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**REPORT OF THE SCRUTINY PANEL: Section 106 Funds Panel**

To what extent can communities and Borough Councillors be involved in determining how Section 106 funds are used?

**Foreword by Councillor Seaton, Chair of the Scrutiny Panel**

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## **1. Background**

At its meeting on 6th August 2014, the Scrutiny Management Board resolved that a Scrutiny Panel should be established to look at issues surrounding Section 106 funding and that Councillor Seaton be Chair of the Panel. The Panel's first meeting was an informal meeting on 8th September 2014, followed by its first formal meeting which took place on 13th October 2014. The Panel concluded its business at its final meeting on 2nd March 2015.

## **2. Panel Membership**

Chair: Councillor Seaton

Councillors Draycott, Duffy, Jukes, Maynard Smith, Pacey and Radford.

The Panel is sad to report that Councillor Ralph Raven passed away before the conclusion of the Panel's work. Councillor Ranson was appointed to the Panel but was unable to continue after the first informal meeting due to being appointed as a Cabinet Support Member; Councillor Radford took her place.

## **3. Terms of Reference and Reason for Scrutiny**

The Panel's terms of reference, agreed by the Scrutiny Management Board on 6th August 2014 were as follows:

- (i) How to ensure that flexibility is built into the Section 106 (S106) process to ensure that communities and Borough Councillors are engaged in the making of funding decisions.
- (ii) As Loughborough does not have a parish/town council, the best means of ensuring that representatives of the town, including both elected Members and properly constituted community groups, are adequately engaged in the S106 process.

The reason for undertaking the review identified by the Board was as follows:

Concerns have been identified regarding the effectiveness of the S106 funding process, specifically:

- whether sufficient opportunities for engagement with Ward Members and local communities are being taken to enable them to contribute to the decision-making process;
- whether sufficient measures are in place to ensure that communities without a parish/town council are afforded the same opportunities to submit their views as those in parished areas;
- the effectiveness of arrangements for communication and ongoing engagement with Ward Members and local communities throughout the process.

The Scope Document for the scrutiny review undertaken by the Panel is attached at **Appendix 1**. This sets out the above terms of reference and reason for scrutiny. The document outlines the position at the conclusion of the Panel's work and, therefore, includes additional stakeholders and resources identified by the Panel as its work progressed, notes added to assist the Panel and a summary of the progress made by the Panel which was reported to meetings of the Policy Scrutiny Group.

#### **4. Evidence, Stakeholders and Witnesses**

The Panel received information from the following stakeholders and witnesses:

- Meeting 3 (1st December 2014) – Issues raised by Parish/Town Councils and community groups in Loughborough in response to a consultation exercise conducted by the Panel.

The Panel received information from Council officers as follows:

- Meeting 1 (13th October 2014) – Presentation on Section 106 Agreements from C. Traill – Strategic Director of Neighbourhoods and Community Wellbeing, R. Bennett – Head of Planning and Regeneration, N. Greenhalgh – Head of Cleansing and Open Spaces, and J. Robinson – Head of Neighbourhood Services;
- Meeting 2 (3rd November 2014) – Presentation on the results of a review of practice at other local authorities from M. Hopkins – Democratic Services Manager and a briefing note on alternative funding options to the use of Section 106 Agreements from J. Casey – Head of Finance and Property Services, and R. Bennett – Head of Planning and Regeneration;
- Meeting 3 (1st December 2014) – Briefing notes on how parish/town Councils could be parties to a Section 106 Agreement, Area Committees, the Coalville Special Expenses Working Party at North West Leicestershire District Council and similar bodies at other local authorities, and examples of the use of the Community Infrastructure Levy.

Copies of the following documents were also made available to the Panel as follows:

- Charnwood Borough Council's Statement of Community Involvement;
- Charnwood Borough Council's Supplementary Planning Document on 'Developer Contributions';
- Examples of other councils protocols for community and councillor involvement with Section 106 Agreements from Lichfield and Milton Keynes;
- An example of an annual report on Section 106 Agreements from the London Borough of Southwark.

Technical Support was provided to the Panel by:

Chris Trail – Strategic Director of Neighbourhoods and Community Wellbeing  
Richard Bennett – Head of Planning and Regeneration

The Panel wishes to thank all stakeholders, witnesses and officers for the assistance provided with its work.

## **5. Summaries of Panel Meetings**

Summaries of the work undertaken at each meeting of the Panel are set out in the “Progress of Panel Work” section of the Scope Document at **Appendix 1**.

Full details of the information provided by witnesses and the issues considered by the Panel are detailed in the notes of the Panel’s meetings listed in Background Papers section of this report, also attached at **Appendix 2**.

