

# Overview and Scrutiny Committee

1 February 2016

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

## Section 106 Contributions Task and Finish Group

<b>Final Decision-Maker</b>	Overview and Scrutiny Committee
<b>Portfolio Holder(s)</b>	Councillor Alan McDermott (Planning and Transportation)
<b>Lead Director</b>	Jonathan Macdonald (Director of Planning and Development)
<b>Head of Service</b>	Jane Lynch (Head of Planning Services)
<b>Lead Officer/Report Author</b>	Nick Peeters
<b>Key Decision?</b>	No
<b>Classification</b>	Non-exempt
<b>Wards affected</b>	All

This report makes the following recommendations to the Overview and Scrutiny Committee:

1. To agree that the following aims of the Task and Finish Group's review have been met:
  - 1.1. The process, by which contributions are negotiated, allocated and then spent, is now clearer;
  - 1.2. A high level flow chart is available for members that provides further detail on the process by which contributions are negotiated (the Council's Section 106 Monitoring Officer is also available to provide detail to all members on outstanding and negotiated Section 106 monies);
  - 1.3. Information, in the form of monitoring reports, is to be provided to the Planning Committee twice yearly - in October (an interim report) and an annual report in April. The information will also made available to all members through the Members' Information bulletin;
  - 1.4. Through an increased awareness of the need for communication between members, officers and local councils, the Section 106 contributions process will be made more transparent. This aspect of the review will be fed to all Councillors via the Task and Finish Group members and through circulation of the final report to the Overview and Scrutiny Committee. A basic guide to Section 106 contributions will also be made available to members for information; and
  - 1.5. Through the work of the Section 106 Monitoring Officer, reintroduction of a quarterly Section 106 officer group (including attendance by KCC officers) and the reporting mechanism detailed above, it was not felt necessary to recommend additional levels of governance and that the decision making process has now been strengthened sufficiently to meet the original scope of the Task and Finish Group.

2. That the Overview and Scrutiny Committee be asked to consider the following, additional points raised during the task and finish group's meetings and decide whether further scrutiny is needed in these areas:

2.1 The ability of members to input into the process through which Section 106 funds are negotiated and allocated, at an earlier stage; and

2.2 The ability of members to understand how the Council's Capital Programme is developed and managed, and to provide input into and influence the Programme at an early enough stage to have an impact on the Programme's outcomes in terms of the schemes identified for development (the Task and Finish Group feel this is an area in particular where further scrutiny work should be done).

**This report relates to the following corporate priorities:**

- A Confident Borough

**Timetable**

<b>Meeting</b>	<b>Date</b>
Overview and Scrutiny Committee	1 February 2016

# Report of the Section 106 Contributions Task and Finish Group

This report provides the findings of the Overview and Scrutiny Committee Section 106 Contributions Task and Finish Group.

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## 1. INTRODUCTION AND BACKGROUND

1.1 At the meeting on 15 June 2015, the Overview and Scrutiny Committee discussed the Community Infrastructure Levy and Section 106 contributions. Following debate on the item, Members resolved that there was further work to do in this area and agreed to appoint Councillors Chapelard, Stewart and Woodward to a Task and Finish Group to look at how contributions were negotiated and the levels of transparency involved in the process.

1.2 The Task and Finish Group met three times and at its first meeting agreed a scope to look at:

- i. How Section 106 contributions are negotiated, allocated and then spent;
- ii. How the information is fed back to the Planning and Overview & Scrutiny Committees;
- iii. The levels of transparency involved during the process for negotiating contributions; and
- iv. Whether an additional level of governance or more structured protocol is required as part of the decision making process.

## 2. EVIDENCE CONSIDERED BY THE TASK AND FINISH GROUP

In their approach to investigating the above issues the Task and Finish Group considered the following evidence before coming to a conclusion:

2.1 Historic/outstanding Section 106 agreements and future agreements:

Concern has been expressed in the past by Councillors that projects funded by Section 106 contributions may not be the most appropriate in terms of providing the maximum benefit to the local and wider community. Changes in regulations now mean that the tests for the requirement or suitability of a Section 106 agreement are more rigorous and that an agreement has to be more specific to the development it is attached to. One of the key tests is the level of impact a development has on the immediate environment. Local authorities will retain the ability to pool contributions from up to five developments (but no more) to fund projects or works. The Task and Finish Group recognised the changes in regulations that separated historic Section 106 agreements from those now being negotiated.

2.2 Level of Input into Section 106 agreements by Planning Services:

There are a number of stages for a Section 106 agreement prior to the release of the contributions and a number of planning officers may be involved in the process. However once the decision on a planning application subject to an agreement is made, planning officers are unable to revise the agreement, unless following a set review procedure.

Release of the contributions is overseen by the Monitoring Officer with involvement by the Finance Service. The Task and Finish Group now have a clearer understanding of the level of involvement planning officers have in Section 106 agreements.

