

Item No. 7 on Agenda

Local Members' Interest
N/A

**Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel
– 19 October 2007**

**Executive Response to Final Report and Recommendations of the Section 106
Agreements Member Working Group**

Recommendations:

1. That the Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel notes Cabinet's formal response to the recommendations of the Section 106 Agreements Member Working Group.
2. That the Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel consider the content of the accompanying Action Plan.
3. That the Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel monitor the Action Plan and implementation of the recommendations made on a six monthly exception basis up until all recommendations have been fully implemented.

Report of Portfolio Holder**Part A****What is the Scrutiny and Performance Panel being asked to do and why?**

4. The Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel are asked to note Cabinet's decisions regarding the recommendations that were made by the Section 106 Agreements Member Working Group and monitor the Action Plan at six monthly intervals.

Part B**Background**

5. The Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel undertook a review into Section 106 Agreements as a result of concerns raised by the Chair of the then Development Services Scrutiny and Performance Panel at a Triangulation meeting between the Chair, Director and Cabinet Member (Development Services). The review aimed to examine the Authority's roles and responsibilities in relation to Section 106 Agreements and to determine how the relationship between the County Council and District Councils in Staffordshire could be enhanced.
6. The then Development Services Scrutiny and Performance Panel nominated a Member Working Group to undertake this review.

7. The findings and recommendations of the Section 106 Agreements Member Working Group were considered by Cabinet at their meeting held on 5 September 2007. Support was shown for the recommendations made in my Executive Covering Report presented to Cabinet with the Member Working Group's Final Report.
8. As Cabinet Member (Economic Prosperity and Sustainable Communities) I proposed that the recommendations made be agreed as they are supportive of and consistent with the Cabinet's own aims, namely:
 - Ensuring that the planning process does not delay much needed development within the County;
 - Ensuring that the Council's Planning Policies and Practices are properly joined up with those of the Districts;
 - Ensuring that much needed financial contributions by developers for public purposes are maximised; and
 - Minimising bureaucracy and duplication in the Council's internal procedures.
9. All of the recommendations of the Section 106 Agreements Member Working Group were agreed by Cabinet:-
 - a) That Local Planning Authorities in Staffordshire be encouraged to develop and implement validation criteria to provide a basis for considering whether Planning Applications should be registered, ideally including the need to ensure that Planning Applications are submitted with draft Section 106 Agreements where applicable; **(agreed)**
 - b) That the County Council encourage Local Planning Authorities to adopt the concept of 'Front loading' planning applications (which includes pre-application discussion and agreement before a Planning Application is submitted) and the completion of a Standard Section 106 Agreement (to avoid protracted negotiations and additional legal costs and delays); **(agreed)**
 - c) That the County Council consider the introduction of a Section 106 Agreements monitoring and administration charge and investigate the number of Section 106 Agreements processed by the County Council each year to determine the income that such a charge would generate; **(agreed)**
 - d) That consideration be given to the development of Planning Gain Policies in partnership with the District Councils as Local Planning Authorities to secure Section 106 Agreement funding for areas of service delivery not currently accessing Section 106 monies; **(agreed)**
 - e) That the Children and Lifelong Learning Directorate review and update the existing Education Planning Obligations Policy, to take into account the Education and Inspections Act 2006 and latest Admissions Code of Practice; **(agreed)**
 - f) That the Children and Lifelong Learning Directorate request that each

District/Borough Council include education requirements within supplementary planning documents on planning obligations; **(agreed)**

