintenance of structural landscaping).

RLP 66 Flood Risk in Developed and Urban Areas

The Council may require developer contributions to flood storage capacity and other flood alleviation measures elsewhere within the floodplain.

RLP 67 Flood risk in Undeveloped Areas

The Council may require developer contributions to flood defence improvement works or other mitigation measures.

RLP 79 Special Landscape Areas

Developer contributions will be sought for the management of new landscape areas.

RLP 80 Landscape Features and Habitats

New development is expected to provide measures for the mitigation of

their impact on wildlife and for the creation and management of appropriate new habitats.

RLP 93 *Public Realm*

The Council will seek agreements to ensure maintenance of (private) development land remaining in the public realm and not to be contained within private curtilages.

RLP 94 *Public Art*

In major developments the Council will seek the promotion of works or building elements in the form of public art or local crafts.

RLP 98 *Environmental Improvements in Conservation Areas*

Contributions will be sought for environmental improvements including lighting and underground replacement of overhead wires and apparatus.

RLP 104 *Ancient Monuments and Sites of Archaeological Importance*

Where in situ preservation of archaeological remains is not justified, developers will be required to make adequate provision for excavation and recording before or during development.

RLP 120, RLP 122 and RLP 124 *Environmental Improvements in Braintree, Halstead and Witham*

The Council will seek contributions towards environmental improvements and subsequent maintenance in the town centres from developments permitted in or impacting on the town centres.

5. THE SYSTEM USED TO MONITOR, ENFORCE AND RECORD SECTION 106 AGREEMENTS.

Planning application sites with Section 106 Agreements are regularly monitored by the Section 106 Monitoring Officer to ensure compliance with the Agreement. The majority of Agreements require developers to serve notice on the Council prior to commencement of development, which is a common trigger point. This enables contribution payments related to commencement to be calculated, requested and paid.

Once a development has commenced, there may be further requirements on the developer to serve notice (for example on first occupation) or to provide schedules of occupation (e.g. every 3 months listing the number and type of dwellings occupied) to the Council. This facilitates the on-going monitoring of the site and ensures that appropriate actions/payments are requested as various triggers points are reached.

If a developer fails to serve the required notice on the Council advising of commencement or that a trigger point is about to be reached this will be identified on the next scheduled review of the Agreement.

Additional monitoring by the Section 106 Monitoring Officer may include site visits, correspondence with developers, enquiries of Development Control Officers, 'mystery shopping', checking Building

Control records and website monitoring.

A Section 106 Agreement is registered as a Local Land Charge and will be revealed on any property search (commonly carried out by purchasers prior to purchasing a property). Details of Section 106 Agreements are also recorded in the Development Monitoring module of UNiform and the Council's Section 106 monitoring database.

Local Land Charge – a note advising potential purchasers of any breach of a Section 106 obligation can be recorded on the Local Land Charges register. Prudent solicitors acting for the purchasers of properties will advise clients not to complete a purchase until such time as the developer has discharged its obligation. The note can then be removed following compliance.

UNiform – the system used by Development Control Officers to record planning applications and decisions. The Development Monitoring module contains basic details of the Section 106 Agreement (date of agreement, parties, main heads of terms and the Section 106 Monitoring Officers file reference).

A scanned copy of the original Section 106 Agreement and any variation or supplemental agreement together with a summary sheet of the Agreement is linked to the planning application number and can be viewed by users of UNiform. Agreements are also available to members of the public via the Council's website.

Database - The database, which was designed by Colchester Borough Council's Planning Agreements Compliance Officer (Section 106 Monitoring Officer), has been nationally recognised and promoted by the Planning Advisory Service as an efficient and effective monitoring system.

The District Council has adopted the database to record a greater level of information, including financial information and planning gain for service partners. It includes more specific details of the Section 106 Agreements, contact details for the parties, trigger dates/points, details of the planning gain and expenditure information, progress on site and actions taken.

A diary type system is used to ensure that development sites/Agreements are reviewed periodically. The frequency of review is determined by the size/type of the development and the expected rate of development on the site.

6. THE ROLE AND DUTIES OF THE SECTION 106 MONITORING OFFICER.

These are as follows:-

- To ensure that all parties comply with the requirements of Section 106 Agreements;
- To ensure that contributions are requested and received from developers, allocated towards specific projects within the scope of the

Section 106 Agreement and used within the time scales specified in the Agreement;

- To monitor and liaise with Accountancy to record contributions received and appropriate expenditure;
- To be a central contact point for developers in relation to compliance with Section 106 requirements;
- To chair the Section 106 Responsible Officers meeting and assist Responsible Officers with Section 106 related queries.

7. THE ROLE AND DUTIES OF THE DEPARTMENTAL RESPONSIBLE OFFICERS.

These are as follows:-

- To ensure that Section 106 contributions allocated to their service are spent in accordance with the Agreement and within the time scale specified in the Agreement;
- To be the point of contact within their service for the Section 106 Monitoring Officer and to ensure information received for the Section 106 Monitoring Officer is forwarded to colleagues within their service as appropriate;
- To liaise with Parish/Town Councils/Ward Members as and when appropriate regarding expenditure of Section 106 contributions, to include drafting and taking reports to relevant committees to seek approval for schemes.

8. THE REPORTING ARRANGEMENTS FOR THE SECTION 106 RESPONSIBLE OFFICERS GROUP.

Current arrangements provide for the minutes of the Responsible Officers meetings to be forwarded to the Head of Finance.

Any matters that require the attention of the Head of Finance are reported directly to that Officer.

9. THE DIFFERENT TYPES OF DEVELOPER CONTRIBUTIONS.

There are three main types of developer contribution:-

- financial contribution;
- dedication of land; or
- dedication of buildings.

Transfer of land or buildings can be to the Council, Parish or Town Council, Essex County Council, an established local trust or a management company (subject to safeguards). Financial contributions may be for the provision or enhancement of infrastructure, or in the form of a commuted payment to cover future maintenance of land.

By subject matter, developer contributions can be used to secure the following:

For the Council

- affordable housing;
- public open space;
- structural landscaping;
- play equipment;
- cycleway links;
- community facilities;
- public art;
- habitat mitigation;
- town centre and environmental improvements;
- conservation area improvements.

For the County Council

- education;
- highways and transportation, including pedestrian and cycle links;
- archaeology.

For the utilities

- flood alleviation schemes and defences;
- flood storage capacity.

10. **THE EXTENT TO WHICH LOCAL COMMUNITIES HAVE AN INPUT INTO HOW SECTION 106 CONTRIBUTIONS ARE SPENT.**

Local communities only have a direct input through consultation on planning applications. They can comment on specific proposals and therefore have an opportunity to make specific community demands, either arising entirely from the proposal or cumulatively in the context of a number of proposals being made in an area over time. These demands may be for open spaces, children's play facilities, doctors surgeries, libraries and similar.

Indirectly, local communities may influence Council policies and proposals through consultation on the local development framework, and previously on local plans. They could identify needs for specific community facilities and identify potential sites for them. These can be secured in whole or in part from developer contributions.

11. **HOW WE MANAGE DEVELOPER CONTRIBUTIONS THAT RELATE TO SERVICE NEEDS IDENTIFIED/NEGOTIATED BY OUR PARTNERS E.G. ECC.**

Contributions payable to ECC (commonly education and highways contributions) are normally payable directly to ECC. If a contribution is paid to the District Council the funds are transferred to the appropriate party and the developer notified accordingly.

The District Council does take an active role in receiving and spending cycleway contributions to expand and enhance the footpath/cycleway network. The District Council has a dedicated Cycleway Officer who works closely with ECC to deliver projects.

12. **WHAT HAPPENS IF A CONTRIBUTION FROM A DEVELOPER FAILS TO MATERIALISE AT THE AGREED TIME?**

The developer will be notified in writing that they are in breach of the Section 106 Agreement and will be given the opportunity to make payment within a reasonable period of time. All financial contributions are index linked so such a delay does not adversely affect the District Council in the short term.

A note may be placed on the Local Land Charge Register to advise potential purchasers that the developer is in breach. This places additional pressure on the developer to comply with the obligations of the Section 106 Agreement as property sales are unlikely to proceed until the purchaser is satisfied the developer has complied with its obligations.

If the developer fails to contact the Section 106 Monitoring Officer or pay the contribution, action will be taken against the developer to secure payment. The appropriate action will depend on the circumstances of the case/requirements of the Section 106 Agreement, but may include proceedings for an injunction or serving a statutory demand for payment on the developer.

It should be noted that in all cases to date, developers have made payment or agreed a schedule of payments after receiving a solicitor's 'letter before action' advising them of the Council's intention to commence proceedings.

13. **WHAT HAPPENS IF THE COUNCIL FAILS TO SPEND THE CONTRIBUTION BY THE REQUIRED TIME?**

If a contribution is not spent by the time set out in the Agreement the contribution or any balance of it should be repaid to the developer.

If a contribution is identified as being at risk and there is valid reason for the delay in spending the same, the developer may be approached and asked to consider extending the time limit in which the Council is permitted to spend the same.

We were advised by Sarah Burder that she was not aware of any instance where the Council had been required to return any money to a developer because the timescale had expired.

14. **THE IMPLICATIONS OF THE COMMUNITY INFRASTRUCTURE LEVY (CIL) IN RELATION TO DEVELOPER CONTRIBUTIONS**

The community infrastructure levy will codify and quantify the amount of developer contributions required to ensure that all infrastructure requirements arising from the local development framework (LDF) development plan documents can be secured. The scope of developer contributions can be widened to include utility infrastructure, although the intention is that developer contributions will only be required to meet funding gaps in the provision of infrastructure. The advantage to developers is that they can budget for the fixed charges that will be set

by the local council, the charges having been tested in a local inquiry before an independent examiner vested with the power to amend the charges proposed by the Council.

The process of setting a levy includes maintaining a register of infrastructure projects that are necessary to support the amount of development proposed in the LDF. These will be costed and the main sources of funding noted. CIL can be used to make good any shortfalls to ensure that the infrastructure will be provided, or they may be used to pump-prime a project.

The Government is considering options for a future scaling back of planning obligations to restrict their scope solely to the mitigation of site specific impacts and affordable housing. This would ensure that CIL becomes the primary means of funding infrastructure.

N.B. For the purposes of setting a CIL, and to inform the Local Development Framework policies, it will be essential for the Council to prepare a forward plan of its service requirements which will be funded in whole or in part by developer contributions. This will be published as part of the Infrastructure Planning process, along with the infrastructure requirements of other public bodies and utilities.

15. **CONCLUSIONS AND RECOMMENDATIONS**

Conclusions

We were pleased to note that the Council has in place an effective system to monitor, enforce and record Section 106 Agreements. The Council's Section 106 Monitoring Officer plays an essential and pivotal role in this respect, and in chairing the Section 106 Responsible Officers Group.

Involvement by individual officers in the Responsible Officers Group varies according to the extent to which specific Section 106 contributions are allocated to their service, but the role and duties of Responsible Officers are clearly set out. In particular, we note that Responsible Officers are being encouraged to work more closely with the relevant Members, Parish and Town Councils in connection with expenditure of Section 106 receipts.

The reporting arrangements for the Section 106 Responsible Officers Group, however, need to be reviewed. Currently, the minutes of the meeting are reported to the Head of Finance, but there is no provision for providing monitoring reports to Management Board, the Cabinet or the Planning Committee. We feel it would be beneficial if formal reporting arrangements in this respect were laid down.

In the interests of providing easier access and greater transparency, we feel that it would also be helpful if there was a Section 106 Agreement/database included on the Council's web-site so that Members, Parish/Town Councils, developers and interested members of the public can readily see the current status of each Agreement.

In both the written material provided to us by Officers and at the Officers Scrutiny Hearing session, the importance of the Council using an evidence-based approach in securing benefits through the Section 106 process was emphasised to us. The relevant policies are referred to in the body of this report.

We feel that it would also be helpful if Parish/Town Councils were encouraged to demonstrate their infrastructure requirements through their own Parish/Village Plans as these can also provide a useful evidence base of local need.

