

**Report of Chief Planning Officer**

**Report to Scrutiny Board (Housing and Regeneration)**

**Date: 25 September 2012**

**Subject: Section 106 consultation with Ward Members**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. At the last meeting of the Scrutiny Board in July 2012, concern was expressed about ward member involvement in the formulation of Section 106 legal agreements which accompany major planning proposals.
2. The Chief Planning Officer was asked to report back to the Board confirming the arrangements for engaging and reporting the views of ward members on the proposed Heads of Terms of these agreements.
3. At present the submission of the draft Heads of Terms can vary according to individual circumstances. The service can and does request that they are submitted as part of the pre application process to aid local engagement. The draft heads of terms are a validation requirement as part of the application submission but it is often during the processing of the application that the detail emerges. This can lead to difficulties with timescales as we do have to have regard to the need for timely and efficient decision making as well as recognising the importance of local involvement.
4. The service proposes to take a much more proactive approach to engagement and reporting, within the legal and policy boundaries within which we operate.

**Recommendations**

Members are requested to note the report and endorse the proposed approach set out

**1 Purpose of this report**

- 1.1 At the last meeting of the Scrutiny Board on 20 July 2012, members requested the Chief Planning Officer to confirm the arrangements for engaging and reporting the views of ward councillors on the proposed Heads of Terms for Section 106 agreements.
- 1.2 The Chief Planning Officer was also asked to consider the Board's proposal that Plans Panels are advised as to whether ward members are content or not with the proposed Heads of Terms of Section 106 agreements (S106)
- 1.3 This report describes the current arrangements and considers the Board's proposal.

## **2 Background information**

- 2.1 A planning obligation must comply with the following three legal tests as set out in the Community Infrastructure Levy Regulations (CIL) 2010:
  - necessary to make the development acceptable in planning terms
  - directly related to the development; and
  - fairly and reasonably related in scale and kind to the development.
- 2.2 The council has policies in the adopted UDP and Supplementary Planning Documents and Guidance which sets out standard charges and formulae which are used to identify the level of obligation required from a major development, for example affordable housing.
- 2.3 A S106 agreement is not a list of benefits a community would like to secure but is based on the policy requirements and mitigation of impacts in compliance with the three legal test set out above. The specific Heads of Terms will depend on the nature, scale and location of a development and its associated impacts.

## **3 Main issues**

- 3.1 Members at the Scrutiny Board meeting in July expressed concern about the level and timing of consultation on the formulation of S106 agreements. The section below describes the current process and identifies measures to ensure a more proactive and consistent approach by the service.
- 3.2 It is important, however, that there is a balance between effective local involvement and the need for timely and efficient decision making which reflects the Council's ambitions to promote regeneration and economic growth.

### **3.3 Pre-application stage**

- 3.3.1 The service encourages developers to consult widely with ward members and local communities at the pre-application stage on proposed developments. Part of this engagement can include the heads of terms of the S106, so that the obligations can reflect, as far is possible, the views of the community. However, the S106 cannot be a wish list of community benefits, and any obligations must meet the CIL regulation legal tests test (see 2.1 above). Engagement is not mandatory and the service can only strongly encourage pre-application involvement with ward members and local communities, not insist upon it. This could change once the

government has introduced statutory pre-application engagement on the largest of schemes.

- 3.3.2 It is quite common that only general issues are discussed at pre-application meetings between officers and the developers, because there is little or no detail at that point, due to timescales or pressures from clients. It is only once an application is submitted that there is often any meaningful information to discuss. However, developers are provided with details of the obligations required for S106 agreements to meet UDP policy and the draft Heads of Terms need to be submitted as part of the formal application and should be communicated to ward members.
- 3.3.3 When there is a major pre-application meeting, this often includes discussions about the S106 (if there is any detail of the proposal at that time). The service has been reorganised so that there is a planning officer who is responsible for each area of the city and in the future the planning officer will contact ward members about major pre-application meetings and approaches by developers as a matter of course, unless there are confidentiality issues, including details of the scheme which are known at that stage including the draft Heads of Terms of any likely S106. Members will be kept up to date through regular ward member briefings.