### 2.3 The reporting Mechanism for Section 106 contributions to the Overview and Scrutiny Committee and communication between Councillors and Planning Services:

Historically, the details of section 106 Contributions were reported to the Overview and Scrutiny Committee retrospectively, every six months. It was recommended by the Task and Finish Group that, in the future, the Overview and Scrutiny Committee receive at least an annual report, to include the following detail:

- i. The level of Section 106 monies being requested;
- ii. How Section 106 monies are received; and
- iii. The projects and schemes on which the Section 106 monies are being spent.

Additionally, it was recommended that updates be provided to all Councillors in the Members Information Bulletin.

At a borough-wide level, there is a possible disconnect between Ward Members in unparished parts of the Borough and the Planning Service, when consideration is given to Section 106 contributions as part of a planning application. The parished parts of the borough have their precepts to potentially fund or part-fund local community facilities. Additionally, parish clerks will provide an extra filter to alert Borough Councillors of forthcoming applications. The Task and Finish Group feel it is incumbent on Borough Councillors and planning officers to maintain lines of communication, particularly in relation to smaller schemes, in order to identify, in advance, any potential for funding from section 106 Contributions. Members should have access to the list of planning applications and consider each application on a case-by-case basis.

### 2.4 Monitoring of Section 106 contributions by Planning Services:

The Section 106 Monitoring Officer now deals with the following elements of section 106 contributions:

- i. The keeping of records for all contributions and relevant data (including historically concluded agreements);
- ii. Maintaining a record of the value of contributions held by the Council at any one point and how much was being attracted, and how the contributions broke down by service;
- iii. The monitoring of sites where agreements had been included and the prompt invoicing of developers where work had started, and any enforcement work needed;
- iv. Interaction with the relevant services to ensure a prompt start to work (including dialogue with KCC); and
- v. Straightforward access by Members and the public to data relating to contributions.

The measures below were introduced in the past to allow the monitoring of Section 106 contributions but they were not consistently implemented. They have been reintroduced by Planning Services to strengthen the monitoring process:

- i. A Section 106 officer group to be reconvened with, if necessary, refreshed terms of reference. To be chaired by the Planning Policy Manager and to meet on a quarterly basis;
- ii. A new protocol between the Borough Council and Kent County Council (KCC) regarding monitoring and the release of funds for KCC projects and provisions;
- iii. The receipt by the Planning Committee of two reports per annum, in October and April, with updates on Section 106 contributions; and
- iv. A flow diagram to provide an explanation of the process through which contributions are agreed and administered.

## 2.5 The Council's Capital Programme:

Full Council approved a four-year rolling capital programme in February 2015 and any new schemes to be added to the Programme will need to specifically consider alternative funding such as Section 106 contributions. In view of the growing demand for increasingly scarce sources of funding for local, ward level community facilities, the Task and Finish Group would like Members to have a better understanding of how the Capital Programme functions and whether there is scope for Members to input into the process at an early enough stage for consideration to be given to local projects.

## 2.6 Key conclusions identified by the Task and Finish Group:

- i. The Task and Finish Group agreed that, through the work now being done by the Section 106 Monitoring Officer and with the measures reintroduced within the Planning service, effective governance of the agreements was now being provided, with a clearer understanding of how the contributions have been negotiated;
- ii. The Task and Finish Group recognised that communication at all levels is important in ensuring a transparent process and that Ward Members have an opportunity to be made aware of applications that, through the inclusion of Section 106 agreements, could fund local community facilities;
- iii. The Task and Finish Group feel that focus on the Council's rolling Capital Programme could provide another avenue for members to explore in order to provide these same facilities.

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## 3 AVAILABLE OPTIONS

The Overview and Scrutiny Committee is asked to consider the findings and recommendations of the Task and Finish Group and choose to either:

- 3.2 Accept the recommendations in full, including the recommendation for further scrutiny of Member involvement in the development of the Capital Programme;
- 3.3 Accept the recommendation - that the aims of the Task and Finish Group have been met, but that no further scrutiny in this area is required; or
- 3.4 Decide that the aims of the Task and Finish Group have not been met and that further work is required.

#### 4 PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.2 It is recommended that the Overview and Scrutiny Committee accept the findings and recommendations of the Task and Finish Group in full and add the scrutiny of Member involvement in the development of the Council's capital programme into the Committee's work programme for consideration at a later date.

#### 5 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 5.2 The decision of the Overview and Scrutiny Committee will be communicated through the minutes of the meeting.

#### 6 CROSS-CUTTING ISSUES AND IMPLICATIONS

<b>Issue</b>	<b>Implications</b>	<b>Sign-off (name of officer and date)</b>
<b>Legal</b> including Human Rights Act	There are no legal implications resulting from the recommendations in the report	John Scarborough/Estelle Culligan
<b>Finance</b> and other resources	There are no financial implications resulting from the recommendations in the report	Jane Fineman, Head of Finance and Procurement 18/01/16
<b>Staffing establishment</b>	There are no staffing implications resulting from the recommendations in the report	[Head of HR or deputy]
<b>Equalities</b>	There is no apparent equality impact on end users resulting from the recommendations in the	[Equalities lead]