In connection with the proposed Community Infrastructure Levy (CIL), we note that the Council is required to draw up a list of infrastructure projects or types of infrastructure which it intends to be wholly or partly funded by the CIL as a basis for completing the charging schedule. We feel it is important for Parish/Town Councils to be included in the consultation process in compiling the list of projects.

The feedback from the Scrutiny Hearing with Parish/Town representatives indicated that Parishes/Town Councils would welcome greater consultation in the Section 106 process. We appreciate that there may be some practical difficulties particularly where the need for a Section 106 Agreement emerges subsequent to the planning application being submitted. However, where it is feasible and practical to do so Parish/Town Councils should be consulted at an early stage and kept informed as the situation progresses.

It was also apparent to us that Section 106 Agreements and the new CIL are complex subjects. We feel that Parish/Town Council representatives would benefit from a training session/workshop on these topics. A brief written guide that could be accessed from the Council's website would also be helpful.

Finally, we would draw Cabinet's attention to the fact that there was some anecdotal evidence from one of the Parish/Town Council representatives (Cllr. P. Barlow, Witham Town Council - see pages 128 and 129 of the minutes of the Scrutiny Hearing held on 7/4/10) that there was an element of dissatisfaction with the way in which the County Council uses Section 106 money for the provision of infrastructure (e.g. highways and education).

Recommendations

We **RECOMMEND** to the Cabinet as follows:-

1. The reporting arrangements for the Section 106 Responsible Officers Group need to be reviewed so that six monthly monitoring reports concerning Section 106 Agreements are submitted to Management Board, the Cabinet and the Planning Committee as appropriate.
2. In the interests of providing easier access and greater transparency, a central Section 106 Agreement/database in spreadsheet form should be included on the Council's web-site so that Members, Parish/Town

Councils, developers and members of the public can see, for each agreement, what site the agreement refers to, what the contributions were for and what progress has been made on spending those contributions (and whether those monies have to be repaid to the developer if not used by a specific date). The spreadsheet should also record any variations to Section 106 Agreements that have been agreed. The spreadsheet should be updated quarterly.

3. We note that under the proposed Community Infrastructure Levy (CIL), the Council will consult with infrastructure providers and draw up a list of infrastructure projects or types of infrastructure which it intends to be wholly or partly funded by the CIL to provide a central database as a basis for completing the charging schedule. We feel that it is important for Parish/Town Councils to be included in this consultation process;

4. Parish and Town Councils should be encouraged to demonstrate their infrastructure requirements through their own Parish/Village Plans as these can provide a useful evidence base of local need;

5. Whilst we accept that there may be some practical difficulties in consulting Parish/Town Councils where the need for a Section 106 Agreement emerges in the life of an application (as opposed to a draft Section 106 Agreement being received with a planning application at the outset) we view consultation with Parish/Town Councils as being of paramount importance. Officers should ensure that Parish/Town Councils are consulted at an early stage and kept informed throughout the Section 106 negotiations, wherever it is feasible and practical to do so.

6. The Council should hold a training session/workshop for Parish/Town Council representatives on the subject of Section 106 Agreements and the new CIL.

7. A brief Guide to Section 106 Agreements and the new CIL (specific to Parish/Town Councils) should be produced and made available on the Council's website.

8. Cabinet should take note that from anecdotal evidence given by a witness at the Parish/Town Council Scrutiny Hearing there appears to be an element of dissatisfaction with the way in which the County Council uses Section 106 money for the provision of infrastructure (e.g. highways and education).

Finally, we would like to record our thanks to all those individuals who have contributed to this study and for the written and oral evidence that has been submitted to us by witnesses.

The Overview and Scrutiny Committee.

Councillor M. G. Gage (Chairman)	Councillor A. M. Meyer
Councillor J. Baugh	Councillor R. Ramage
Councillor G. Cohen	Councillor D. E. A. Rice
Councillor M. Dunn	Councillor A. F. Shelton
Councillor Dr. R. L. Evans	Councillor Mrs. J. A. Smith
Councillor J. E. B. Gyford	Councillor F. Swallow

APPENDIX A

CONTENTS

Part 1 – Response Received from BDC Councillor (page 2)

Part 2 - Responses received from Parish/Town Councils (pages 3 to 9);

PART 1 – RESPONSE RECEIVED FROM BDC MEMBER

Consultation letters were sent to all District Councillors and one response was received from Cllr. R. Mitchell (see below).

Cllr. R. Mitchell

Re your letter just received. I just have one observation to make. It would sometimes seem that we don't have any central spreadsheet/database register of 106 monies paid in, out, date required for use, which agency is in charge, what project conditions apply, officer handling etc. etc. The result makes it difficult to find out what's happened to the monies when someone knows there were some and, for instance, it wasn't really available until the development is complete, which could be some while after the permission was granted – if that makes sense!

This makes it difficult to chase anything up at a later date, with the result that it might appear to some that, effectively, the money is lost.

Not completely sure that this is in line with what you're asking, but I believe it's relevant when looking into the whole 106 issue.

PART 2 - RESPONSES RECEIVED FROM PARISH/TOWN COUNCILS

Consultation letters were sent to all Parish and Town Councils and responses were received from the following:-

Black Notley Parish Council
 Feering Parish Council
 Great Bardfield and Finchingfield Parish Councils
 Hatfield Peverel Parish Council
 Rivenhall Parish Council
 Sible Hedingham Parish Council
 Terling and Fairstead Parish Council
 Witham Town Council

Details of the responses are set out below.

<u>Parish/Town Council</u>	<u>Response</u>
Black Notley Parish Council	<p>I write with reference to your letter dated the 24th September 2009, regarding the Overview and Scrutiny Study – Section 106 Agreements.</p> <p>This item was on the agenda at the recent meeting of the Parish Council on the 27th October 2009. It was suggested that it would be a good idea in the future if Braintree District Council consult with the Parish Council's with reference the 106 agreement if a development should come up in the area in the future.</p>
Feering Parish Council	<p>Further to your letter of 24 September, the Feering Parish Planning Committee has the following comments to make on the above study:-</p> <ul style="list-style-type: none"> • These agreements are not always considered appropriate for small developments, and yet the cumulative impact of several small developments can put unreasonable pressure on current infrastructures with no way of addressing it. Can Planning Authorities address this problem – perhaps with a smaller levy on all developments towards infrastructure improvements?

	<ul style="list-style-type: none"> • What happens when the money from a S106 isn't used for the designated purpose, because it is insufficient, or permissions cannot be obtained (the Inworth Rd footway is a case in point) – can the money come back to the Parish Council for local use instead of disappearing into a central black hole? • Can these agreements be made to cross borough and district boundaries? i.e can a development in one borough be used to improve infrastructure in another district? In Feering we are constantly seeking S106 agreements on developments in Tiptree (under Colchester Borough Council) to improve the road infrastructure through Feering to the A12, as we are adversely impacted by the additional traffic arising from these developments, but they are never granted.
Great Bardfield and Finchingfield Parish Councils	<p>Both Councils are of the opinion that the section 106 Agreement can be a useful tool when dealing with concerns raised in respect of various projects. Their experience, of course, is understandably narrow, mainly in respect of planning permissions on land and buildings and affordable housing schemes.</p> <p>A well constructed 106 Agreement will often result in achieving full support for a proposal – affordable housing is a prime example; however, a major concern is their longevity. The fact that they can be 'overturned' at some future date detracts from their usefulness.</p> <p>The results of the Committee's deliberations will be awaited with interest.</p>
Hatfield Peverel Parish Council	<p>With reference to your letter dated 24th September, Hatfield Peverel Parish Council believe that monies arising from a Section 106 Agreement, especially in the case of contributions to Highways improvements should be used only to improve facilities for the actual Planning Permission that is requested. It should not be seen as an additional income for other Highway uses and thereby influence any planning comments as a result.</p> <p>I refer to your letter dated 24 September 2009, relating to the Section 106 study, which was considered by Rivenhall Parish Council at its meeting last evening.</p>
Rivenhall Parish Council	<p>I would request information as to why Rivenhall Parish Council does not gain any benefit from those developments that come within the Parish boundary – for example, and in particular, the Industrial developments extending the Eastways Industrial Estate on the</p>

	<p>outskirts of Witham, a good proportion of which lie within the Rivenhall Parish boundary.</p>
<p>Sible Hedingham Parish Council</p>	<p>Thank you for your letter of 24th September and for giving the Parish Council the opportunity to comment upon S106 Agreements, which is much appreciated.</p> <p>Our Chairman, Councillor Joanne Beavis, and myself have had meetings and correspondence with Sarah Burder in your office regarding S106 Agreements so far as they concern Sible Hedingham. This has been extremely valuable and as a result of our experience to date the Parish Council desires to make the following comments:</p> <ol style="list-style-type: none"> 1. That BDC should consider inviting Sible Hedingham Parish Council to be a party to appropriate S106 Agreements. In this respect, as you may be aware, the Parish Council will be a party to the forthcoming S106 Agreement in connection with the Premdor site for which a planning application is expected imminently. 2. That even if the Parish Council is not a party to a S106 Agreement it would appreciate the opportunity to comment upon all draft agreements. 3. The main reason for 2. above is that there have been S106 Agreements relating to Sible Hedingham where the wording has been so wide that monies, for example for education, have been allocated to the whole Braintree District. If a site in Sible Hedingham is developed the Parish Council expect all monies, including monies for education, to be used for the benefit of Schools in Sible Hedingham. Why should Sible Hedingham suffer the inconvenience and disturbance of a development but the S106 monies spent in other parts of the District? This occurred with the wording of the Wimpey agreement a couple of years ago and to prevent this happening in the future the Parish Council wish to be consulted upon and have sight of all draft agreements before they are approved and engrossed. 4. Upon completion of all S106 Agreements relating to Sible Hedingham the Parish Council would appreciate a copy of the final document as a matter of course, whether or not the Parish Council is a party to it. In the past it has often been very difficult to obtain copies. 5. It is apparent that there needs to be more effective control by BDC upon collecting S106 monies from developers. Payments are not always made when they should be and this needs tightening up. 6. All S106 monies need allocating to the relevant purpose in good time before

- reaching the deadline when contributions have to be paid back to the developer. Whilst we are not aware of this happening, the risk should not arise.
7. About three years ago some S106 monies (approx £3 to £5,000?) for Artwork in Sible Hedingham were allocated to a Medieval Pottery Archaeological Report by BDC without the Parish Council being consulted. As it happens, when the Parish Council heard about this, they were completely in favour, but it would have been nice to be consulted. The report has not yet been published and hopefully publication will take place and the money used before it has to go back to the developer. Will you please look into this, to expedite the publication of the report and let us know the position.
 8. Since the retirement of Jean Grice and the departure of Alison Dando we have not been able to ascertain, despite enquiries, which officer in BDC is responsible for Artwork so far as S106 Agreements are concerned. Surely an officer has taken over those responsibilities and if so please provide name, extension and email address.
 9. The Parish Council and BDC have prepared schedules showing relevant information from S106 Agreements – site, date, amounts, purpose, deadline for expenditure, transfer of land (in kind), balances, etc. etc. Is it possible for BDC to update this schedule say once a year and send to the Parish Council for review.
 10. In connection with the development of 133/135 Swan Street a highway contribution of £6,163 was proposed. Unfortunately at a Public Inquiry, the Inspector threw out this contribution because BDC Planning Officers failed to produce evidence in support. If only your Planning Department had notified ECC Highways and the Parish Council that evidence was required it could have been produced. As a result Sible Hedingham has lost a vital highway improvement in the village. This situation must never be allowed to occur again.
 11. Apart from highways, education, open spaces, playground equipment, church repairs and artwork, will you please provide a list of other community facilities (if any) to which S106 monies can be applied.
 12. Can S106 monies be allocated for the provision of street lighting or the provision of allotments?
 13. Apart from transfer of land what other S106 benefits in kind can be provided, if any? Any other examples would be appreciated please.
 14. What is BDC policy regarding S106 monies arising from the construction of wind turbines? The Parish Council regard wind turbines as good in principle.