## **6. Equality Impact Assessment (EIA)**

The Improvement & Organisational Development Manager stated that the need for an Equality Impact Assessment would be considered following the final submission of the report.

## **7. Key Findings**

The Panel obtained evidence from a range of sources both internal and external as described in section 4 above. The Panel heard of examples of good practice that was used by other councils such as the publication protocols setting out how the public and councillors could be involved in the processes related to Section 106 Agreements and how information was made available about the uses to which section 106 funding was put. The Panel also heard directly from parish/town councils and community groups in Loughborough regarding their experiences and aspirations about engagement with the processes related to section 106 agreements.

The following key findings are set out in sections linked to the evidence the Panel received which led them to those findings.

A. The Panel heard evidence from officers about the current processes in place for dealing with Section 106 Agreements as follows (meeting 1):

- (i) In respect of consultation, there were clear guidelines in place as laid out in the Council’s Statement of Community Involvement as to who should be consulted and the procedures to follow. Pre-application consultation by the developers was not a requirement; however, at Charnwood it was a requirement for any major development and developers were encouraged

to provide a statement outlining how they had engaged with relevant parties; however, as it was not a legal requirement and those statements varied considerably. In practice, developers would meet with various local representatives to identify community aspirations and to learn how best to engage with the local community and residents. In Loughborough it was more difficult given that there was no parish council; developers should consult with local councillors and community groups. Officers would provide advice and support as part of that process.

- (ii) Following the submission of a planning application, there was a 21 day period of public consultation which was a statutory requirement, during which time ward councillors, parish/town councils, any known constituted groups and all relevant Council services were notified and could make representations. All comments were forwarded to developers for them to consider the 'basket' of facilities requested.
- (iii) Legislation controlled what contributions could be requested and the Council's Supplementary Planning Document on 'Developer Contributions' provided a framework that councillors scrutinised. Each contribution had to pass three tests (Community Infrastructure Levy (CIL) tests); it must be directly related to the development, reasonable in scale and kind and necessary to allow the development to go ahead. Reports to Plans Committee contained a breakdown of the obligations sought. Members of Plans Committee were advised not to take an active role in the pre-application stage.
- (iv) Community engagement was encouraged, with Open Days being held to ensure that people were given the opportunity to express their views. Extensive consultation and on-going dialogue with parish/town councils, residents and community groups regularly occurred.
- (v) The management of Section 106 monies was a complex one as many parties were involved and the 'pot' of money had to be managed on an on-going basis. A strict audit process was in place to monitor the situation, with an internal cross directorate officer group to monitor timeframes and expenditure.
- (vi) The Council was listening to the concerns of local residents. Road shows to explain Section 106 Agreements were increasingly being held and the Council was constantly trying to improve the ways in which it communicated with the public.

The Panel noted the comments made by officers in respect of consultation; however, it believed that more could be done in this regard.

Often ward councillors only found out the proposals for a Section 106 Agreement when they received the Plans Committee reports a week before the meeting and

then it was too late to make any comments. This was a missed opportunity as ward councillors were more aware of local needs. It appeared that officers identified projects instead of asking parish/town councils what was needed. This could result from requests made by parish/town councils failing to pass the CIL tests; however, when that happened those councils should be notified. Local people and councillors felt that they were being dictated to and that not all the monies were being spent in the local area. Of particular concern for Loughborough councillors was the lack of consultation. All monies seem to be put in a general pot for Loughborough and councillors were not consulted.

B. The Panel heard evidence on the results of a review of practice at other local authorities in relation to how communities and councillors are involved in determining how Section 106 funds are used which identified the following examples for the Panel to consider (meeting 2):

- (i) Information and guidance – This could take a number of forms but was a prerequisite for greater engagement so that people knew what opportunities for engagement existed. Examples of good practice identified by the Panel included the publication of accessible guidance documents, the availability of forms to enable requested information to be obtained more easily, the identification of individuals for people to contact and undertaking training and visits to assist people in participating. Training for Borough Councillors and parish/town councils was identified as being a particular need.
- (ii) Project banks – A number of councils maintained project banks as a means of identifying schemes suitable for using Section 106 contributions. This provided an opportunity for proactive engagement with stakeholders to identify schemes which had public support and for preparatory work, such as costing of projects, to be undertaken which could speed up the delivery of projects. The Panel concluded that there should be stronger mechanisms in place to seek to obtain suggestions for projects which could be funded through Section 106 contributions.
- (iii) Parish/town councils as parties to Section 106 Agreements – This approach could be used when a parish or town council had a legal interest in the land affected by a Section 106 Agreement and had been used by the Borough Council on occasion. The Panel saw potential benefits in such an approach in enabling parish/town councils to have a greater involvement in negotiating the terms of Section 106 Agreements. The Panel received a further report on this issue at its third meeting on 1st December 2014 but decided not to make any recommendations.
- (iv) Methods of consultation with councillors – The Panel considered a number of examples of councils which had committees or working parties that enabled councillors to consider matters relating to Section 106 Agreements more formally and processes for obtaining suggestions from