- g) That a corporate Section 106 Agreements database be developed and implemented. Consideration should be given to:
- I. Exploring the merits of various packages/formats that will best fit the County Council's purpose;
 - II. All directorates being given read access to the database;
 - III. Designated officers from Children and Lifelong Learning and Development Services Directorates having 'write' access to the database to enable it to be updated directly by the designated officers(s) acting on behalf of their respective directorate;
 - IV. The corporate Section 106 Agreements database being managed and maintained by a dedicated Section 106 Agreements Officer;
 - V. The Section 106 Agreements database being centrally located within the Legal Services Unit;
 - VI. The possibility of the County Council's Section 106 Agreements database being able to communicate with other monitoring systems at District/Borough Councils; **(all agreed)**
- h) That the County Council resolves existing problems associated with the management of Section 106 Agreements by:
- I. Considering the appointment of a dedicated Section 106 Agreements Monitoring Officer, whether as a new post, or from existing County Council resources, which would be based in the Legal Services Unit to manage and maintain a corporate Section 106 Agreements database and act as the single communication interface with the Local Planning Authorities in Staffordshire; **(agreed)**
 - i) That the County Council encourages Local Planning Authorities to consider the potential impact of developments upon smaller communities and that they consult with Parish Councils in the planning and Section 106 Agreements process; **(agreed)**
 - j) That a seminar be arranged for County, District/Borough Councils and Parish Councils to discuss:
 - I. The findings of this review and to consider how these recommendations could potentially impact upon District and Parish colleagues and applicants with a view to moving toward a Staffordshire approach to Section 106 Agreements; and

- II. How the County (and indeed any other statutory/non statutory consultees) can work with the Local Planning Authorities of Staffordshire in introducing effective 'front-loading' procedures. **(all agreed)**
10. An extract from the Minutes of the meeting of Cabinet held on 5 September 2007 are attached as Appendix 1.
11. The accompanying Action Plan to implement the recommendations agreed is attached at Appendix 2. Appendix 2 outlines the recommendation, the proposed actions to be taken, the responsible officer and the timescales for completion.
12. **Equalities Implications** – None
13. **Legal Implications** – None except as outlined in the report
14. **Resource and Value for Money Implications** – The cost of implementing the recommendations should be offset by the impact of the recommendations in ensuring that the County Council takes full benefit of potential section 106 contributions.
15. **Risk Implications** – The County Council may not receive the financial contributions to which it is entitled if it fails to manage and monitor section 106 agreements effectively.

Contact Officer/s:

Name: Rebecca Redman
Telephone No.: 01785 854086
Address/e-mail: Rebecca.redman@staffordshire.gov.uk

List of Appendices/Background papers

Minutes of meeting of the Development Services Scrutiny and Performance Panel held on 10 August 2006;

Final Report of the Section 106 Agreements Member Working Group

Executive Covering Report to the Section 106 Agreements Member Working Group Final Report

Minutes of the meeting of Cabinet held on 5 September 2007

Executive Response and Action Plan

Appendix 1

Extract from Minutes of the meeting of Cabinet held on 5 September 2007

Scrutiny Report on Section 106 Agreements (Schedule 6)

85. The Cabinet considered a joint report of the Director of Law and Governance and the Corporate Director (Development Services) on the Scrutiny Working Group on Section 106 Agreements.

The Development Services Scrutiny and Performance Panel, which had been succeeded by the Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel, had commissioned a Member Working Group to carry out a review of Section 106 Agreement processes. The Working Group had reported back to the Scrutiny and Performance Panel and the report and recommendations of the Working Group had been endorsed by the Panel and forwarded to the Cabinet for consideration.

Mr. Beresford, as Chairman of the Working Group, thanked members and officers for their contribution to the work of the Group. Mr. Beresford informed the Cabinet that implementation of the Working Group's recommendations would increase value for money. The initial cost of establishing a single ICT Support System would be quickly clawed back. A strong Policy would also assist the County Council and the District and Borough Councils, particularly in defending planning appeals.

Mr. Simpson queried how the County Council would receive feedback on the responses from District and Borough Councils to the proposed Policy. Mr. Beresford responded that, if adopted, the Staffordshire Development Control Officers' Group would be appraised of the Policy and would have an opportunity to respond. Mr. Simpson questioned whether the Working Group were of the view that such a Policy would remove some of the barriers which developers had commented about under current planning procedures. Mr. Beresford pointed out that the Policy would make it very clear to developers what this Authority and the Planning Authority would require of them, as it would provide a template. Mr. Drinkwater added that the aim of the Working Group had been to achieve non-duplication of work and a commonality of approach, which would attract developers to Staffordshire.

86. **RESOLVED** – (a) That the response to the Working Group's report (as set out in Appendix 1 to Schedule 6 to the signed minutes) be endorsed.