	<p>depending upon where they are located. It is noted that wind turbines elsewhere (e.g. Norfolk) attract S106 contributions towards repairs to local churches. Approximately what financial contribution can be expected for each wind turbine and what can this be allocated to apart from churches?</p> <p>The Parish Council hope that your Overview and Scrutiny Committee and in due course your Cabinet will find the above comments helpful and will assist with improving the system, particularly better communications with Parish Councils regarding this very important work to benefit local communities. It would also be helpful if you can please answer the queries raised above to give the Parish Council a better understanding of S106 Agreements and how they can further help the community.</p> <p>I look forward to hearing from you please. Thank you.</p>
<p>Terling and Fairstead Parish Council</p>	<p>The Parish Council has your letter of 24th September 2009 and the Councillors have asked me to comments as follows.</p> <p>We have taken the opportunity to download a standard form of S106 agreement and reviewed a number of guidance notes from diverse authorities.</p> <p>We are a small community with a closely drawn village envelope. Section 106 payments as a result of development within the parish are unlikely, nevertheless we have requirements where commuted sums and other payments would apply.</p> <p><i>Affordable Housing:</i> We still have a demonstrable need for rented and stepped equity housing within the community. May the exceptions site policy RLP6 and the commuted payments received by BDC on other sites in the District be focused on the rural areas of housing need.</p> <p><i>Education:</i> Our primary school increasingly serves an influx of students from Witham and Hatfield Peverel. There are increasingly few students attending the school who live in the village. To ensure the school continues as a sustainable and viable educational unit, there must be education contributions channelled from Section 106 agreements to the rural schools.</p>

Additionally, the Council has been successful in extending its Information Technology literacy programme to its older residents. May this initiative be supported by 106 contributions?

Public Open Space:

We are keen to have formal playgrounds and amenities funded by BDC in our community and suggest that 106 contributions for off site facilities may be advanced as part of a wider BDC district initiative. We would be especially keen to see inclusive schemes for football and youth play areas in the rural communities.

Public Art:

Perhaps some railings and barriers may be commissioned using local themes as part of section 106 contributions. We presently have no public art (apart from the village sign financed entirely by voluntary contributions) in our community.

Flood Risk and Infrastructure:

We would like to see if some progress could be made on the Teiling Ford and its continued use as a thoroughfare. It is too deep and requires a pavement if it is to be used for car traffic. Could off site commuted sums be used?

Transport and Highway:

We have a limited bus service. We have seen section 106 payments being agreed with other authorities which initiate funding on car club or car sharing schemes in rural areas: may this be looked at please.

We have seen bus programmes and timetables linked to a community computer link. May this be considered for an internet café at the village stores?

Certainly, we need infrastructure improvements to pavement separation from roads as the increase in traffic in rural areas increases. Is this possible under off site commuted sums?

Is the walking bus initiative, school crossing patrol capable of further under section 106 agreements?

Witham Town Council

Thank you for the opportunity to delay the Town Council's response to your consultation letter of 24th September 2009 to enable Members of the Environment Committee to comment.

Members consider that in addition to the Town Council being consulted on how Section 106 money should be spent, they would welcome the opportunity to decide how best to spend for the benefit of the town and its residents. Therefore, they would ask that all Section 106 money relating to Witham is devolved down which would fulfil the conditions of the Braintree District Council's charter.

APPENDIX B

Minutes of Scrutiny Hearings held on:-

31st March 2010 (Officer Representatives)

7th April 2010 (Parish/Town Council Representatives)

Minutes

Overview and Scrutiny Committee

31st March 2010

Braintree
District Council

Councillors	Present	Councillors	Present
J. Baugh	Apologies	A. M. Meyer	Apologies
G. Cohen	Yes	R. Ramage	Yes
M. Dunn	Yes	D. E. A. Rice	Apologies
Dr. R. L. Evans	Apologies	A. F. Shelton	Yes
M. Gage (Chairman)	Yes	Mrs. J. Smith	Yes
J. E. B. Gyford	Apologies	F. Swallow	Apologies

Officer Witnesses in attendance:

Sarah Burder, Section 106 Monitoring Officer (and Chair of the Section 106 Officers Group)

Darren Roberts, Development Control Area Manager

Tessa Lambert, Development Control Manager

Stuart Kay, Senior Planner was not able to attend in person, but submitted written answers to Questions 3, 8 and 9.

69. DECLARATIONS OF INTEREST

INFORMATION: There were no interests declared.

70. MINUTES

DECISION: That the minutes of the meeting of the Overview and Scrutiny Committee held on 10th March 2010 be approved as a correct record and signed by the Chairman.

71. QUESTION TIME

INFORMATION: There were no questions asked or statements made.

72. SCRUTINY HEARING WITH OFFICERS – STUDY INTO HOW CONTRIBUTIONS FROM SECTION 106 AGREEMENTS ARE MANAGED BY THE COUNCIL

Cllr. Gage welcomed Sarah Burder, Darren Roberts and Tessa Lambert to the meeting.

He referred to the Question Plan for the Scrutiny Hearing that had been previously circulated to Officers. This would form the basis of tonight's session so that Members could drill down on any underlying issues, and in addition Members would have the opportunity to ask supplementary questions.

The written answers provided by Stuart Kay to Questions 3, 8 and 9 were circulated and read by Members prior to the question and answer session commencing.

Sarah Burder made an opening statement summarising the key elements of Section 106 Agreements. She reminded the Committee that legal agreements which secure planning obligations make a scheme - which is otherwise unacceptable in planning terms - acceptable. The relevant guidance is contained in Government Circular 05/2005 and states that Section 106 Agreements must be:

1. relevant to planning;
2. necessary to make the proposed development acceptable in planning terms;
3. directly related to the proposed development;
4. fairly and reasonably related in scale and kind to the proposed development; and
5. reasonable in all other respects.

Points 2, 3 and 4 of the guidance are due to become law when the statutory instrument which deals with the Community Infrastructure Levy (CIL) is due to be passed on 6th April this year.

There are a number of specific things that a Section 106 Agreement can do as follows:-

- * restrict the development or use of land in a specified way;
- * require specific operations or activities to be carried out in, on or under the land;
- * require the land to be used in a specific way;
- * require a sum or sums of money to be paid to the local planning authority.

Sarah emphasised that the focus should not be on the benefit that a Section 106 Agreement can procure, but rather it is about what is necessary to mitigate the effects of the development and to make the proposal acceptable as a good quality development in land use planning terms.

The Chairman thanked Sarah for her opening statement, and then referred to the Question Plan and invited Officers to answer the questions.

A summary of the question and answer session is set out below.

Question 1 (i)

As regards the Section 106 agreements for the Maltings Lane development in Witham, would you provide the Committee with a brief paper setting out the history of the agreements. What were the original agreements, and what were the subsequent amendments and additions?

Answer by Darren Roberts

(i) Darren had previously circulated a briefing paper which had been attached to the Agenda and circulated to the Committee in advance of the meeting (see attached appendix).

Supplementary Question by Cllr. R. Ramage

Although not directly related to the Section 106 Agreement, the parking provision on the

Maltings lane development appears to be inadequate on the phase of the residential development that has been built, and in respect of the community amenities. Is there likely to be better parking provision on the next phase?

Answer by Tessa Lambert

As regards the adequacy of the parking provision, the County Council has now revised its parking standard. It did so after looking at a number of development schemes across the County including Maltings Lane. The County Council's previous standard was based on maximums - effectively saying to people you have got to reduce the number of cars. It was found that this policy was not working effectively and the County Council has therefore revised the policy to specify the minimum number of spaces required for new residential developments.

Answer by Darren Roberts

(Darren referred to a plan of the Maltings Lane development showing the housing, business park and community areas, and which parts had been developed to date).

The community areas will be built, but the timing is later than had been originally anticipated. We are constantly working with the developers on these aspects. Part of my role is to organise the Maltings Lane forum where we speak to a number of local residents regarding their concerns and trying to move things forward.

The impact of the recession has delayed the development, and a number of the Section 106 trigger points will only be activated once the first house on a particular phase has been built.

We have to work within the terms of the Section 106 Agreement that has been agreed, although we do try to get the developers to provide facilities in advance of the trigger points if possible.

The new road that has now been built enables the developer to access the community areas. The planning application for the new school has been submitted, and hopefully that will be approved soon. There are trigger points that will happen shortly in relation to the transfer of the community centre land, the place of worship land and the health centre land.

Supplementary Question by Cllr. Mrs. J. Smith

What is the position concerning the number of dwellings on the site, and the various trigger points?

Answer by Darren Roberts

Originally, it was planned that there should be 850 houses on the whole site, but there was a second planning application which increased that number by an additional 218 houses.

None of the extra 218 have been built yet. They are located in the western third of the estate, and there are Section 106 trigger points relating to the Art contribution (prior to 50th dwelling) and Off Site Open Space (prior to 107th dwelling).

In respect of the original planning permission, there was a section 106 obligation to build the main spine road after the 300th dwelling had been completed.

As well as increasing the number of houses, the second application brought forward and better defined the community facilities within the development.

The second application took some two years to process due to the time it took to agree the Section 106 details with the developer and a consortium of landowners. There were a number of legal issues to resolve and we had to be satisfied that the Agreement was watertight and to our satisfaction.

In summary, there are two planning applications that have been approved – the first for the complete site, and the second for the western third of the site, and on both of them there are Section 106 Agreements.

Supplementary Question by Cllr. M. Dunn

As regards the two Section 106 Agreements, it appears that the second Agreement is more comprehensive and more watertight than the first. Is it fair to say that in the 1990s the Council was less 'aggressive' in its approach with regard to negotiating Section 106 Agreements, and that nowadays any Section 106 Agreement that the Council negotiates will be a lot more watertight?

Answer by Darren Roberts

I was not a planner in the 1990s, but certainly the current approach is to ensure that the Section 106 Agreements are far more watertight and that there are no loop-holes that could be exploited by developers. We are also asking for more contributions in Agreements, but are also ensuring that our requirements are reasonable, appropriate and related to the proposed development.

In the case of the Maltings Lane development, some items were always going to be added to the latter Agreement such as the Art Contribution. This element was seen as relating more to the community facilities and not related as much to the general housing side of the development.

For the first Section 106 Agreement there were some key items that were needed such as the road network, the amount of affordable housing, the locations of the public buildings and the timing of certain phases of the development, and contribution towards the community centre. These were enhanced in the context of negotiating the second Section 106 Agreement when the second planning application was submitted which focused mainly on the business park and the community aspects.

Answer by Tessa Lambert

The strength of your negotiating position in relation to Section 106 Agreements depends on the soundness of your policy basis. Obviously, in the context of the second Section 106 Agreement we had a very recently adopted Local Plan as our policy basis. The Local Plan may not have been so up to date when the first Section 106 Agreement was made.

Supplementary Question by Cllr. A. Shelton

I see that there are 845 houses built or under construction, and that a number of the original Section 106 Agreement obligations relate to infrastructure works. How many of those infrastructure works are completed?

Answer by Darren Roberts

All of the road infrastructure that relates to those houses has been constructed although not all of those roads have yet been adopted by Essex County Council the highway authority as they are not yet of an adoptable standard. Until they are adopted, Barretts, the developer remain responsible for maintenance.

The green open space provision around the housing, including the balancing pond, has been completed.

The play areas have now been constructed, but with hindsight that is something that should have been completed earlier.

The only things that have not been done relate to the other third of the development where the business park and the community facilities are to be located.

Supplementary Question by Cllr. A. Shelton

I also note that in the first Section 106 Agreement the sum of £3/4m was due to be spent on improvements on the A12, but this has been spent on other improvements in Witham. Could you explain the reason for this?

Answer by Darren Roberts

The original intention was that this money should be spent on the A12 specifically on the widening of the road between Hatfield Peverel and Witham. However, it was necessary for the Highways Agency to conduct a public enquiry into these proposals which caused a delay. It was not possible for the money to be spent within the required time as specified in the Section 106 Agreement. The money therefore reverted back to the Council to spend on improvements to the road network in Witham.

