

# Scrutiny Committee report



Report of Head of Planning

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To: SCRUTINY COMMITTEE

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## Section 106 Audit – Follow-Up Report 2011

### Recommendations

1. To seek comments from scrutiny committee on, the progress of the Section106 audit action plan, the advice to town and parish councils regarding involvement in s106 agreements and the update on Community Infrastructure Levy and Section106 Supplementary Planning Document

### Purpose of Report

1. The purpose of this report is to update scrutiny committee on progress made on the Section 106 audit action plan (action plan) drawn up by officers after the audit report on Section 106 (S106) agreements dated 7 September 2011.
2. The report also advises how town and parish councils can become involved in S106 agreements and provides an update on progress of the Community Infrastructure Levy (CIL) and new S106 Supplementary Planning Document (SPD).

### Strategic Objectives

3. This report contributes to the Council's Strategic Objectives in the corporate plan 2012-16; particularly the effective management of resources.

## **Background**

### **Action plan**

4. In accordance with the 2009/2010 joint internal audit plan a review of the internal controls for the effective and efficient operation of planning S106 agreements was undertaken in 2010.
5. On 15 September 2010, audit and governance committee received a report on the S106/Commuted Sums 2009/10 audit report summarising the key findings of the audit; the level of risk in our processes; and actions to address these risks. The paper advised that overall the audit found some weaknesses in the adequacy of the internal control system which put the system objectives at risk and made a number of recommendations.
6. A follow-up audit was completed in September 2011 to evaluate whether recommendations had been implemented within the agreed timescale and revise the implementation dates. A copy of the follow-up audit is attached at [Appendix 1](#).
7. Officers produced an S106 audit action plan in response to the follow-up audit. As part of committee's work programme it has asked for a review of progress. An updated copy of the S106 audit action plan is attached at [Appendix 2](#).

### **Town and Parish Council involvement in S106 agreements**

8. Committee has asked for officer views on how town and parish councils can best contribute to the development of s106 agreements.

### **CIL and S106 SPD**

9. The opportunity has been taken to brief committee on the progress of CIL and S106 SPD.
10. Generally S106 agreements currently help fund local and strategic infrastructure. The new CIL will fundamentally alter the existing S106 regime. It will no longer be possible to use S106 agreements as a means of collecting and pooling financial contributions for the provision of strategic infrastructure in the way they are used at present. The new CIL is intended to ensure all new development makes a contribution to strategic infrastructure in an area as a whole (pooling funds), where as future S106 agreements, which still have a part to play post-CIL, are intended to only mitigate the site specific impact of individual planning applications on infrastructure to make them acceptable in planning terms.
11. These changes give rise to the need for a new S106 SPD to take account of the changes to S106 agreements post-CIL.

## **Audit Action Plan**

12. The S106 audit action plan includes action needed at both Vale of White Horse (Vale) and South Oxfordshire District Councils (South). This report however, only addresses actions needed at Vale and the common actions required at both councils.

13. Actions in the action plan are numbered, cross-referenced to the follow-up audit recommendations, and colour coded according to their level of risk and current status. The action plan includes agreed and proposed dates for implementation of outstanding actions.

14. With reference to the action plan, at [Appendix 2](#):

- Eleven of the seventeen actions listed relate to either Vale or are common to both councils
- Of the eleven actions six have been completed (actions 3, 6, 8, 9 (Vale recommendation number 11), 14, 15)
- Action 13, making the (open space) calculation model available on the council's website) is not being pursued because to do so would require a dedicated resource and this would in any event be short-lived as it will be superseded by CIL and the new S106 SPD
- All the remaining actions (actions 2, 4, 5, 7, 9 (Vale recommendation number 12)), are either partly completed or are work in progress and will be addressed and completed either through quarterly S106 reviews, or a revised S106 process as described below
- All outstanding actions are on track to be completed by either September or November this year. These dates follow the recently implemented new harmonised Ocella system (computer software) and phase 2 implementation, which includes an S106/CIL module. It is expected that this should be live from September 2012
- One of the outstanding actions is high risk (action 2), and the four remaining outstanding actions (actions 4, 5, 7, 9 (Vale 12)) are medium risk

### **Quarterly Reviews**

15. Action 9 (Vale 12) that is the formal reporting of income, expenditure, and future amounts is on-track and will be addressed at quarterly S106 review meetings by management team and the cabinet member for planning from September and an annual report to cabinet, March/April. During September the Ocella Phase 2 S106/CIL module should be live and enable informal reporting and reconciliation rather than manual methods.

### **Revised s106 process**

16. The way in which S106 agreements are processed at present has been redesigned. The redesigned S106 process flowchart is attached as [Appendix 3](#). It is coded to show where actions are currently either (a) being done well; (b) being done but not as well or consistently; or (c) where necessary action is not being done. Improvements to (b) and (c) are being worked on.

