

Divisions Affected – All

CABINET 14 May 2024

Infrastructure Funding and s.106 Contributions Update Report of Place Overview & Scrutiny Committee

RECOMMENDATION

1. The Cabinet is **RECOMMENDED** to —
 - a) Agree to respond to the recommendations contained in the body of this report, and
 - b) Agree that relevant officers will continue to update Scrutiny for 12 months on progress made against actions committed to in response to the recommendations, or until they are completed (if earlier).

REQUIREMENT TO RESPOND

2. In accordance with section 9FE of the Local Government Act 2000, the Place Overview & Scrutiny Committee requires that, within two months of the consideration of this report, the Cabinet publish a response to this report and any recommendations.

INTRODUCTION AND OVERVIEW

3. The Place Overview and Scrutiny Committee considered a report on the Council's Infrastructure Funding and s.106 Contributions Update at its meeting on 17 April 2024.
4. The Committee would like to thank Cllr Judy Roberts, Cabinet member for Infrastructure and Development Strategy, and Bill Cotton, Corporate Director for Environment and Place, Rachel Wileman, Director of Planning, Environment and Climate Change, and Nicholas Perrins, Head of Strategic Planning, for attending the Committee and answering its questions.
5. The Infrastructure Funding Statement had been considered by the Committee at its meeting on 06 December 2023 before being submitted to Cabinet. The large sums of money unspent had also been explored at the Performance

Overview & Scrutiny Committee in December and in the latter's scrutiny of the Cabinet's proposed budget.

6. The Performance and Corporate Services Overview and Scrutiny Committee had been advised that a sprint piece of work into the matter was to be undertaken and so the Place Overview and Scrutiny Committee (the Committee) requested an update.

SUMMARY

7. The report set out the progress made against the recommendations made by the Committee in December 2023, including the ongoing review of s.106 collection and expenditure procedures which had been established, as the update report set out, "to review all aspects of the developer contributions process, governance, and expenditure to increase the rate of delivery where practicable to do so." Developer contributions have been secured mainly through section 106 (s.106) of the Town and County Planning Act 1990 (as amended). The Committee was reminded that the Council had highly effective processes for negotiating and securing development contributions. However, the expenditure of these funds in a timely fashion was more challenging.
8. The Committee had a wide-ranging discussion with the Cabinet member and with the officers and, notwithstanding that it wishes to receive further updates on the recommendations it made in December, the Committee made another series of recommendations. Some of these build on ones made previously but these eight further recommendations broadly concern communications with members, flexibilities to allow speedier delivery, and the presentation of data. Fundamentally and collectively, they are about the need for the Council to spend the money it has received efficiently and effectively for the benefit of residents, taking account of the local knowledge of an area's elected member.

RECOMMENDATIONS

9. One of the factors that results in infrastructure funded money not being spent is that it can be earmarked for projects so specific that it is difficult to bring them to fruition. The Committee recognises that conditions must be attached to the agreements and recognises that those conditions must not be so loose as to make the conditions meaningless. However, the Committee calls upon the Council to ensure that, when drafting agreements and in negotiations with developers and district councils, the conditions attached to particular projects have some flexibility built into them insofar as is possible.
10. Particularly where the projects have not been provided at the initial stages of development, it may well be that the needs of a particular community have changed. An example was given in Committee of money being earmarked for books for a particular public library. The library did not need money towards its book stock but it did need refurbishment. Having such specific commitments impacts negatively on communities rather than providing the benefits intended. Agreements should be such that the community would

benefit, and the Committee is clear that flexibility should not enable the contributions earmarked for a community to be spent outside that locality, but it is of key importance that there is flexibility built in.

11. The Committee made a similar recommendation in December but expands on it slightly here.

Recommendation 1: That the Council should ensure that the conditions attached to future s.106 contributions are wherever possible sufficiently flexible to ensure that they can be used to meet the actual needs of residents whilst ensuring that flexibility does not enable them to be spent in differing localities.

12. There are many reasons why the Council has, as the report to the Committee sets out, almost £278m in s.106 moneys held. The Committee notes that just over £108m is held for specific use where no scheme has yet been proposed with a further £28.6m held for schemes that have been proposed but not yet actioned. The Committee recognises that many of them are rational and coherent reasons for still being held. One example given in Committee was of it being unwise to implement multiple road projects simultaneously because, counterintuitively, improving roads at the same time has the potential to make the network less efficient in the meantime.
13. However, the Committee is keen to impress upon Cabinet the force of feeling on the part of both members and residents that their divisions have money committed to improving the infrastructure, and thus the lives, of those who live there and yet the money is not spent and the projects have not been delivered. Residents have experienced the pain of development works but, in too many cases, are yet to receive the gain of the conditions which have been agreed. The report received by the Committee notes that some funds have been “held for over 20 years without any movement other than accruing of interest.” This cannot continue. Whilst the Committee was reassured that no funds had been clawed back in recent years, the value of money resting in a bank account will depreciate and will be able to meet less of the need than was initially intended.
14. The Committee was recommended to acknowledge and endorse the progress made. It did so and it recognises that work is being undertaken and is pleased at the progress on it. However, time is of the essence and the Committee calls on Cabinet to make clear its commitment to the funds being used swiftly for the purposes intended.

Recommendation 2: That the Cabinet should accept and acknowledge the frustrations and dismay of members and residents at the sheer scale of the funding received and yet to be spent and should commit to that money being used for the infrastructure projects for which it has been provided as speedily as practicable.