Supplementary Question by Cllr. A. Shelton

In respect of the £275,000 contribution to the Community Centre in the first Section 106 Agreement, has that facility been built?

Answer by Darren Roberts

The subsequent Section 106 Agreement provides for £690,000 for the Community Centre. This facility has not yet been built.

Supplementary Question by Cllr. A. Shelton

In the first Section 106 Agreement, there is provision of £50,000 for Town Centre/Cycleways – has this been spent?

Answer by Darren Roberts

Yes - there are some cycleways that have been built/improved between the site and the town centre, and other cycleways in Witham.

Question by Cllr. Mrs. J. Smith

In respect of enforcement of Section 106 Agreements, who monitors Section 106 Agreements to ensure that the various timescales etc are being complied with. If they are not, how do we enforce them?

Answer by Sarah Burder

Monitoring of Section 106 Agreements is part of my responsibilities as Section 106 Monitoring Officer, and I ensure that both the developer and the Council adhere to their respective obligations under the Agreement. I am located in Asset Management and report to the Head of Asset Management.

Generally, I have a good working relationship with the major developers if I need to chase progress or ascertain whether Section 106 obligations have been triggered.

As a last resort, the Council could obtain an injunction to prevent the developer from continuing with the development if that developer was not adhering to his obligations under the Section 106 Agreement.

Also, if the Section 106 obligation requires the developer to pay a sum of money to the Council and this was outstanding we could take proceedings to have the company wound up.

Supplementary Question by Cllr. M. Dunn

As far as the Maltings Lane development is concerned, are you confident that all the Section 106 obligations that are required to be made to date have been implemented?

Answer by Sarah Burder

Yes. I am aware of the key dates and maintain a close liaison with Darren Roberts as part of my monitoring responsibilities.

Supplementary Question by Cllr. Ramage

Has the economic climate had an impact on the progress of the development?

Answer by Sarah Burder

Yes. The developer has not progressed with the development as the recession has had an adverse impact on the housing market.

In some instances on other sites, where the developer was required to make a payment to the Council we have had to negotiate with the developer to allow an element of leeway. A number of developers have had some cash flow difficulties given the depressed state of the housing market.

Supplementary Question by Cllr. Ramage

There appears to be an excessive amount of lighting on the Maltings Lane development particularly in Gershwin Boulevard. Can you clarify who determines the lighting level and whether anything is being done about this?

Answer by Darren Roberts

Street lighting is a County Council responsibility, but I believe following discussions between the Developer and the County Council that some of the lighting is to be removed.

Supplementary Question by Cllr. Ramage

I ask this question on behalf of a member who is unable to be with us tonight.

In relation to the Section 106 obligation relating to the provision of a Health Centre, I understand that the contract has to be let by 31/5/10. What happens if the contract deadline is not met, and what are the implications for the Council in this eventuality as I understand the land reverts back to the Council.

Have we been pursuing the matter with the Primary Care Trust (PCT) and the developer with a view to ensuring that the contract is let in time?

Answer by Sarah Burder

With regard to whether the contract is let in time, that is dependent on negotiations between the developer and the PCT, and we do know that the parties are in communication.

As regards the transfer of the land, there is a requirement for the contract to be let by 31st May this year. In the event that it is not, the land does not revert to the Council. However, the consortium of landowners has the option of offering it to the Council, and therefore that land could be transferred to us. Negotiations could then continue with the PCT with a view to getting them to provide the Health Centre.

Answer by Darren Roberts

The land is allocated as a Health Centre in the master plan and that is what it should be unless there was a change to the planning application and the Section 106 Agreement. I understand that there have been meetings between the Developer and the PCT – it is an issue of what the PCT's aspirations are in terms of whether they can provide the building. The parties have been made aware of the deadline.

Question 1 (ii)

What lessons have been learnt as a result of the Section 106 Agreements on the Maltings lane development?

Answer by Darren Roberts

There are a number of lessons.

In terms of the phasing of the development, it would have been prudent if we had brought the phasing forward.

The location of the affordable housing has changed, and that has caused some problems with buyers who wanted to be aware of what was to be built next to them. This is more of a social than a planning issue, but in future the location needs to be decided early on with more certainty.

The play areas need to be provided at the same time as people are moving in, and not some four years later.

Finally, with major developments such as Maltings Lane the open space that currently comes to the Council to manage brings with it an associated financial burden in maintenance and management costs. In future, the open space that the Council receives through a Section 106 Agreement for major developments is going to be managed by the relevant developer's Management Company to the Council's satisfaction, but with the Company bearing the financial burden.

Supplementary Question by Cllr. R. Ramage

Would not the Land Charge Search in the house buying process reveal the location of the play area?

Answer by Darren Roberts

It would only be revealed if the area was specifically included in the Land Charge Search area.

For future Section 106 Agreements, the construction and phasing of the play areas would specifically require them to be provided at the same time as the houses are occupied.

Question 2

Are the limitations on the use of planning obligations sufficiently understood among the public, Town and Parish Councils, and Council Members?

Answer by Tessa Lambert

There is a general misconception about the limitations of what we can negotiate through Section 106 Agreements. Agreements should not be viewed as a betterment levy to achieve benefits to the community on a very ad-hoc basis. There are tests that the Council has to apply when seeking to negotiate Section 106 Agreements and those are the five tests that have been previously mentioned i.e that the matters agreed must be:-

- * relevant to planning;
- * necessary to make the proposed development acceptable in planning terms;
- * directly related to the proposed development;
- * fairly and reasonably related in scale and kind to the proposed development, and
- * reasonable in all other respects.

The scope for negotiation, therefore, is limited. Negotiations also have to be underpinned by a sound policy basis. We cannot require contributions for which we have no supporting policy in the Local Plan or supplementary planning document.

In conducting negotiations, we have to ensure that we have a strong and sound case. If the developer declines to make that contribution and we refuse the application purely on that ground, we will have to ensure that we have a sufficient planning case to defend that refusal.

In terms of why there might be a limited understanding generally on the limits of Section

106 Agreements, it is not often that Parish Councils will come across a situation where there is a Section 106 Agreement being considered apart from occasional instances where there is an exception site involving an element of affordable housing. In the main, it is the town areas that experience the level of development that will actually justify the Section 106 Agreement.

In terms of District Councillor involvement, we would expect Planning Committee Members to have more of a working understanding. Also, Members on Local Committees should have some understanding as they will consider reports submitted, for instance, on cycle route schemes where they have been sought through Section 106 Agreements. The Local Committee will consider the detail of that scheme and how the financial contribution is going to be spent.

In respect of items like play equipment and public art, there would normally be some form of public consultation exercise. We would acknowledge that there have been some failings in the past on how those items have been handled, particularly with public art.

Generally, there are points at which Members and Parish Councillors may have had an involvement in Section 106 Agreements, but it is unreasonable to expect every Parish Councillor to have a working knowledge of what is clearly quite a complex subject.

Supplementary Question by Cllr. A. Shelton

In item 5 of the Information Pack the role and duties of Departmental Responsible Officers are listed and this includes liaising with Parish/Town Councils/Ward Members. As a Ward Member for 11 years I have yet to be consulted on any Section 106 Agreement. Although my Ward is not located in a town there has been a Section 106 Agreement in Pebmarsh involving social housing, but I was not consulted when I believe I should have been. Can you comment?

Answer by Sarah Burder

The reference in the Information Pack relates to consultation regarding sums of money that are to be paid to the Council for a specific purpose under a Section 106 agreement as opposed to the inclusion of affordable/social housing that has been specifically negotiated in accordance with the Council's supplementary planning guidance on affordable housing. I would expect the relevant departmental Responsible Officer to consult the Parish/Town Council and the local Member on Section 106 monies in relation to play areas, cycleways etc.

Supplementary Question by Cllr. M. Dunn

Over the past three years during Section 106 negotiations, have there been many instances where developers have refused to make contributions that we requested and has that resulted in the planning application in question being refused?

Answer by Tessa Lambert

I can recall a planning application in Notley Road, Braintree for special needs accommodation for older people and there was an expectation of a certain level of financial contribution in lieu of affordable housing within that development. We indicated that it should be at a set level which the applicants did not agree to, and the application was subsequently refused. The application went to appeal and was dismissed. In terms of

being in a position to refuse that application we would have had to involve valuers and surveyors to support our case and to provide evidence that the financial contribution should be set at that level. There would have been a whole exercise in assessing the viability of the scheme with or without that contribution, because the developer's argument would have been that the contribution was set too high and therefore the scheme was not viable. There was quite a detailed argument about land valuations.

In other situations there will be cases where we adopt a certain negotiating position and that may be challenged, and as a consequence we may have to concede certain elements.

The proposed CIL has a lot of advantages for both the Council and the development industry. It will identify very clearly a charge that will be related to a specific element of the development e.g. per house, per sq. metre, of commercial development etc. Developers will have more certainty of what to include in their costings. The charging level set by the Council will have to be supported by evidence that sets out what infrastructure the proposed new development needs, and what that will cost and how it will be applied to that new development on a pro-rata basis. It is a much more logical system to follow and will introduce a greater level of consistency.

In respect of Section 106 Agreements, our negotiating position depends on the soundness of our plan and the evidence that we have to support the contributions that we are seeking. There have been examples of applications that have gone to appeal and we have been in situations where the Highway Authority, for example, has requested a certain level of contribution to fund pedestrian crossings, improvements to bus stop facilities. We have found ourselves in some difficulties at the appeal stage when the Planning Inspector has required evidence that this infrastructure is needed and that the costs in terms of the financial contribution are justified. In those circumstances, we have to be very firm with the County Council to ensure that they can show definitively that the development justifies that extra infrastructure.

Over the years, the development industry is getting sharper and consequently we have to be certain that we have a sound case. The level of costs awarded to a developer who wins an appeal has also been getting higher.

We therefore enter into negotiations before the application is made and explain to the developer fairly and clearly what the expectations are likely to be.

The areas that are more difficult are the smaller scale developments where we may get a Section 106 request from County Highways for a highways contribution, and we are not best placed to defend the need for that highway provision. Unfortunately, the Highways Authority does not always appreciate the need for a sound case when you are seeking a contribution from the developer.

Supplementary question by Cllr. M. Dunn

Is the Council hamstrung in some of its negotiations by the lack of policy, and are we as aggressive as we need to be in our negotiations with developers?

Answer by Tessa Lambert

We are assertive in our negotiations with developers. Negotiating skills are an integral part of a Planning Officer's day to day work. Where you have an adopted Local Plan it is a case of saying this is the policy and this is the expectation.

In the case of our open spaces strategy which becomes effective shortly, we can provide developers with a document which gives a clearly calculated formula for asking for a contribution of 'x' amount per dwelling to deliver for the authority as a whole the plans that we have for provision of new open space, provision of new allotments etc. It is all fully explained and that is your evidence base.

If the developer does not accept the open space argument we will refuse the application, and if there is an appeal the strategy will be put to the test.

Supplementary question by Cllr. M. Gage

If we were negotiating a major extension of development (say 150 to 200 houses) on an area that is not currently developed and we are seeking funds from that new development, but we were going to put the money towards regenerating the facilities for extending schools, enhancing a health centre, would we be in a much stronger situation if the policy that you laid out in the development plan actually listed those items?

Answer by Tessa Lambert

Yes – you would be in a much stronger position if the policy basis was strong.

Question 3

Would you update the Committee on the current position regarding the implementation of the Community Infrastructure Levy (CIL) and the likely timescales involved?

Written answer by Stuart Kay

Draft Regulations have been put before Parliament; they are due to come into force on 6th April, but parliamentary approval is still awaited. The other key date is 6th April 2014, after which the use of S106 planning obligations for pooled contributions towards items that could be funded by the CIL will cease. By 2014, if the Council intends to use pooled contributions to fund infrastructure it will have to have an adopted CIL Charging Schedule in place.

The Community Infrastructure Levy

The Government is in the process of introducing a Community Infrastructure Levy, to be raised on new residential and commercial development to make a financial contribution to the infrastructure needed to support future levels of development within each local authority area. Draft Regulations have been put before Parliament to become effective on 6th April or soon after parliamentary approval.

