Divisions Affected – All

CABINET
25 February 2025

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

RECOMMENDATION

1. The Cabinet is **RECOMMENDED** to —

    a) Note the recommendations contained in the body of this report and to consider and determine its response to the Place Overview and Scrutiny Committee, and

    b) Agree that, once Cabinet has responded, relevant officers will continue to provide each meeting of the Place Overview and Scrutiny Committee with a brief written update on progress made against actions committed to in response to the recommendations for 12 months, 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 Statement (IFS) and s.106 Review. This provided the statutory statement on Infrastructure Funding which reported on developer contributions secured, spent or received during the financial year 2023-2024. It also included an update on the s.106 review project which had been commissioned after the Committee considered the 2022/2023 IFS in December 2023 and raised significant concerns about the amount of money held by the Council but not yet spent on infrastructure delivery. This project was intended to ensure that the moneys were spent on the infrastructure for which they were provided at pace and to identify and resolve those issues which hindered that.

4.   The Committee would like to thank Cllr Judy Roberts, Cabinet Member for Infrastructure and Development Strategy, Robin Rogers, Director of Economy and Place, and Nicholas Perrins, Head of Strategic Planning, for attending to present the report and to answer the Committee's questions. The Committee was grateful, too, to Cllr Liz Leffman, the Leader of the Council, and Cllr Dr Pete Sudbury, Deputy Leader of the Council with Responsibility for Climate Change, Environment, and Future Generations, for also attending to answer questions.

SUMMARY

5.   The Chair began by reminding colleagues that, whilst the Infrastructure Funding Statement was retrospective, the Committee had made a number of recommendations previously regarding the s.106 process and that it was likely there would be a number of questions on that review project.

6.   The Cabinet Member for Infrastructure Delivery introduced the report and set out that the Council continued to be very effective at collecting developer contributions. The Council had collected £61.4m in developer contributions in 2023/24 and there was a forecast spend of c.£60m in 2024/25, mainly on large projects such as the A420 improvements. There was a recognition that complexities of s.106 contributions and using them in compliance with the initial agreements had been a concern across councils of all administrations over many years.

7.   The Head of Strategic Planning outlined an update of work undertaken to analyse and assess the challenges that needed to be overcome. The Head of Strategic Planning recognised the need for urgency and he and the Director of Economy and Place emphasised the Council's commitment to identifying and achieving the changes swiftly. There had been extensive diagnostic work and the Committee heard detail of plans for implementation.

8.   The Committee had an extended discussion raising a number of points, including whether there were ICT systems in place that were adequate to the Council's needs, flexibility in s.106 agreements, risk of clawback, governance and accountability, various toolkits that the Council could use, and delays in delivery of the project. Whilst the Committee was pleased that work was being undertaken, members remained frustrated by the speed with which the results of that work were coming to fruition. The Committee made a series of recommendations which the Committee considered would be of use as well as one observation.

9.   The observation is that the Committee questions if the integration of the Council's IT systems are adequate to its needs for this operation. The Committee makes eight recommendations: one is about ensuring the data dashboard is available speedily; another about rating risk; two concern deadlines, transparency, and accountability; three are about using readily

available resources to improve planning and delivery and the last is about working with partners to ensure holistic planning.

OBSERVATION

10. One of the fundamental challenges for the Council is that the audit undertaken of processes as part of the s.106 review had identified significant deficiencies in how various ICT systems are configured. There are three main systems to manage s.106 funds and projects. These are MasterGov (for planning obligations), PPM (for project management), and SAP (for finance). The Committee was told that these were in and of themselves efficient but that the interplay between them was cumbersome. There is a widespread recognition that these systems need to be integrated – for a failure to integrate impacts on both data accuracy and on data speed – but the Committee was keen to explore how the Council would deliver the integration and transformation and believed that it would be useful to consider using external IT architects, if necessary, to explore how this should be done.

11. A number of concerns were raised about the adequacy of the Council's IT systems for this operation and the impact their inadequacy had on service delivery. The Committee considered that there was a pressing need for a comprehensive IT strategy to resolve widespread issues and to improve the likelihood of the s.106 project being successfully completed in a timely fashion.

Observation: That the integrations of the IT systems used for s.106 delivery of the Council are inadequate to the Council's needs.

RECOMMENDATIONS

12. A fundamental concern identified by the Committee was that there appeared to be a lack of clarity regarding what needed to be done, by whom, and by when. The audit undertaken by the service had highlighted that there were deficiencies in IT systems which meant the Council was reliant on time-consuming manual interventions which were susceptible to errors.

13. The topic of front funding projects, using Council money to start projects and then recovering the funds from s.106 contributions, was explored. The Committee was advised that the main concern with such an approach was the need for high levels of coordination and integration between services and systems to ensure proper initiation of projects and, also, the accurate tracking of funds.