(b) That the Director of Law and Governance and the Corporate Director (Development Services) be requested to implement the recommendations in the Working Group's report and be authorised to take whatever steps are necessary in that regard.

ECONOMIC PROSPERITY AND SUSTAINABLE COMMUNITIES SCRUTINY AND PERFORMANCE PANEL

SECTION 106 AGREEMENTS MEMBER WORKING GROUP

SEPTEMBER 2007

RECOMMENDATION	PROPOSED ACTION	LEAD OFFICER	DEADLINE
(a) That Local Planning Authorities in Staffordshire be encouraged to develop and implement validation criteria to provide a basis for considering whether Planning Applications should be registered, ideally including the need to ensure that Planning Applications are submitted with draft Section 106 Agreements where applicable;	<p>Although this action is dependant upon the district councils as local planning authority to apply Staffs County Council (SCC) officers will press Local Planning Authorities (LPA's) in Staffordshire to formally implement validation criteria in line with recently published supplementary draft guidance by Department of Communities and Local Government (DCLG) to provide a policy basis for refusing to register applications that are not supported with all relevant information which will include applications that do not include a draft S106 Agreement where appropriate. Progress has already been made in this area. The actions are therefore:</p> <p>(i) Prepare progress chart to set out the current position of each LPA in</p>	Steve Clarke	(i) December 07

		<p>Staffordshire on the validation criteria that they are applying, its policy status and whether the criteria is available to applicants on their web site</p> <p>(ii) Prepare timetable for the introduction of formal validation procedures where these are not yet implemented + timetable for any proposed amendments to already established formal validation procedures.</p> <p>(iii) All LPA's to be advised of the outcome of the S106 Protocol trial run between SCC/ESBC/SBC during the six months commencing July 1st 07 with a view to implementing the same, or refined, validation procedures as set out in the protocol.</p> <p>(iv) The concept of 'validation' to be raised as a regular item on the agenda at Staffs DC Group meetings with a view to achieving comprehensive and consistently applied approaches across Staffordshire in accordance with national guidance.</p>		<p>(ii) Jan/Feb 08</p> <p>(iii) Jan/Feb 08</p> <p>(iv) Raised at DCOG meeting 21/09/07 + on-going item on agenda at future meetings until comprehensive and consistent processes across</p>
--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		(v)The concept of 'validation' to be raised at a seminar to be arranged in January 08 with officers/members representing the district councils		Staffordshire are in place (v) Jan 08
(b)	That the County Council encourage Local Planning Authorities to adopt the concept of 'Front loading' planning applications (which includes pre-application discussion and agreement before a Planning Application is submitted) and the completion of a Standard Section 106 Agreement (to avoid protracted negotiations and additional legal costs and delays);	To press LPA's in Staffordshire to formally adopt pre-application processes that will help enable heads of terms in the S106 (where appropriate) to be determined prior to the submission of Planning Applications. Progress has already been made in this area. The actions are therefore: (i)Prepare progress chart to set out the current position of each LPA in Staffordshire on their 'front loading' processes. (ii) Prepare timetable for the introduction of 'front loading' processes where these are not yet implemented + timetable for any proposed amendments to already established formal procedures.	Steve Clarke	(i) December 07 (ii) February 08

(c)	That the County Council consider the introduction of a Section 106 Agreements monitoring and administration charge and investigates the number of Section 106 Agreements processed by the County Council each year to determine the income that such a charge would generate;	As a short term expedient a charge of £200 will be added to legal costs to cover monitoring and administration.	John Tradewell	Implemented
(d)	That consideration be given to the development of Planning Gain Policies in partnership with the District Councils as Local Planning Authorities to secure Section 106 Agreement funding for areas of service delivery not currently accessing Section 106 monies;	The County Council will encourage the districts to establish planning obligation policies and practices that secure all the community infrastructure required to support development. Progress reports on where individual Local Planning Authorities are in respect of establishing policy through the respective Supplementary Planning documents produced by Local Planning Authorities shall be produced at the Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel	Tony Lovett	Starting Jan 08 and every 3 months thereafter until there is comprehensive adopted policy across the County
(e)	That the Children and Lifelong Learning Directorate review and update the existing Education Planning Obligations Policy, to take into account the Education and Inspections Act 2006 and latest Admissions Code of Practice;	The review of the policy will include an appraisal of an appropriate dwelling threshold for requirement of an education contribution, pupils attributable from new housing, building cost multipliers and all factors which may lead to an adjustment of the education contribution.	Tracy Haycock	31 August 2008