Currently contributions in cash or kind towards community infrastructure needs are negotiated as part of a Section 106 Agreement. Typically contributions towards schools, highways, community facilities, open space and other facilities are only sought from larger residential proposals. An increasing number of local authorities are setting out local tariffs to cover major infrastructure requirements, although application of the tariff is subject to negotiation and agreement through the S106 process.

The CIL definition of infrastructure includes road and transport facilities, flood defence, education and medical facilities, sporting and recreation facilities, open space and

affordable housing. It is not a finite list, and other types of infrastructure such as district heating schemes, police stations and other community safety facilities could also be funded through CIL. For the time being affordable housing will continue to be funded through S106 agreements and not the CIL. This is to enable affordable housing to be delivered on site to form mixed communities

Setting the CIL Charge

CIL will introduce a structured administrative process, with “charging authorities” and “collecting authorities”. Most local authorities will adopt both roles. Under the CIL process, the Council will need to broadly identify:

the cost of infrastructure required to support development,

when development will come forward

what infrastructure is needed to support that development

what it will cost

what other funding sources are available to meet that cost, and

how much of that cost should be met by CIL.

The Council will have to decide which rate of CIL best meets the infrastructure costs, having regard to its effect on viability of development and the apportionment of CIL between different types of development and different parts of the District may be used to give flexibility to deal with varying land values, say between urban and rural areas.

Under the S106 process, charges are set out in supplementary planning documents which are subject to consultation but not to external examination. Under CIL, following consultation with local communities and stakeholders on their proposed CIL rates, the Council must publish a draft “charging schedule” which will set out the rate per square metre net floor space and which will be examined in public by an independent person (the CIL Examination). The examiner will have regard to costs, other funding sources, impact on viability of development and compliance with legislation; the examiner’s recommendations will be binding on the Council. The Council would not need to adopt the final schedule presented by the examiner, but could submit a revised schedule to a further examination. A schedule cannot be adopted if the examiner rejects it. The Charging Schedule has an unlimited ‘shelf life’, but it must be kept under review.

The CIL Charge

CIL will be applied to most buildings that people normally use - it will not be levied on buildings into which people do not normally or only intermittently go. There is no liability on structures or changes of use not involving an increase in floors pace. The charge becomes a local land charge and is enforceable by the Council.

There will be a 100 sq m threshold on non-residential development. Exemptions and relief from liability to pay CIL are set out - most development allowed under the General Permitted Development Order, charitable development by charitable institutions and the social housing element of a development will be exempt. The Council can choose to consider giving relief where, exceptionally, the imposition of CIL will make a development unviable.

CIL will be payable within 60 days of commencement, and an instalments option will be available where the charge is £10,000 or more. There are provisions for charging authorities to accept one or more transfers of land as a payment ‘in kind’ for the whole or part of a CIL charge on charges of £50,000 or more. Up to 5% of CIL receipts can be used

to fund the implementation and running costs of CIL. The Charging authority must prepare an annual financial report. The Regulations provide for a detailed enforcement package.

Relationship Between CIL and S106 Obligations

The Regulations place limitations on the use of planning obligations. They enshrine in law three of the Circular 5/05 policy tests - the obligation 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 to the development.

Section 106 obligations will be scaled back to dealing with site specific issues and affordable housing; they will not be able to provide for the funding or provision of relevant infrastructure and thereby secure double charging.

Transition arrangements

The use of planning obligations for pooled contributions towards items that could be funded by CIL will cease after a transitional period of 4 years. However, where an item of infrastructure is not locally intended to be funded by CIL, pooled planning obligation contributions may be sought from no more than 5 developments. Clearly local authorities wishing to introduce or continue with a tariff-based charging system will need to adopt CIL by April 2014.

The main opposition party has pledged to scrap CIL and instead introduce a new "single unified local tariff", with locally set rates published in local plans and a percentage of receipts raised by the tariff passed down to the community in which development takes place.

Supplementary Question by Cllr. G. Cohen

My understanding is that whatever Government wins power at the next election, Section 106 Agreements will be dead. Is that correct?

Answer by Tessa Lambert

Depending on the outcome of the election, we may be looking at either the progression of the CIL or something else.

In terms of Section 106 Agreements, if we are looking at the CIL for the future it is still the intention that Section 106 Agreements are maintained for provision of affordable housing so that would not form part of a CIL. It would need to be acquired through a planning obligation as it is now.

Section 106 Agreements will not be dead, but they might be reduced in scope and in respect of the contributions that they currently cover.

Supplementary Question by Cllr. M. Dunn

Do you have any view concerning the "single unified local tariff" proposed by one of the main opposition parties, in place of the CIL?

Answer by Tessa Lambert

I have not looked at the detail, but my understanding is that the policy is not formulated to

the level of detail that gives you enough information to form a conclusion. We would be governed by Government Guidance in the way that any "single unified local tariff" was implemented.

Question 4

As regards the reporting arrangements for the Section 106 Responsible Officers Group, are there any monitoring reports produced concerning Section 106 Agreement spends which are submitted to Management Board, Cabinet or the Planning Committee?

Answer by Sarah Burder

No. There are currently no formal reporting arrangements for the Responsible Officers Group. The Group provides a forum for discussion of general matters and internal procedures relating to Section 106 Agreements. I am more than happy to prepare formal reports and would welcome any guidance on the type of information that Members would like to see reported, and what those reporting arrangements should be.

Supplementary Question by Cllr. M. Gage

What do you see as the simplest way to inform Members. Would it be in the form of a spreadsheet similar to what was included in the Information Pack, for publication on the Council's web site?

(This leads to Question 6 which is taken below).

Question 6

We note that approved and draft Section 106 agreements are available on the Council's website linked to the relevant planning application. However, in the interests of providing easier access and greater transparency is it feasible to include on the website a central Section 106 agreement/data base so that Members, Parish/Town Councils, developers and members of the public can see, for each agreement, what site the agreement refers to, what the contributions were for and what progress has been made on spending those contributions?

Answer by Sarah Burder

I am happy that the bespoke database system that I use for monitoring Section 106 Agreements could be adapted and publicised on the Council's web site in spreadsheet form so that it could be viewed by both Members and the public, and updated quarterly. If members had any concerns on individual Section 106 Agreements, they are welcome to contact me direct for information and advice.

(Members commented that they felt monitoring reports should be submitted to the relevant Local Committee)

Supplementary Question by Cllr. G. Cohen

Would it be possible to include the status of each Agreement, and a journal of significant events?

Answer by Sarah Burder

It is possible. It's slightly easier in relation to financial elements and a spreadsheet would cover those aspects, but you have to be wary about raising expectations as Section 106 contributions will not be triggered until the development actually commences, or until the development reaches a certain stage.

Question 5

As regards the balances of those older Section 106 Agreements which are less specific in terms of outcome and location compared with more recent agreements, have the relevant approval processes been clarified in respect of the spending of those balances and, if so, can you update the Committee on what they are?

Answer by Sarah Burder

There are just a few older balances remaining. There is always a need to refer to the specific wording of the Agreements to ensure that this is complied with. All Agreements may be different in that they have been individually negotiated with the developer.

However, there is little guidance on what approval processes should be followed to actually utilise the Section 106 funds. Where there is an element of ambiguity or a decision needs to be made the matter is referred to the relevant Local Committee.

I would welcome any further guidance the Committee may wish to make on this point.

Supplementary question by Cllr. A. Shelton

The spreadsheet set out on page 46 of the Information Pack includes the Section 106 Agreement by Barrett Homes Ltd on land at Nether Court, Halstead and includes a note to use the Section 106 contribution within 10 years. Is it still in time?

Answer by Sarah Burder

There are no actual repayment provisions within this Section 106 Agreement – so the balance of just over £5000 is still available for use. I put the note on the schedule in the interests of good administration as obviously we still need to spend the monies within a reasonable timescale.

Question 7

Two of the consultation responses received from Parish/Town Councils (Black Notley and Sible Hedingham) request consultation on any draft Section 106 Agreements relating to developments in their respective Parishes.

Would you let us have your comments as to whether it is feasible/practicable to consult Parish/Town Councils on draft Agreements?

Answer by Tessa Lambert

Where we have a planning application that is received with a draft Section 106 Agreement we will notify the Parish Council as part of the standard consultation procedures and the Parish Council will have access to all the information.

For some larger developments, we will also advise the applicants to undertake some pre-application consultation including consultation with the local Parish Council and other interested groups. Some of the pre-application consultation will mean that Parish Councils may have an opportunity to look at the heads of terms of the draft legal agreement. It is quite proper at that stage for the Parish Council to indicate to us any comments that they may have on the draft agreement, and we would take account of those comments in the whole planning application process. We would explain to the Parish Council why we were not able to agree with their comments if that was the case.

It is difficult to do much more than that because once the planning application is received and it is accompanied by a draft Section 106 Agreement it tends not to change too much before you get to the point where a decision is made. However, where you receive a planning application and the need for a Section 106 Agreement emerges in the life of the application we may only have 3 to 4 weeks to make a decision on the application. The timescale gives us some practical difficulty in involving the wider community.

As a general principle, it is not possible for the Parish Council to be a party to the negotiation of a Section 106 Agreement as the process is not designed for that, but Parish and Town Councils do have an input as a statutory consultee to the planning application process. It is not feasible for us to involve Parish Council representatives in discussions with developers, because most of that discussion should have taken place anyway, and we are really quite constrained on the scope that we have on these matters. For a Parish Council to make a suggestion that we should achieve 'x', there has to be a policy basis for showing that the development justifies 'x'.

Question 8

Does the Council maintain a central record/register of items highlighted by Parish/Town Councils for community/infrastructure improvements so that they can be identified as priorities and taken into account when negotiating any Section 106 Agreements in that respective Parish Council's area (for example, see items highlighted by Terling and Fairstead Parish Council in its submission)?

Written answer by Stuart Kay

The Council does not maintain a central record/register of community/infrastructure improvements.

Currently Parish/Town Councils are consulted on all planning applications and have the opportunity to identify what community/ infrastructure improvements they consider to be required. These may be taken into consideration during negotiations on Section 106 Agreements.

Under the CIL the Council will consult with infrastructure providers and draw up a list of infrastructure projects or types of infrastructure on which it intends to be wholly or partly funded by CIL. This will provide a central record of a wide range of community and other infrastructure requirements as a basis for compiling the Charging Schedule.

Community or infrastructure improvements highlighted by parish and town councils must be deemed necessary to support the development proposed. As with S106 Agreements, CIL is about making proposed development acceptable - therefore any local infrastructure proposal must be justified by the development it is required to support and cannot address current deficiencies.

Question 9

As regards the point raised by Feering Parish Council concerning the cumulative effect of small developments on current infrastructures where no Section 106 Agreements are appropriate, is this particular issue one of the items that could be potentially addressed by the proposed CIL?

Written answer by Stuart Kay

One of the justifications for introducing the CIL is that at present a significant proportion of development is not contributing to the costs of providing infrastructure because of thresholds set on Section 106 contributions sought by most local authorities. The CIL will be chargeable for each new dwelling, and for commercial development the threshold will be just 100 sq m. So yes, CIL is designed to ensure that the cumulative effects of small developments are taken into account in the funding of infrastructure. The Council's Open Space Supplementary Planning Document, which comes into force on 1st April, includes provision for a tariff to be applied to individual new dwellings, to be secured through S106 Agreements.

Officers then commented briefly on those issues/requests/suggestions raised by Parish/Town Councils during the consultation process for this study which had not already been covered by Officers in their written submissions set out in the Information Pack.

Feering Parish Council

(ii) Can section 106 monies that cannot be used for the designated purpose be channelled back to the Parish Council for local use?

Answer by Sarah Burder

No. The monies have to be used for the purpose specified in the Section 106 Agreement. However, in my four years in this post I have never had occasion to return money to a developer because we are unable to spend it for the specified purpose.

(iii) can section 106 monies relating to development in one District be used to improve the infrastructure in an adjoining District which is affected by the impact of the development?