councillors about potential projects which could be funded by Section 106 contributions. This issue was considered further by the Panel at its third meeting on 1st December 2014 (see E below). The Panel also concluded that further thought would need to be given to identifying which Borough Councillors should be consulted on different matters as some Section 106 Agreements and some projects affected a number of adjacent wards and some communities, for example Shepshed and Syston, were covered by more than one ward.

- (v) Transparency and reporting – The Panel considered examples of the publicity given to the outcomes of Section 106 Agreements in terms of the money that was invested in the local area. The Panel concluded that such information was important as it provided transparency about how Section 106 funds were being used and reinforced the information available about encouraging engagement as it showed that engagement could have a positive outcome. In particular the Panel identified the annual report produced by the London Borough of Southwark as a good example. The Panel also identified the need for there to be a clearly identifiable Lead Member who was accountable for all matters in relation to Section 106 Agreements.
- (v) Protocols and policies – The Panel considered examples from a number of councils which had adopted protocols or policies which codified the practices identified above in a formal document.

C. The Panel heard evidence on alternative funding options to the use of Section 106 Agreements (meeting 2) and on the use of the Community Infrastructure Levy by other councils (meeting 3).

The Panel noted the current position in respect of the Community Infrastructure Levy and the uses to which the New Homes Bonus was currently put. The Panel concluded that these matters were outside its remit and did not make any recommendations in respect of them.

D. The Panel undertook a survey of parish/town councils and Loughborough community groups to determine their views and aspirations regarding Section 106 Agreements. The results of that survey were considered by the Panel and raised the following issues (meeting 3):

- (i) Of the responses received, a number of representatives had expressed a general level of dis-satisfaction with current arrangements. Of particular concern was that officers appeared to be making too many decisions without consulting local councillors or parish/town councillors. There appeared to be a disparity in what officers were saying and what councillors perceived to be actually happening.

- (ii) It would be helpful to clarify how some specific contributions were agreed as it had caused problems in the past when large sums of money had been allocated for certain projects, particularly public art and it was not understood why that had occurred.
- (iii) Councillors were not being told how they could engage properly both with officers and developers and more training was required for all councillors, including parish/town councillors.
- (iv) Following the submission of a planning application, once the formal consultation process begins, councillors, including parish/town councillors should become involved and work with both officers and the developer to make any recommendations regarding where contributions were required.

The Panel concluded that the evidence gathered from the parish/town councils and community groups reinforced the views that it had already formed regarding the need for additional consultation, training for all those involved in the process and clarity on how the processes worked.

E. The Panel received a report on the operation of Area Committees and other bodies within councils that could facilitate the involvement of councillors in considering matters related to Section 106 Agreements. The Panel had considered this to be a particular issue in Loughborough which did not have a Town Council (meeting 3).

The Panel identified that such bodies could take a number of forms and have different functions. Area Committees had formal decision-making powers within a particular geographical area but other types of body operated on an advisory basis.

The Panel concluded that there needed to be an equitable process to ensure that councillors in Loughborough were consulted in the same way as councillors in the rest of the Borough. The establishment of a forum or working group would allow this to happen and in that way officers could consult with all Loughborough councillors together.

## **8. Recommendations made by the Panel**

In undertaking its work the Panel considered there was a disconnect between the Council's stated policies on engagement in the process of agreeing Section 106 Agreements and disbursing Section 106 funds and the practice as experienced by councillors and parish/town councillors. The Panel identified a particular issue in Loughborough of ensuring that there was sufficient engagement with representatives of the town. The Panel is making the following recommendations to address these issues.

1. That the role of Borough Councillors throughout the process of agreeing Section 106 Agreements relating to their own wards and the disbursing of Section 106 funds should be based on the principle that all Borough Councillors whose wards were affected should be involved and kept informed from the earliest possible stage and throughout the process. This should be achieved by the development of a protocol which includes:
  - the options which are available to councillors at the various stages of the process (including when decisions are taken to finalise or amend Section 106 Agreements following meetings of the Plans Committee);
  - proformas, which seek and provide information to ward councillors at all stages;
  - guidance on when wards should be considered to be affected by a matter, and therefore the ward councillors consulted, in relation to the location and size of development, the scale of Section 106 contributions and the resultant impact on the wider area.