14. The Committee was advised that phase 2 of the s.106 project review had begun and that it would focus on improving systems, process, and reporting so as to put in place a significantly improved s.106 delivery system.

15. In order to achieve that, though, the Committee considers that there needs to be much greater clarity over the granular response that is needed to achieve this ambition. The Committee recognises that the success of the project will be seen in efficient and effective collection and spending of money on infrastructure projects for the benefit of residents and communities across the county. This will necessarily need multi-faceted and system-wide improvement but, in order to ensure that is achieved, the Committee considers that an outline of key deliverables within the project should be published.

16. The outline of key deliverables the Council is seeking to implement should be accompanied by realistic deadlines for each of them to be met. Some aspects will take longer than others and it would be unwise to set deadlines that are implausibly optimistic but, at the same time, those things that can be changed and improved easily and swiftly should have deadlines that reflect that.

Recommendation 1: That the Council should publish an outline of the milestones identified as requirements for the success of the project with associated deadlines.

17. Aligned to the above, the success of the project will require clarity over who is responsible for each aspect of it and who is ultimately responsible for overseeing it and for implementing it. The Committee noted that, whilst there had been explicit progress on the governance around Community Infrastructure Levy (CIL), the governance structure for s.106 funds was not well-defined, with an element of uncertainty over the oversight and management of the funds. Different services have responsibilities for different aspects of the process (with the planning obligations team managing the initial collection and recording of funds and delivery teams responsible for implementing projects). There was a recognition of the need for better integration and communication to ensure efficient use of funds.

18. Whilst recognising that different teams and elements in the Council manage different parts of the process, the Committee considers that the Cabinet should identify who is ultimately responsible for driving s.106 spend and how they will be held accountable. Key deliverables and deadlines would facilitate the creation of Key Performance Indicators which would easily and transparently demonstrate whether or not the improvement project is on track. These KPIs would be of use to the Council as a whole but also to members so that they have appropriate oversight.

Recommendation 2: That the Council should identify who is ultimately responsible for driving the success of the improvement project and by what measures they will be held accountable to ensure effective utilisation of funds.

19. The Local Government Association's Planning Advisory Service published a guidance handbook on improving the governance of developer contributions as well as a self-assessment toolkit[1]. These included a number of practical

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[1] https://www.local.gov.uk/sites/default/files/documents/GG-DevContributions%20-%20Self%20Assessment%20v10.1-BLANK.xlsx

steps for improvement, along with resources to support councils. The toolkit assesses current governance processes by using the 'maturity model.' The introduction to the guidance handbook[2] sets out that:

20. *In order to help you understand your current situation, and where it can be improved we have used the concept of a 'maturity model'. A maturity model can help organisations assess the current effectiveness of a delivery model, and identify ways to improve performance through measures and feedback.*

21. *It uses a scale ranging from 'ad-hoc' through to' integration' to measure the effectiveness of the different elements of the 'system' described above. 'Ad-hoc' applies to where things are done in an inconsistent or un-structured way, whereas 'integrated' describes where things are done in a managed and controlled way, and consistently across teams or the council.*

22. *We understand that good practices and behaviours vary across different parts of this system, and whilst at an organisational level this system might be operating effectively, the component parts of this system may not be operating at the same level of effectiveness. This is why we suggest considering how different parts of the system are operating when considering how and where to improve, rather than the systems as a whole.*

23. *By considering where on this scale you currently are can provide a platform on which improvement can be planned and implemented. It is important to recognise your own circumstances when considering change - improvements and changes can be incremental, or focused in certain areas. The maturity model recognises this.*

24. *The self-assessment tool is focussed around an analysis of each of the five identified parts of the system [namely, Leadership and resources, Governance, Policy and evidence, Systems and processes, and Project Delivery] and by considering it as a whole it will help you to identify where you might be performing well and where there may be areas for improvement.*

25. The Committee considers that it would be of great benefit to the Council to undertake this self-assessment as part of this project and so recommends that it does so.

Recommendation 3: That the Council undertakes the Local Government Association's Planning Advisory Service self-assessment toolkit – 'Improving the governance of developer contributions in order to evaluate and improve current practices.'

26. The Committee recognises that the s.106 system is complex and that there are considerable inflexibilities in legal agreements but notes with approval that there was a determination to build in as much flexibility as possible within all new agreements. One issue highlighted in this meeting, as well as at previous meetings of the Committee, was that the needs of communities change and

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[2] https://www.local.gov.uk/pas/topics/developer-contributions/improving-governance-developer-contributions-full-guidance

develop and what was envisaged as being useful or necessary at the planning stage of a development might no longer be considered relevant at – or during – the delivery stage. Building in as much flexibility as possible is, therefore, essential and the Committee continues to encourage the Council to do that.