Answer by Sarah Burder

In theory, you can do this, but the circumstances would be quite rare. The local planning authority would be the enforcing party so any financial contribution could only be paid to the local planning authority in question. You would have to have a separate arrangement to ensure that the contribution was correctly applied for the purpose that it was intended for.

Supplementary Question by Cllr. R. Ramage

Did that kind of arrangement apply at the River View development at Witham with Maldon District Council?

Answer by Darren Roberts

I do not believe that this development was subject to a Section 106 Agreement, but was the result of partnership working with Maldon District Council in connection with the extra care housing provided at that site which was made a condition of the planning permission.

Rivenhall Parish Council

Raised the issue that it does not gain any benefit from developments in the Parish particularly the extension to the Eastways Industrial Estate.

Answer by Darren Roberts

At Eastways there are four areas of new development, and the extension to Eastways is in Rivenhall Parish, but it is one long road which eventually finishes at the Colchester Road junction with Eastways in Witham Town. On each of the areas of new development, the County Council requested a sum of £10,000 to improve the Colchester Road junction to make better for HGVs and to improve highway safety. This case illustrates that Section 106 Agreements need to be reasonable and proportional to the development, and to make what would otherwise be an unacceptable development into an acceptable one.

Rivenhall Parish Council had wanted improvements to a cycle lane on the A12, but you could not really link the need for that to the new development. Consequently, we could not justify asking for the developer for a contribution. We did get some money for a cycleway that eventually links up to Rickstones School which is in Rivenhall Parish, so the Parish Council do get some benefit.

Sible Hedingham Parish Council

(i) Can the Parish Council be invited to be a party to appropriate Section 106 Agreements?

(Answer already covered by Tessa Lambert in her answer to Question 7)

(iii) Can the Parish Council be given a copy of the final Section 106 Agreement as a matter of course?

Answer by Sarah Burder

All completed agreements are put on the Council's web site and can be accessed by Parish Councils. The Parish Council is also notified when the planning application has been approved.

(v) Can Section 106 monies be allocated for the..... provision of allotments?

Allotments are covered in the Council's open space strategy, so the answer is yes we can require a Section 106 Agreement to make a contribution to allotments.

(vii) (a) What is BDC policy concerning Section 106 monies arising from the construction of wind turbines? (b) approximately what financial contribution can be expected for each wind turbine and what can this be allocated to?

Answer by Darren Roberts/Tessa Lambert

There is no specific policy regarding wind turbines and it would have to be considered on a case by case basis.

If it is a completely unacceptable development it would simply be refused.

If it was an acceptable development it may not possibly need a Section 106 Agreement, and may be approved subject to conditions. There may be circumstances where a sum of money may be required (for instance to mitigate noise), but you would have to consider carefully how Section 106 monies would be spent to benefit the community.

In this District, we have had only applications for 15m high wind turbines and not the very large and tall type of turbine that have been built in Norfolk.

Again, the five tests laid out in the Government's guidance would apply to any Section 106 Agreement.

If the impact of the wind turbine needs mitigating and that mitigation cannot be got through planning conditions then we may seek a Section 106 Agreement.

It would be difficult to put a figure on the financial contribution that would be included in a Section 106 Agreement for each wind turbine.

Witham Town Council

The Town Council highlights that it would welcome the opportunity for decisions on how Section 106 monies are spent to be devolved to the Town Council.

Answer by Tessa Lambert

We do realise that there are things we could do better in terms of involving Town and Parish Councils in decisions about how monies are spent, but that is not the same thing as devolving responsibility to them.

If, for example, we had a public art financial contribution we would need to seek advice on what would be most appropriate. We do not have an in-house source of advice and would therefore look to the local community through local interest groups, the Parish/Town Council and other routes for ideas as to what might be the best way of using this financial contribution to provide some public art. We are probably not getting that right at the moment.

The areas where the Parish Councils would have that sort of role are quite limited, because, for instance, if we already have a cycle scheme that has been achieved through a Section 106 contribution that would go through the relevant Local Committee anyway.

In summing up, the Chairman indicated that running through the Committee's enquiries there appeared to be a perception amongst members and Parish/Town Councils that Officers are constructing Section 106 Agreements with developers without sufficient consultation. It was also notable from the answer given to Question 8 that the Council does not maintain a central record/register of items highlighted by Parish/Town Councils for community/infrastructure improvements (including improving existing infrastructure) that could be taken into account when negotiating Section 106 Agreements.

Tessa Lambert indicated that the Council's open spaces strategy had tried to formulate a programme of works that will deliver new open space and associated infrastructure, and

these are then costed and worked back to a figure that will apply to each development. Possibly for the future a single proposed dwelling would need to make a Section 106 type contribution towards the provision of open space for the District as a whole. This could build up a fund and we could then look to the community to identify where the greatest need is in terms of open space provision, and make the process more transparent in that particular area.

In terms of an education contribution that a housing scheme would require, that is set out by the County Council based on a set formula.

Tessa emphasised that the purpose of the Section 106 Agreement is not to directly deal with any deficiencies in infrastructure that a Parish/Town might have, but that whatever the Agreement delivers has to be directly related to the development.

The Village Plan and Design Statement routes may give a focus for identifying the need for infrastructure improvements within a Parish/Town, and that would also provide the beginning of an evidence base.

The Chairman commented that the session had been particularly useful, and that Members would take into account the information that they had received this evening when determining what recommendations to make to Cabinet.

In closing the session, the Chairman thanked the Officers for attending the hearing and for giving full and frank answers to the Committee's questions.

The meeting closed at 9.15pm

M. Gage
Chairman

Appendix

Question 1 - Brief History of Section 106 Agreements – Malting Lane, Witham

Maltings Lane Progression and Section 106 requirements

Original Permission

Submitted 1991
Development Brief 1996
Approved 2000

Section 106 obligations:

Affordable houses – 4 acres of land + 6 acres at 50% market value
Community Centre - £275,000 contribution
Strategic play Area
Open Space – 28 acres; commuted payment for maintenance
Town Centre/ Cycleways - £50,000
Land for Church, School, Health Centre
Construction Code of Practice
Highways – Timing of Spine Road (300 dwellings)
A12 Contribution - £750,000 (subsequently spent on other improvements in Witham)
Not less than 800 and not more than 850 dwellings

Subsequent applications for Housing – 845 built or under construction

Outline Extension (06/1143/OUT) – Additional 218 houses, community area, business park, playing fields, school, etc
Submitted 2006
Approved November 2008

Section 106 obligations:

30% affordable
Highway works to be constructed including improvements to Spinks Lane crossing, pedestrian facilities on Hatfield Road, new bus stops (already provided)
Travel and Marketing Pack to be provided to occupiers
Education Contribution
Art Contribution - £100,000 or work of art – prior to 50th dwelling
Off site open space - £40,000 prior to 107th dwelling
Open Space to be transferred to management company
Community Hall – land transferred – payment of £690,000 to council- prior to 1st dwelling
Place of Worship Site – 0.2 hectares- must be erected in 10 years (i.e by 2019)
Health Centre – evidence of contract by May 2010
Playing Fields – 2ha or more – football pitches, tennis courts, changing facilities. Layout after 101st dwelling
Public Transport Contribution - £45,000 to the Council – prior to 1st dwelling
Traffic Management Contribution - £41,000 – prior to 1st dwelling
Cycle Way Contribution - £50,000 to County Council – prior to 1st dwelling
Bus Service Improvements – Commencement of a bus service – prior to 1st dwelling
Retail Units to be provided – prior to 50th dwelling, comprising a 1115sqm food store (roughly half the size of Tesco, Witham) and 3 x further retail units of 140 sq m

Business Park – application for at least one hectare of the business park to be made within 12 months of the commencement of development

Subsequent application for School – pending consideration

Application for road infrastructure approved in 2009 and this has now been built

No applications for housing or other built development to date.

Note most dates ‘kick in’ when building of residential units start. Because no applications have been received there is uncertainty over when this will be, regular contact is made with the representatives of the landowners.

Darren Roberts, Development Control Area Manager, Development Services, Development Control

Minutes

Overview and Scrutiny Committee



7th April 2010

Councillors	Present	Councillors	Present
J. Baugh	Apologies	A. M. Meyer	Yes
G. Cohen	Apologies	R. Ramage	Yes
M. Dunn	Apologies	D. E. A. Rice	Apologies
Dr. R. L. Evans	Yes	A. F. Shelton	Yes
M. Gage (Chairman)	Yes	Mrs. J. Smith	Yes
J. E. B. Gyford	Yes	F. Swallow	Yes

Parish/Town Council witnesses in attendance:

Cllr. Tony Hayward, Great Bardfield Parish Council
Cllr. Maggie Pawsey, Gosfield Parish Council
Cllr. Tony Strudwick, Gosfield Parish Council
Cllr. Shirley Diver, Halstead Town Council
Cllr. Joe Burlo, Pebmarsh Parish Council
Cllr. Jack Prime, Rivenhall Parish Council
Adrian Corder Birch, Clerk to Sible Hedingham Parish Council
Cllr. Phil Barlow, Witham Town Council

Sarah Burder, Section 106 Monitoring Officer (and Chair of the Section 106 Officers Group) was also in attendance.

73. CLLR. DR. R. EVANS

The Chairman welcomed Cllr. Dr. R. Evans to the meeting following his recent operation and was pleased to note that he was making a good recovery.

Cllr. Evans thanked the Committee for its card and for sending him best wishes.

74. DECLARATIONS OF INTEREST

INFORMATION: There were no interests declared.

75. MINUTES

DECISION: That the minutes of the meeting of the Overview and Scrutiny Committee held on 31st March 2010 be approved as a correct record and signed by the Chairman.

76. QUESTION TIME

INFORMATION: There were no questions asked or statements made.

77. SCRUTINY HEARING WITH PARISH REPRESENTATIVES – STUDY INTO HOW CONTRIBUTIONS FROM SECTION 106 AGREEMENTS ARE MANAGED BY THE COUNCIL

Cllr. Gage welcomed the Parish/Town Council representatives to the meeting.

He referred to the Question Plan for the Scrutiny Hearing that had been previously circulated to witnesses and which would form the basis for tonight's session.

He also reminded the Committee of its terms of reference for this study, and invited Sarah Burder to summarise the key elements of Section 106 Agreements.

Sarah reminded the Committee that legal agreements which secure planning obligations make a scheme - which is otherwise unacceptable in planning terms - acceptable. The relevant guidance is contained in Government Circular 05/2005 and states that Section 106 Agreements must be:

1. relevant to planning;
2. necessary to make the proposed development acceptable in planning terms;
3. directly related to the proposed development;
4. fairly and reasonably related in scale and kind to the proposed development; and
5. reasonable in all other respects.

Points 2, 3 and 4 of the guidance became law when the statutory instrument which deals with the Community Infrastructure Levy (CIL) was passed on 6th April 2010.

There are a number of specific things that a Section 106 Agreement can do as follows:-

- * restrict the development or use of land in a specified way;
- * require specific operations or activities to be carried out in, on or under the land;
- * require the land to be used in a specific way;
- * require a sum or sums of money to be paid to the local planning authority.

Sarah emphasised that the focus should not be on the benefit that a Section 106 Agreement can procure, but rather it is about what is necessary to mitigate the effects of the development and to make the proposal acceptable as a good quality development in land use planning terms.

The Chairman then referred to the Question Plan and invited the Parish/Town Council representatives to answer the questions.

A summary of the question and answer session is set out below.

Question 1

Are there any additional points or information that you would like to add to the information that you have already provided in your Parish/Town Council's original submission? (if your Parish/Town Council did not respond to the initial consultation, you are welcome to make some brief opening comments should you so wish)

Answer to Question1 by Cllr. Tony Hayward, Great Bardfield Parish Council

I refer to the written submission by the Clerk of Finchingfield and Great Bardfield Parish Councils that was included in the Information Pack and would expand on a couple of issues. There were two developments (now somewhat historic) that were built in the Great Bardfield/Finchingfield area involving Section 106 Agreements. These had caused concern at the time in that the Agreements did not appear to be operated as intended.