15. During its meeting, agreements made under section 278 of the Highways Act 1980 (s.278 agreements) were suggested as a means of ensuring physical

infrastructure was ready and complete at an earlier stage than was sometimes the case with agreements pursuant to s.106. The Council had used such agreements on occasion and they were acknowledged as a practical solution in some cases. The Committee recognises that such agreements would relate to modifications to the existing highway network and so would not be an appropriate vehicle for all planning obligations or relevant to all developments. However, it considers that it would be sensible for the Council to consider its approach and to explore whether it might be feasible and beneficial to enter into agreements under s.278 rather than under s.106 more than is currently the case.

***Recommendation 3:* That the Council should explore whether it would be better to enter s.278 agreements which could ensure that physical infrastructure is provided by developers at the early stages of development rather than primarily relying on s.106 contributions being earmarked for such infrastructure at a later date.**

16. The Committee recognises that significant proportions of the unspent money are earmarked for future expenditure and that it is not the case that the money is simply unallocated or unspent. The Committee considers that it would be better, both for the Council's processes and in the interests of openness and transparency, for that to be made clearer.

***Recommendation 4:* That the Council should ensure that information makes clear where unspent moneys have already been earmarked for future expenditure.**

17. One of the major frustrations expressed by members was that they are rarely engaged in any discussions about potential developments in the early stages. Indeed, too often, they are not engaged in any discussions about them at all. Councillors representing a division in which development is proposed should at the very least be informed about it. The Committee considers that it would be even better if they were not simply informed but actually involved in discussions and engaged with the practicalities of the proposals and the impact on the local area. It is members who are elected to represent the people of their divisions and it is members who know the complexities and the needs of their divisions.
18. The Committee is pleased that there will be more engagement with members about s.106 contributions at Locality level and agrees with the suggestion that Locality Meetings should include a more forward looking update so that members can provide input into the process. Members noted that, in some areas, they had been receiving more information but that was always retrospective. Far better would be for the Council to go further in order to ensure it engages proactively with members.

***Recommendation 5:* That the Council should ensure that local members are informed about, involved in, and engaged with regarding any and all new developments from the beginning of proposals being discussed.**

19. Allied to the concern about engagement with elected representatives, the Committee also raised the issue of whether, to ensure democratic responsibility and accountability, one or more Cabinet members should sit on the Strategic Capital Board. This is currently an officer-led board which, the Committee was advised, is an operational structure which oversees delivery of those capital programmes which have been approved by Full Council or by Cabinet. Members of the Committee gave examples of where similar boards at district level include Cabinet members. Cabinet members are able to take advice from the relevant ward councillors and feed that into discussions on the board.
20. Whilst it would not wish to interfere in operational matters, the Committee sees merit in the Council giving serious consideration to arranging for Cabinet members to sit on the Strategic Capital Board. Ultimately, the overall efficiency of the process is the responsibility of members. The Committee believes that there is a place for politicians on the Board and calls on the Council to arrange for Cabinet members to do so.

Recommendation 6: That the Council should arrange for Cabinet members to sit on the Strategic Capital Board to ensure democratic responsibility.

21. The dashboard being developed to give an overview of infrastructure projects and the funds attached to them is a development the Committee supports. Members look forward to seeing the current iteration during Locality Meetings and to providing feedback. The Committee heard that the intention is to launch it by the autumn and looks forward to being able to use it. However, the Committee is keen to ensure that members can engage with officers who are dealing with the particular projects in their divisions. The Committee cautions strongly against too generic contact details that can result in enquiries disappearing into the ether and members feeling the need to follow up by contacting Directors in order to get answers to their questions. Rather, contact details should be provided for the team or officers engaged with that particular project so that members and residents can have some confidence that they will be able to receive an informed response.

Recommendation 7: That the Council should, when its dashboard goes live, ensure that contact details for appropriate officers are attached to each infrastructure project.

22. The Committee recognises that there is a large number of teams which are involved with s.106 contributions and agreements. There is therefore a large number of officers too, each of whom will have their own knowledge. The Committee was pleased to hear that the sharing of data and information will result in knowledge being available across the Council rather than there being the potential for single points of failure. The Committee is glad that an absence of silo working should enable a more efficient system which will result in the substantial funds the Council holds being spent.
23. Linked to the concerns about member engagement, though, and the challenges of communication on occasion, the Committee would welcome

consideration being given as to whether each Locality should have a dedicated s.106 officer who would be aware of the projects in that Locality and who would be able to advise and engage with local members.

Recommendation 8: That the Council should avoid silo working and consider whether each Locality should have a s.106 officer attached to it.

FURTHER CONSIDERATION

24. The Committee expects to consider the subject again during the 2024/25 municipal year.

LEGAL IMPLICATIONS

25. Under Part 6.2 (13) (a) of the Constitution Scrutiny has the following power: 'Once a Scrutiny Committee has completed its deliberations on any matter a formal report may be prepared on behalf of the Committee and when agreed by them the Proper Officer will normally refer it to the Cabinet for consideration.

26. Under Part 4.2 of the Constitution, the Cabinet Procedure Rules, s 2 (3) iv) the Cabinet will consider any reports from Scrutiny Committees.

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Annex: Pro-forma Response Template

Background papers: None

Other Documents: None

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