Once a draft protocol is prepared, all Borough Councillors should be consulted on its content before it is finalised and implemented.

Reason: To increase the ability of ward councillors to influence decisions in relation to agreeing Section 106 Agreements and disbursing Section 106 funds on behalf of the communities they represent, and to provide a consistent level of support to councillors in this role.

2. That ongoing training and guidance be provided to all Borough Councillors about their role in, and how they can engage with, the process of agreeing Section 106 Agreements and disbursing Section 106 funds to enable them to participate more fully in it. The training and guidance should include probity issues, where relevant, to ensure that councillors' dealings with developers and other interested parties were appropriate. Training and guidance, amended to reflect their particular role, should also be provided to parish and town councils and formally constituted community groups to assist them in participating in the process.

Reason: To ensure that ward councillors, parish/town councils and formally constituted community groups are appropriately supported in their roles and to assist them to influence decisions in relation to agreeing Section 106 Agreements and disbursing Section 106 funds on behalf of the communities they represent.

*Note: Definition of formally constituted community group may be required.*

3. That Borough Councillors be supported in working with the communities that they represent to identify unmet needs for infrastructure and community facilities in their wards through establishing a process of

regularly seeking information about this from councillors. The process should be introduced as part of the training described in recommendation 2 above and facilitated by developing proformas to be sent to all councillors, identifying named officers to whom those proformas should be sent and setting out clearly how the information provided by councillors would be responded to.

Reason: To enable needs assessments to be undertaken and identify potential funding sources for those needs, which could include Section 106 funds where this was appropriate.

4. That a working party of all Borough Councillors representing Loughborough wards be set up to enable those Loughborough ward councillors to consider the impact of development on Loughborough, and whether requests for the inclusion of items in Section 106 Agreements should be made to mitigate this, and how any Section 106 funds received should be disbursed where appropriate. The terms of reference of the working party could include advising on the allocation of Section 106 funds to particular projects, considering unmet needs for infrastructure and community facilities, and the ability to make recommendations to the Cabinet and the Plans Committee where significant issues or concerns are identified.

Reason: To improve the process for consulting with elected representatives on matters related to Section 106 Agreements and funds by providing an opportunity for consultation in Loughborough which does not currently exist and adopt good practice which is used by councils elsewhere in the country.

5. That the Council makes available further information on matters relating to Section 106 Agreements. This should set out the money collected and spent as a result of Section 106 Agreements and what the money was used for in different localities. It could also include details of the Council's procedures for public engagement in the process so that this was encouraged. This could be achieved by expanding the information which is already published but should be accompanied by an easily accessible summary.

Reason: To ensure that there was transparency and accountability in respect of Section 106 Agreements and encourage public engagement and participation in the process of decision-making on matters relating to them.

OR

5. That the Council produces an annual report on matters relating to Section 106 Agreements. This should set out the money collected and spent as a

result of Section 106 Agreements and what the money was used for. It could also include details of the Council's procedures for public engagement in the process so that this was encouraged. The report should be introduced by the Lead Member and could be submitted to the Cabinet or considered by scrutiny.

Reason: To ensure that there was transparency and accountability in respect of Section 106 Agreements and encourage public engagement and participation in the process of decision-making on matters relating to them.

6. That following the Borough Council elections in May 2015 the Leader or the Cabinet identify a Cabinet Lead Member with responsibility for all matters relating to Section 106 Agreements and funds.

Reason: To address the current situation in which there were a number of Cabinet Lead Members responsible for different elements relating to Section 106 Agreements and ensure that there was greater accountability in respect of Section 106 matters.

## 9. Background Papers

- Scope Document (Appendix 1)
- Agenda Papers and Notes of Panel meetings available on the Council's website at:  
[http://www.charnwood.gov.uk/committees/section\\_106\\_agreement\\_scrutiny\\_panel](http://www.charnwood.gov.uk/committees/section_106_agreement_scrutiny_panel)

Informal Meeting – 8th September 2014

Meeting 1 – 13th October 2014

Meeting 2 – 3rd November 2014

Meeting 3 – 1st December 2014

Notes of above Panel meetings also attached (Appendix 2)

Meeting 4 – 19th January 2015

Meeting 5 – 2nd March 2015

- Information considered by the Panel as detailed in Paragraph 4 of this report is available on request and internally at:  
[http://info/sites/Policy\\_Scrutiny\\_Group/Lists/S106%20Agreement%20Scrutiny%20Panel/AllItems.aspx](http://info/sites/Policy_Scrutiny_Group/Lists/S106%20Agreement%20Scrutiny%20Panel/AllItems.aspx)