The first was a development involving a Section 106 Agreement in Northampton Meadow which extended beyond the development line, and included an element of affordable housing. It was thought that there was to be a footpath included in the development which would link this development to the High Street, but this was apparently negotiated out of the deal although the Parish Council was not aware of this at the time. The affordable housing element when completed came under the control of the Blackwater Housing Association and we understood that the Parish Council would have the opportunity to be involved in the recommendations for allocations, although nothing was heard. Subsequently, ownership of the housing passed to South Anglia Housing Association and then to Circle Anglia Housing Association. It was not until the latter association took over and following further enquiries from the Parish Council that appropriate arrangements were put in place to consult the Parish Council.

The second case refers to a development at Finchingfield Nursery where we understood that a dwelling was built with a Section 106 Agreement tying its occupation to an agricultural holding. It appears that over time the Section 106 Agreement was overturned although the Parish Council knew nothing of it and were not consulted.

On page 5 of the Information Pack, there is a reference to provisions in the legislation for Section 106 Agreements to be modified with the agreement of all the parties, but this does not appear to have happened in this case.

Finally, I am interested in how the system works in relation to Section 106 Agreements as I have been invited to join the Housing Department's Rural Panel.

Comments by Sarah Burder

I am not specifically familiar with the two cases.

However, historically, there have been problems in relation to Housing Associations involvement in Section 106 Agreements in the context of affordable housing, where one Housing Association has been superseded by another. In connection with the Rural Review, Tim Lucas will be reviewing past agreements with a view to ensuring that the type of problem referred to by Councillor Hayward does not recur.

The Parish Council may not have been specifically consulted in relation to the Finchingfield Nursery case unless they were a specific party to the Section 106 Agreement.

Comment by Cllr. A. Shelton

There were similar problem at a site at Bures Hamlet involving Circle Anglia Housing Association.

I hope that some formal indication would be given to Members when the 'tidying up' exercise by Tim Lucas has taken place. We need to ensure in the context of Section 106

Agreements that there is a link between affordable housing in rural areas and the local Parish Council, and that all parties adhere to the Agreement as made.

Comment By Sarah Burder

Whilst all Section 106 Agreements can be negotiated and varied, the various parties have to agree to any amendments.

(Cllr. P. Barlow joined the meeting at this point).

Answer to Question 1 by Adrian Corder Birch, Sible Hedingham Parish Council

Insofar as Sible Hedingham Parish Council is concerned, Section 106 Agreements have been under consideration for some time. Myself and Cllr. Beavis the Chairman of the Parish Council, met with Sarah Burder approximately 18 months ago and went through all the Section 106 Agreements in the Parish which was extremely helpful.

Pages 26 to 29 of the Information Pack details the response of the Parish Council to the consultation and covers 14 points.

The additional comments that I would make or issues that requires highlighting are as follows:-

1. (The Premdor Site) The planning application is still awaited. It has been agreed in principle that the Parish Council will be a party to the Section 106 Agreement because of certain land transfers that will take place.

Comment by Sarah Burder

In this particular case, the Parish Council is to benefit from those parcels of land and that is the reason for the Parish Council being a party to the Agreement. It would not be practical or feasible to make Parish Councils a party to every Section 106 Agreement.

3. (Parish Council wish to be consulted upon and have site of all draft agreements) The wording of Agreements has been so wide that education monies, for example, have been allocated to the whole Braintree District as opposed to benefiting exclusively schools in Sible Hedingham.

Comment by Cllr. M. Gage

We note the point you are making. The County Council is the education authority and we understand that they are tightening up on how the money should be spent. However, we do follow the requirements (which are formula based) and guidance of the education authority in relation to the contribution that it requires from Section 106 Agreements and how it should spent.

Comment by Cllr. F. Swallow

I think it is important that we should consult the Parish Councils on Section 106 agreements where it is practical to do so.

I accept that we have to follow the advice of the education authority in respect of its requirements as they are the experts in that particular field.

Comment by Cllr. M. Gage

The Government is introducing a Community Infrastructure Levy (CIL) to be raised on new residential and commercial development to make a financial contribution to the infrastructure needed to support future levels of development so that developers will know up front what to include in their development costings.

The CIL definition of infrastructure includes road and transport facilities, flood defence, education and medical facilities, sporting and recreation facilities, open space and affordable housing.

Comment by Cllr. J. Gyford

Clearly, the Parish Council as I understand it wanted to tie the financial benefit to one or more specific schools within the Parish. Are we being told that this is illegal and cannot be done under any circumstances without the law being changed, or are we being told that this is not county policy. Can we clarify the position?

Comment by Sarah Burder

I am not totally familiar with the County Council's policy, but the Section 106 Agreement in relation to education contributions will reflect the County's policy. The more recent wording that is often used in Section 106 Agreements will normally specify that the money is spent 'in the vicinity of the site', and often split between primary, secondary and pre-school elements.

Comment by Cllr. Gyford

The crucial question in this particular instance is on the definition of "in the vicinity of" which is presumably relevant to both the existing legislation and the new legislation, and whether that is in accordance with what the Parish Council assumed to be the case.

Comment by Cllr. Dr. R. Evans

The issue of the Section 106 Agreement wording has been raised by Mr. Birch – why was the wording not drafted as tightly as it should have been. The wording is obviously crucial in any Section 106 Agreement.

Comment by Cllr. M. Gage

This is one of the issues that we need to look at further in the context of our study.

Comment by Adrian Corder Birch, Sible Hedingham Parish Council

I feel that Sible Hedingham would welcome the inclusion of the words "in the vicinity of the site", because the old Section 106 Wimpey Agreement referred to in the written submission indicated "money for education will be allocated for the whole of the Braintree District". That is the wording that the Parish Council disagrees with. The fact that the County Council is tightening up on the wording is to be welcomed.

Comment by Sarah Burder

Over recent years, the wording has improved and Officers have learnt from their experience with drafting agreements that the wording needs to be precise particularly given that developers themselves are much sharper in their negotiations.

Comment by Joe Burlo, Pebmarsh Parish Council

It occurs to me that the term "in the vicinity of the site" might have an explanation or something similar to the local connection wording. You have very specific items in terms of priorities that define the local connection and these priorities can cascade down in your definition of local connection.

Comment by Sarah Burder

The contributions provided for in a Section 106 Agreement are only triggered once the development has commenced. If you are too specific with the wording there are dangers that what was considered reasonable and relevant in relation to priorities at the time the Agreement was made may no longer be appropriate if the development was started some years after the planning permission was granted and circumstances have changed.

4. (Parish Council to have a copy of the completed Section 106 document) Access to Section 106 Agreements has improved.

Comment by Cllr. M. Gage

Completed Section 106 Agreements are available on the Council's web site.

5. (more effective control by BDC in collecting Section 106 Agreement monies) It would be helpful if the schedule showed which contributions need to be repaid if not used, and those that do not.

Comment by Sarah Burder

In the past, there have been instances of delays in the Council collecting monies. This is mainly due to the slump in the housing market where we have negotiated and allowed some leeway to developers who are experiencing cash flow difficulties.

7. (Section 106 monies –artwork) The Council has responded to this item indicating that the money will be used for a publicly accessible publication that may include a pottery trial. This is an example of a variation to a Section 106 Agreement.

8. (Query as to which Officer in BDC is responsible for Artwork items included in Section 106 Agreements) The Council has responded indicating that Robert Rose has now taken over this responsibility.

9. (Publication of information on section 106 Agreements) It would be useful to have a schedule similar to the one at the back of the Information Pack that was sent to Parish Councils annually.

Comment by Sarah Burder

I indicated at an earlier Scrutiny Hearing with Officer Witnesses last week that I would be happy to publish the schedule on the Council's web site and for this to be updated quarterly.

10. (Public Inquiry – 133/135 Swan Street, Sible Hedingham - Loss of Highway contribution) The Parish Council would always be prepared to attend a public inquiry to give evidence if required, and similarly Essex County Council if called upon to do so.

Comment by Cllr. A. Shelton

It does not seem unreasonable for the Parish Council to expect that at a Public Inquiry the Council would ensure that sufficient evidence is produced in support of the Council's case.

11. (List of community facilities to which Section 106 Agreement monies can be applied). The Information Pack supplied by Steve Bore indicates that the list also includes flood defences and flood prevention. I would like the Council to note that Sible Hedingham was one of those Parishes which does suffer greatly from flooding, and although 3 flood lagoons have been provided other parts of the village are still susceptible to flooding. In appropriate Section 106 Agreements in the future, the Parish Council would be grateful if contributions were included for flood defences and flood prevention.

Comment by Cllr. M. Gage

We take the point and will draw this to the attention of the Planning Department who will; need to liaise with the appropriate Agencies when negotiating Section 106 Agreements.

12. (Provision of Section 106 monies for street lighting and provision of allotments)

Comment by Sarah Burder

Yes – Section 106 monies can be provided for both of these.

13. (Apart from transfer of land what other S106 benefits in kind can be provided)

Comment by Sarah Burder

These can include:-

- (a) Safe pedestrian access, amenity space and open areas for use of the public, including formal recreation space, together with commuted sums for their maintenance;
- (b) Community facilities including community premises, healthcare, education facilities, children's play space and equipment, crèches, public toilets and recycling facilities;
- (c) Affordable housing;
- (d) Access, public transport improvements, shopper's parking and provision for pedestrians and cyclists, and green travel plans;
- (e) Conservation and enhancement of historic buildings, open space and the natural environment;
- (f) Improvements to utility infrastructure.

14. (BDC Policy – Section 106 Agreement monies –wind turbines)

Comment by Sarah Burder

The Council has no specific policy regarding wind turbines and each case would be considered on its merits.

Comment by Cllr. Jack Prime, Rivenhall Parish Council

In connection with Section 106 agreements associated with industrial type developments, could Section 106 monies be used for allotments.

Comment by Sarah Burder

The issue would be whether you would need to provide allotments to mitigate the effects of the development and whether such a provision complied with the five tests laid out in the Government Guidance ie. relevant to planning; necessary to make the development acceptable in planning terms; directly related to the proposed development; fairly and reasonably related in scale and kind to the proposed development; reasonable in all other respects.

Comment by Adrian Corder Birch, Sible Hedingham Parish Council

As regards page 11 of the Information Pack (Section 10 – 2nd sentence), I would prefer to see Responsible Officers “ordered” rather than “encouraged” to work more closely with Members, Parish and Town Councils in connection with expenditure of Section 106 receipts.

Comment by Cllr. M. Gage

I feel this is more of a semantic point, but I think the Council would prefer the use of the word “encouraged”.

Comment by Adrian Corder Birch, Sible Hedingham Parish Council

As regards the provision of future maintenance costs, could this be used more in future Section 106 Agreements?

Comment by Sarah Burder

Officers will enter into negotiations with developers and will endeavour to use their negotiating skills to try and achieve the best deal including the issue of maintenance costs, but it has to be agreed by both parties.

Comment by Cllr. P. Barlow, Witham Town Council

From my experience there is always a difficulty in seeking to fund essential revenue expenditure through Section 106 Agreements. In respect of the Great Notley Village development, for example, a number of areas were set aside for recreational/amenity land. A certain sum was included for ongoing maintenance for grass cutting etc., but over a relatively short period of years inflation reduced the sum available in real terms.

I would sympathise with Officers trying to negotiate a set of revenue sums out of what is essentially a capital pot. I can understand why Officers might not want to go along that route. You should either negotiate maintenance costs for a set period for a set sum or require maintenance to be carried out for a set number of years, but developers would be reluctant to give you a blank cheque.

Comment by Adrian Corder Birch, Sible Hedingham Parish Council

As regards variations to Section 106 Agreements, this occurred recently in Sible Hedingham when an agreement provided for artwork of a comparatively small sum on a small site. It was agreed that the developer pays the same contribution, but towards a larger project elsewhere in the village. Could those variations be included in the quarterly schedule to be provided on the Council's web site so that Parishes are aware of them?

Comment by Cllr. M. Gage

Yes – we will include variations in the schedule.

Answer to Question 1 by Cllr. Phil Barlow, Witham Town Council

My experience is based on the periods when I was a member of the County and District Councils.