27.   Part of that flexibility is contingent on having holistic plans for infrastructure needs ahead of time. It inevitably remains the case that the granular detail of such needs might vary but working with district councils and other partners – including elected members – at the earliest stages to consider together what is likely to be necessary will be useful in planning and delivering appropriate infrastructure.

Recommendation 4: That the Council commits to working closely with district councils and other partners to ensure there are holistic plans in place for infrastructure needs.

28.   The Committee discussed the ideas contained within the book *The Planning Fallacy* as well as optimism bias and associated attitudes which impact on project delivery. If organisations are overly optimistic in their attitudes towards planning, it is more likely that their optimism will be disappointed. In a literature review by the Behavioural Insights Team for the Department for Transport in 2017, it was noted that transport infrastructure projects "seem particularly susceptible to optimistic planning, with one metaanalysis concluding that 9 out of 10 projects have cost overruns. Based on a sample of 258 transport projects around the world, actual costs were on average 28 percent higher than estimated. Rail projects incurred the highest cost overruns, with an average cost-overrun of 44.7 percent. This was followed by fixed-linked projects which averaged a 33.8 percent cost-overrun, and roads with a 20.4 percent cost-overrun.[3]"

29.   The Committee considers that it would be of value for officers, and indeed Cabinet members, to take steps to correct favourability biases in their planning – specifically regarding The Planning Fallacy. In order to do that, it would be helpful for them to consider and reflect on some of the writings available, with one easily accessible overview being the one cited above.

Recommendation 5: That the Council take steps to correct any favourability biases in project planning and delivery to ensure a pragmatic and realistic approach.

30.   The Committee recognises that there are constraints and complexities around infrastructure planning, particularly when they involve many stakeholders and are long-term plans. It discussed backcasting and the futures toolkit used by the Civil Service and commended them to the Council. Backcasting is "a way of connecting a given future to the present and overcoming 'present bias' in the way that we plan. It is a tool for determining the steps that need to be

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[3] https://assets.publishing.service.gov.uk/media/5a821602ed915d74e3401a64/lit-review-exploration-of-behavioural-biases.pdf, p25

taken to deliver a preferred future."[4] It is an approach which should result in an achievable and realistic plan by ensuring one considers all steps rather than solely focusing on the end goal. Backcasting means that one achieves an action plan with a timeline back to the present which takes account of factors that could have arisen that are outside the planner's control.

Recommendation 6: That the Council uses the Government Office for Science's **The Futures Toolkit** ***in order to ensure its plans and policies are robust and realistic.***

31.   The Committee was disappointed that the data dashboard which it had been told in April 2024 that the Council was committed to launching by autumn 2024 was still not available. The Committee was underwhelmed by the explanation that the delay was the result of a licensing issue and sought to impress upon the Cabinet members and officers the need for that licensing issue to be resolved extremely quickly.

32.   Members have been repeatedly assured that they will have live access to data so that they can monitor the progress of s.106 funds and projects in their divisions. The Committee considers the launch of that dashboard to be essential and calls on Cabinet to ensure that it is launched without further delay.

Recommendation 7: That the data dashboard is launched without further delay to ensure that members can monitor s.106 funds and projects.

33.   The Committee remains concerned about the risk of unspent s.106 funding being returned to developers owing to project delays and system inefficiencies. The Committee noted that the report set out that only £12k had been returned during the last three financial years. It was unconvinced that this figure was entirely accurate, noting that it had previously been told that no money had been returned. It considered it important that, next time the Committee considers this topic, it should be provided with greater detail behind those figures. Regardless of the accuracy of that £12k, the Committee considered that the Council lay itself open to considerable risk of more being clawed back.

34.   The Committee considers that there should be a greater acknowledgement of the risk of moneys being returned to developers and that a risk rating for existing moneys not being spent in time should be implemented. This would identify and address potential issues proactively so that they can be addressed.

Recommendation 8: That the Council should implement a risk rating for s.106 moneys being reclaimed if they are not spent in time so that issues can be addressed proactively.

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[4] https://assets.publishing.service.gov.uk/media/66c4493f057d859c0e8fa778/futures-toolkit-edition-2.pdf, p91

FURTHER CONSIDERATION

35.   The Committee agreed that it should receive a progress update on s.106 and the IT project at its February 2025 meeting and intends to consider a substantive item on it in April 2025.

LEGAL IMPLICATIONS

36.   Under Part 6.2 (13) (a) of the Constitution Overview and 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.' This power is derived from the Local Government Act 2000 (LGA 2000).

37.   Under Part 4.2 of the Constitution, the Cabinet Procedure Rules, s 2 (3) (iv) the Cabinet will consider any reports from Scrutiny Committees which reflects the requirements set out in the LGA 2000

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Annex: Pro-forma Response Template

Background papers: None

Other Documents: None

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