#### **3.4 Formal application stage**

- 3.4.1 Not all major applications seek pre-application discussions but some go straight to formal submission. The service requests that the draft Heads of Terms are submitted as part of the validation procedure of the application. It can be some time into the process until the detail of the S106 contributions is finalised.
- 3.4.2 Details of all new applications are available on Public Access and members can be alerted to every major application in their ward. Draft Heads of Terms are available for viewing and ward members and the community have the opportunity to comment on the content.
- 3.4.3 Section 106 obligations are based on policy requirements and where applications are submitted and the Section 106 is “policy compliant”, then there is no discussion or negotiation with ward members as developers are providing what they need to comply with current policy. However it is important that ward members are kept informed, therefore it is proposed that planning officers will inform ward members about all new major applications and the draft Heads of Terms when they are submitted. Members will be invited to comment, by a given date, on the draft Heads of Terms.

#### **3.5 Viability**

- 3.5.1 Where viability is cited as a reason by a developer why not all the S106 contributions can be made the expectation is that a viability appraisal will need to be submitted to demonstrate this – at that stage discussions will take place with the relevant ward members to determine what are the local priorities and seek further views on the S106 package being offered. The application is likely then to be referred to the relevant Plans Panel for a decision with the views of ward members included.

- 3.5.2 On all major schemes the officers report will state if and when ward members have been consulted on the content of agreements and what response(s) have been received .

### **3.6 Position statements**

- 3.6.1 Draft Heads of Terms are sometimes presented as part of a position statement to the Plans Panel. This can allow further member input particularly where financial viability of the scheme is an issue and Members can advise on the priorities and approach at this stage in the process.

### **3.7 Reporting the views of ward members**

- 3.7.1 The Board, at the meeting in July asked if ward member views on the Heads of Terms could be reported to the Plans Panel. Currently a summary of the obligations are included in the officer's report and it is now proposed to include details of ward member involvement on the S106 agreement and their views, where they have been expressed to officers, so that members at Plans Panel are clear about the views of local ward members. This practice will be applied consistently across the service on all major applications received from 1<sup>st</sup> October 2012 onwards.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The three Plans Panel Chairs and the Executive Board Member for Neighbourhoods, Planning and Support Services are being consulted about the proposed changes outlined in this report.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 Ward members have a role as community champions. Greater engagement of the community is likely to result in more people being aware of development and of planning issues and allows communities to have a greater input to the planning process, aiding community cohesion.

### **4.3 Council policies and City Priorities**

- 4.3.1 The effective and expedient determination of planning applications contributes to the overall prosperity of the City and plays a key part in the regeneration and growth agenda. The service makes a key contribution to the delivery of housing growth, a priority in the City Priority Plan 2011-15.

### **4.4 Resources and value for money**

- 4.4.1 There are some resource implications from the changes to be made as it will take officer time to ensure that members are contacted and to collate responses, however this will be met from existing resources.

### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 There are no legal implications arising from the report.

## **4.6 Risk Management**

4.6.1 This section is not relevant to this report.

## **5 Conclusions**

- 5.1 It is proposed to formalise the process of informing ward members about S106 agreements. Members will be informed about all non-confidential major pre-applications discussions with developers early on, members will be informed about all new major applications where there is a S106 and invited to comment by a given date and where there are viability issues, officers will consistently invite member comments members on the draft Heads of Terms to determine local priorities, where appropriate.
- 5.2 Officer reports have been inconsistent in the past. Usually reference has been made where there have been viability issues and ward member have been involved. Officer reports will now note systematically where there has been ward member involvement in S106 agreements and also the outcome of that involvement.

## **6 Recommendations**

Members are requested to note the report and endorse the proposed approach set out.

## **7 Background documents<sup>1</sup>**

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<sup>1</sup> The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.