In my view, the more consultation that can be undertaken at Parish or Town Level the better will be the final Section Agreement, because it is members at that level than can provide much of the detail that will help to 'lubricate' a development.

At County level, I found that there was an aloofness and almost a failure to either comprehend or to explain why such huge demands were made on the Section 106 budget. I do not have any problem in respect of the Community Infrastructure Levy being directed at strategic developments, and it is easy to appreciate, for instance, that contributions are needed for highways.

The problem I experienced at County Hall and continue to have is in connection with education. To a certain extent you can appreciate that a development will generate a demand for extra school places. However, in many cases I received the strong impression that Officers were using Section 106 money to replace what should have been the spend that they received through Government Grant and the Council Tax. I think that works to the detriment of other aspects that the District Council would want to lever in, and what the Parish Council would want to see by way of a little 'icing on the cake'. For example, the Maltings Lane development at Witham has taken a long time to come to fruition and a sum of money was set aside to build a school. The school that is to be built is to house the children not only generated from the Maltings Lane development, but also to replace an infants school. I think there is evidence to indicate that the County Council levered in more money than legitimately they could have asked for.

Although I understand that the Agreements have been tightened up, there is still some discretion and I think pinning down County Council Officers is no bad thing.

Comment by Cllr. Dr. R. Evans

I agree with the point about consultation – you cannot have too much of it as long as it is constructive and based on fact. What matters is what occurs after the consultation. I am sure Cllr. Barlow will concur with my dissatisfaction with the developers concerning the delays in connection with the Section 106 Agreement regarding the place of worship site at the Maltings Lane site.

We need to secure the objectives within the Section 106 Agreement within a reasonable

timescale.

The Section 106 contributions need to benefit those Parishes affected by the development.

Comment by Jack Prime, Rivenhall Parish Council

Will the points raised by the Parish/Town Councils set out in pages 25 to 31 receive a specific written answer, and, if so, when?

Comment by Steve Bore, Scrutiny Manager

Yes – once the Committee's study has been substantially completed which is likely to be in May.

Comment by Sarah Burder

Section 106 contributions required by Essex County Council in respect of education are formula based taking into account the number of bedrooms per house in order to assess the likely increase in the child population. Whilst the County Council requirements are included in any Section 106 Agreement, District Council Officers have no direct involvement in calculating what those contributions should be.

Comment by Cllr. Phil Barlow, Witham Town Council

The biggest difficulty I experienced was in getting the County Council to be transparent.

On the issue of consultation on Section 106 Agreements, it is important to have early consultation as well as continual consultation.

If Officers have spent a long time either in preliminary or detailed negotiations with developers and then advise the Parish Council on what they feel is the best deal the Parish Council may not necessarily concur. It is important at an early stage to get the views of Parish/Town Councils.

Over recent years, developers now have pre-application discussions where they consult the Parish Council as part of that process. In such instances, the Parish Council has an opportunity to indicate what it is looking for in respect of that particular site. As a result of one recent consultation, the Town Council were able to indicate how it would like to see contributions to help develop the cycleway at the Blackwater Rail Trail.

If it is a significant development, I do not see why County and District Officers should not be doing the same thing so that they can get a view of what the local community is seeking.

On a different point, if you cannot fulfil the terms of an original Section 106 Agreement – what do you do? There is an example in respect of the Maltings Lane development where there was a sum of £750,000 set aside to build a new Witham to Hatfield Peverel link road to deal with highway safety issues. It had a time limit on it, but sum set aside was not capable of being converted into the required highway solution, and overtime the cost of the works had inflated to over £1m. The Witham Area Committee requested the County Council to consult the Council on what would be done with that money, and we gave them a shopping list of 5 priority areas. However, this was totally ignored by the County Council who decided to spend the money on a footbridge over the railway station.

The District Council as local planning authority needs to be aware that there appears to be a mismatch between engaging the community and responding to what they want. At County level, there appears to be a completely different strategic agenda. I hope your final report will reflect the fact that there is widespread dissatisfaction with the way that the County Council used the Section 106 money.

Finally, we asked over a year ago for a full set of accounts held for Section 106 Agreements by the County Council for highway purposes, and we have still to get the final detail.

Comment by Cllr. A. Meyer

As we are the local planning authority, can we exclude education items that are the responsibility of Essex County Council from Section 106 Agreements so that we only include issues that solely come under our responsibility and control and which will be used to benefit the local community?

Comment by Steve Bore, Scrutiny Manager

I do not believe that we can exclude the County Council in the way suggested, but I will seek clarification from the Planning Department.

(Since the meeting, the Planning Department has drawn attention to the following extract from Government Circular 5/05 concerning the scope of Section 106 Agreements.

"Local Planning Authorities should take the lead in negotiating planning obligations with developers. However, it is important that all sectors and tiers of government or other public agencies with legitimate land-use planning interests are involved at an appropriate level and in a focused way in providing an evidence base and setting planning obligations requirements. An integrated approach such as this will also ensure a coherent approach to the need for infrastructure created by a number of developments."

The County Council does have a clear interest in Section 106 Agreements as certain developments will give rise to a need for the infrastructure (e.g. highways and education) that the County Council has a responsibility to provide.

As a matter of good practice and to ensure an integrated approach, the District Council as local planning authority will always consult the County Council where appropriate concerning its requirements when negotiating Section 106 Agreements.)

Question 2

We would be pleased to receive any views you have on the effectiveness of the Council's liaison processes with Parish/Town Councils regarding expenditure of Section 106 contributions, and whether you feel there are any areas that could be improved?

As this issue had been covered in the debate on Question 1, Parish/Town Council witnesses concurred with Cllr. Gage's summing up that there was a need for the District Council to consult early, and to continue to consult throughout the Section 106 negotiations, and also to ensure that effective action is taken following the consultation.

Question 3

If the Parish/Town Council gains from a Section 106 Agreement in respect of equipment, infrastructure, or facility do you have the resources and capacity to maintain and refurbish these items in future years from your own budget?

Answer by Adrian Corder Birch, Sible Hedingham Parish Council

Insofar as Sible Hedingham Parish Council is concerned the answer is yes. We do have the necessary budget to meet maintenance costs for future years.

Answer by Tony Hayward, Great Bardfield Parish Council

We do, out of prudence, keep money specified for particular development for the future and we precept for a certain amount each year and put it towards that fund. Where there was the opportunity to gain some money from the developer, and where it was felt appropriate for the Parish Council to contribute to that proposal we would take the opportunity to consult the community. There is the opportunity of greater partnership between the Parish Council and the District Council in this respect.

Question 4

Should the item gained from the Section 106 Agreement be owned by the Parish/Town Council or the District Council?

Answer by Jack Prime, Rivenhall Parish Council

Rivenhall has never had any Section 106 monies, but should we ever receive any then I am sure that if it was something that the Parish Council could maintain it would like to own the item. However, if it was playground equipment I understand that BDC generally takes responsibility for that anyway.

Answer by Tony Hayward, Great Bardfield Parish Council

It would depend on the nature of the development proposed, but if it was an item in the control of the Parish Council then it would wish to own it. If it was a large project which would require monitoring, scrutinising and enforcing then it is something that has to be dealt with on a partnership between the Parish and the District Council who would have the necessary staff resources.

Answer by Phil Barlow, Witham Town Council

To a certain extent it is dependant on the level of the overall ownership that the Parish or Town Council may have. If it has foisted upon it an item gained from a Section 106 Agreement in respect of which it has had no opportunity to negotiate or been consulted, then it may be reluctant to own it. Early, upfront and continuous dialogue is the key, and would provide greater clarity of the role of principal authorities.

Answer by Joe Burlo, Pebmarsh Parish Council

On the question of ownership, I feel the Council should always maintain the insurance policy in respect of any Section 106 item (eg playfields, play equipment) because Parish

Councils cannot afford to insure them.

Comment by Phil Barlow

It would surely be difficult for the District Council to insure an item if it did not own it.

The insurance held by the Town Council are for assets that we own.

Comment by Adrian Corder Birch

There are three major insurers that specialise in insurance for Parish and Town Councils. On behalf of the Essex Association of Local Councils, the Essex County Council negotiated a scheme with an insurance company that gave large discounts to Parish and Town Councils and offered very competitive rates.

Question 5

Do you compile a list each year i.e. Public Works or Public Choices for infrastructure gain or maintenance?

Answer by Adrian Corder Birch, Sible Hedingham Parish Council

We do maintain a list for Sible Hedingham Parish Council which was started three years ago.

We also have a list of assets which will include some Section 106 items. We have to prepare certain lists of assets for both audit and insurance purposes.

Answer by Tony Hayward, Great Bardfield Parish Council

We do have a Parish Plan which would include a list.

Question 6

Do you consult the public in your Parish/Town Council area about preferences on improvements and planning gains?

Answer by Phil Barlow, Witham Town Council

Witham Town Council has conducted two comprehensive public consultations and has updated the Town Plan so in that respect we have something that might be termed a wish list. However, for a town the size of Witham comprehensive public consultations can be quite expensive.

Comment by Sarah Burder

We have worked with two developers recently who have gone to great lengths to make approaches and to discuss matters with the relevant Town/Parish Council. Rayne Parish Council is one of the Council's involved and has worked closely with the developer. The public consultation has been mainly at the developer's expense and concerns a piece of art to the value of £30,000 that is required to be provided as part of a Section 106 Agreement.

Comment by Jack Prime, Rivenhall Parish Council

One opportunity that each Parish/Town Council has each year is the annual Parish Assembly when all the Parishioners can put forward their views on anything and everything including developments, plus you also have the Question Time session at every Parish Council meeting.

Comment by Cllr. Dr. R. Evans

When I was served on the Town Council I used to find the monthly surgeries a very valid and important source of information where members of the public could talk to their elected Town Council representatives, ask questions and put forward suggestions. These were very useful and I would like to see them promoted as widely as possible.

Question 7

Do you feel that it would be useful for the District Council to hold a training session/workshop on the subject of Section 106 Agreements and the new Community Infrastructure Levy?

There was a general consensus in favour of the District Council holding a training session/workshop.

Comment by Cllr. A. Shelton

I feel that in addition the Parish Clusters should also be used as a means of communicating and disseminating information on Section 106 Agreements and the new Community Infrastructure Levy.

Comment by Tony Hayward, Great Bardfield Parish Council

Some of the Parish Clusters work better than others, and I believe the Leader of the District Council is questioning their format and effectiveness.

I believe a dedicated evening session/workshop would be the best option.

At the conclusion of the session, the Chairman Cllr. M. Gage thanked the Parish/Town Council representatives for attending and for their contributions, and invited any final comments.

Comment by Cllr. Joe Burlo, Pebmarsh Parish Council

In relation to question 2, Pebmarsh Parish Council has a sum of money that is being held by the District Council under a Section 106 Agreement for play equipment. It appears that the Parish Council has to spend its own money first and then seek reimbursement which is not an ideal arrangement from the Parish Council's standpoint.

Comment by Sarah Burder

The money is paid to the District Council in the first instance in its capacity as the local

planning authority. In Pebmarsh, the District Council does not have any sites that it owns on which to place the play equipment and in those instances we ask the Parish Council to provide the site and to install the equipment. We will then reimburse the Parish Council. The arrangement is to safeguard the District Council's position in that we need to ensure that the money has been properly used for the purpose specified.

If this causes any financial difficulty to the Parish Council, I would be happy to discuss this with the Parish Council to find a way forward. For instance, the invoices from the company installing the play equipment could be sent direct to the District Council for payment.

On behalf of the Town and Parish Council representatives, Tony Hayward thanked the Chairman, Members of the Committee and Officers for the opportunity that had given to meet with the Committee and to discuss Section 106 issues, and that it had been a very informative session for all concerned.

78. CANCELLATION OF MEETING OF OVERVIEW AND SCRUTINY COMMITTEE ON 21/4/10

DECISION: that in view of the Scrutiny Manager's involvement in the Council's Election Team in respect of the General Election on 6th May 2010 the meeting be cancelled.

The meeting closed at 9.10pm

M. Gage
Chairman