		<p>The review will take account of best practice adopted by statistical neighboring authorities.</p> <p>The policy will be subject to consultation with District/Borough Councils and other authorities and will need member approval.</p> <p>The approved policy will be published on the Staffordshire Council website.</p>		
(f)	That the Children and Lifelong Learning Directorate request that each District/Borough Council include education requirements within supplementary planning documents on planning obligations;	<p>To date, education requirements have been included in the Supplementary Planning Document of three district councils (Lichfield, Cannock and Newcastle), and we are currently in consultation with a further three borough/district councils (Stafford, East Staffordshire and Staffordshire Moorlands), with appropriate contacts identified for the remaining two district councils (Tamworth and South Staffordshire). Each Supplementary Planning Document is subject to consultation and each borough/district is at varying stages of the Local Development Framework process.</p> <p>The Supplementary Planning Documents will and do illustrate the potential education contribution required and state that further information can be obtained from the County Council and</p>	Tracy Haycock	30 April 2008

		direct readers to the appropriate webpage of Staffordshire County Council. It is anticipated that links from Staffordshire County Council website will be provided to the relevant web pages of the district/borough websites.		
(g)	<p>That a corporate Section 106 Agreements database be developed and implemented. Consideration should be given to:</p> <p>I. Exploring the merits of various packages/formats that will best fit the County Council's purpose;</p> <p>II. All directorates being given read access to the database;</p> <p>III. Designated officers from Children and Lifelong Learning and Development Services Directorates having 'write' access to the database to enable it to be updated directly by the designated officers(s) acting on behalf of their respective directorate;</p> <p>IV. The corporate Section 106 Agreements database being managed and maintained by a dedicated Section 106 Agreements Officer;</p>	Existing Legal Section 106 Agreements database being reviewed to establish whether it can be amended/extended to become a corporate database accessible by all Directorates	John Tradewell	December 2007

	<p>V. The Section 106 Agreements database being centrally located within the Legal Services Unit;</p> <p>VI. The possibility of the County Council's Section 106 Agreements database being able to communicate with other monitoring systems at District/Borough Councils;</p>			
(h)	<p>That the County Council resolves existing problems associated with the management of Section 106 Agreements by:</p> <p>I. Considering the appointment of a dedicated Section 106 Agreements Monitoring Officer, whether as a new post, or from existing County Council resources, which would be based in the Legal Services Unit to manage and maintain a corporate Section 106 Agreements database and act as the single communication interface with the Local Planning Authorities in Staffordshire.</p>	<p>The ability to create a new post will depend upon whether the introduction of monitoring/administration charge will be effective in bringing in sufficient resource for a new post. The position in this regard will be reviewed in 6 months time. In the meantime consideration is being given to whether this role can be undertaken by an exiting post within Legal Services. However, this is currently subject to vacancies being filled.</p>	<p>John Tradewell</p>	<p>April 2008</p>
(i)	<p>That the County Council encourages Local Planning Authorities to consider the potential impact of developments upon smaller communities and that they consult</p>	<p>To be discussed at the Seminar with County, District and Borough Councils</p>	<p>Steve Clarke</p>	<p>Feb 08</p>

	with Parish Councils in the planning and Section 106 Agreements process.			
(j)	That a seminar be arranged for County, District/Borough Councils and Parish Councils to discuss: I. The findings of this review and to consider how these recommendations could potentially impact upon District and Parish colleagues and applicants with a view to moving toward a Staffordshire approach to Section 106 Agreements; and II. How the County (and indeed any other statutory/non statutory consultees) can work with the Local Planning Authorities of Staffordshire in introducing effective 'front-loading' procedures.	Please note actions at recommendations a and b above	Steve Clarke	Feb 08