17. The remaining four outstanding actions in the action plan, (actions 2, 4, 5, 7), which are:

- Developing a protocol to ensure S106 monies are expended within the terms of agreements

- Ensuring that all stages of the S106 process, including spending of monies, the definition of responsibilities, and a system of delegation
- Establishing a master register of S106 agreements in legal
- Prompting developers to notify the council when they reach S106 trigger points

will be addressed by dealing with the deficiencies highlighted (b) and c) in the process flowchart. A master register of S106 agreements will be kept and maintained by the Planning Department instead of the Legal Department and the action plan has been amended to reflect this.

18. Implementation of the improvements required on the revised S106 process will be completed by November this year. This work is associated with the emerging CIL and the new S106 working practice, as mentioned in 10 & 11.

### **Town and parish council's involvement in s106s**

19. Town and parish councils are consulted on planning policy documents such as the Core Strategy and individual planning applications, and have the opportunity to draw attention to the need for new infrastructure that they consider necessary to support new development in their areas. Often local infrastructure needs are currently set out in parish or community plans. This local knowledge helps to supplement the information held by the council to update the Infrastructure Delivery Plan (IDP), which is part of the Core Strategy and to influence planning policy documents. This knowledge can be taken into account to justify infrastructure requirements in negotiations with developers when negotiating S106 agreements.
20. The recently introduced neighbourhood planning measures extend the opportunities for town and parish councils to engage even more directly in identifying and helping to secure necessary infrastructure. Town and parish councils need to set out their expectations in their plans that are justified and costed, which will assist the district council in negotiations with developers on their applications.
21. The important role for town and parish councils is to provide information about local infrastructure needs that is justified and costed. However, expectations need to be managed, as identified local infrastructure can only be taken into account and secured through S106 agreements where they accord with nationally set legal tests including; necessary to make the development acceptable, directly related to the development, and reasonable in scale and kind. However, a 'meaningful contribution' of CIL can be passed to town and parish councils to spend as they see fit. It is considered that those councils that develop and get adopted Neighbourhood Plans with new development would expect a contribution from CIL.

### **CIL and S106 SPD**

22. An up-to-date development plan being its starting point the preparation of our CIL charging schedule depends upon the Council's Core Strategy. We will need to commission a CIL viability study from specialist consultants and we will need an up to date IDP upon which our CIL infrastructure list, a list of the infrastructure needed to support the development planned in our area, will be based.
23. It is too early to say, but it is probable, that because of Vale's varied character and differences in the economic viability of different types of development across our district our charging schedule is likely to have various rates for different areas and different types of development. What is viable in Abingdon may not be viable in Faringdon.
24. Once we have the viability study, we need to identify and take account of alternative funding streams which can help fund CIL infrastructure. This could for example include; New Homes Bonus and Growing Places Fund. We can then assess whether we have a funding gap.
25. A Preliminary Draft Charging Schedule (PDCS) will then be drawn up which strikes an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the imposition of the levy upon the economic viability of development across the area. The PDCS will be consulted upon and having taken representations into account a Draft Charging Schedule (DCS) will be published for further consultation; which will be considered in due course at a public examination. Providing the examiner finds that the DCS is an appropriate basis for the collection of the levy the Council could adopt the DCS, in accordance with the relevant regulations.
27. In addition to the CIL charging schedule we are developing and must implement systems for the collection and enforcement of CIL, and for spending CIL receipts. The new Ocella module (Phase 2) will assist with the delivery of an appropriate administration system. Work has yet to start on the spending strategy of receipts. This work will be cross council and be co-ordinated with our administration of grants by Corporate Support. It is expected that some of our strategic infrastructure will be co-ordinated countywide through the existing Spatial Planning and Infrastructure Partnership (SPIP).
28. Work on the S106 SPD will commence when the PDCS has been published by which time the shape of our CIL will be clearer and it will be possible to identify the non-CIL infrastructure which the S106 SPD will address. A draft S106 SPD will be published for comment at the same time as the DCS with the intention this can be adopted at the same time as the CIL charging schedule.
29. The existing S106 recording and monitoring module is being updated with Ocella as part of the work on our CIL module. This will provide improved monitoring systems, the outputs of which will be used for our quarterly review reports.

## **Financial Implications**

30. The work identified in the S106 audit action plan will be delivered within the existing service budgets

## **Legal Implications**

31. There are no legal implications arising from this report.

## **Risks**

32. Changing priorities, timetables, and diminishing resources for partners/contractors can impact on and delay the action plan and CIL.

## **Conclusion**

33. Progress has continued on the S106 audit action plan since September 2011. More than half of the outstanding actions have been completed. The implementation of the remainder is either brought forward or firmed-up where previously open-ended, and all outstanding actions are now on track to be completed by either September or November this year, 2012.

34. The opportunity for town and parish councils to influence S106 agreements will increase with the advent of neighbourhood planning. We will encourage engagement in policy developments and key planning applications as well as setting out what is required to justify and cost local infrastructure for their areas.

35 Work on Vale's CIL and S106 SPD depends upon progress with the Core Strategy, but it is anticipated that this will be completed before April 2014.

## **Background Papers**

1. S106 Audit Report 2010
2. S106 Audit follow up Report 2011 (attached Appendix 1)
3. S106 Audit action plan (attached Appendix 2)
4. S106 Process flowchart (attached Appendix 3)