

**Minutes of the meeting of the Connected Communities Scrutiny Committee held in Conference Room 1 - Herefordshire Council, Plough Lane Offices, Hereford, HR4 0LE on Tuesday 27 February 2024 at 2.00 pm**

**Committee members present in person and voting:** Councillors: Bruce Baker, Ellie Chowns (Chairperson), Frank Cornthwaite, Elizabeth Foxton, Ed O'Driscoll (Vice-Chairperson), Ben Proctor and Richard Thomas

Others in attendance: R Allonby (Service Director Economy and Growth), M Averill (Service Director Environment and Highways), B Baugh (Democratic Services Officer), Y Coleman (Planning Obligations Manager), R Cook (Corporate Director - Economy and Environment), Councillor B Durkin (Cabinet Member Roads and Regulatory Services), B Evans (Engineering Manager), A Houston (Programme Manager), K Jones (Team Leader Area Engineer), K Knight (Sufficiency Planning and Capital Investment Manager), P McKim (Head of Planning and Building Control), Q Mee (Head of Educational Development), A Rees-Glinos (Governance Support Assistant), G Speller (Senior Project Manager), Councillor E Swinglehurst (Cabinet Member Environment) and D Webb (Statutory Scrutiny Officer)

**28. APOLOGIES FOR ABSENCE**

Apologies for absence had been received from Councillors David Hitchiner and Roger Phillips.

**29. NAMED SUBSTITUTES**

Councillors Elizabeth Foxton and Richard Thomas were present as named substitutes for Councillors David Hitchiner and Roger Phillips, respectively.

**30. DECLARATIONS OF INTEREST**

No declarations of interest were made.

**31. MINUTES**

The minutes of the previous meeting were received.

**Resolved:**

**That the minutes of the meeting held on 8 November 2023 be confirmed as a correct record and be signed by the Chairperson.**

**32. QUESTIONS FROM MEMBERS OF THE PUBLIC**

A document containing a question received from a member of the public and the response given, plus a supplementary question and the response given, is attached at Appendix 1 to the minutes.

**33. QUESTIONS FROM MEMBERS OF THE COUNCIL**

A document containing a question received from Councillor David Hitchiner and the response given is attached at Appendix 2 to the minutes.

### **34. THE POLICY, PRIORITISATION AND DELIVERY OF SECTION 106 FUNDING**

The opening comments made by the Cabinet Member Environment included: officers were thanked for the comprehensive and detailed report; the inquiry from the scrutiny committee was welcomed; an overview was provided of the historic backlog in the delivery of Section 106 funded schemes and the involvement of the Programme Management Office (PMO) in the new delivery model; it was acknowledged that delays in community infrastructure projects added costs and frustrated the intention to mitigate the impact of development; Section 106 contributions had to be spent efficiently and sensibly; there had been meaningful progress but there was still a way to go; the committee was invited to consider whether the future plans were robust enough or whether further action might be needed; there could be a need to raise public awareness of the connection between development sites and community infrastructure projects; and there may be a need for revisions to the formulae for contributions as set out in the Supplementary Planning Document (SPD) on Planning Obligations dated 1 April 2008.

The Chairperson thanked contributors for the work undertaken in preparing the report.

The principal points of the discussion are summarised below:

#### **Policy**

1. In response to a question from the Chairperson, the Planning Obligations Manager reported that the figures in the SPD on Planning Obligations were up-to-date for education and health but others, such as highway contributions, had not been updated since 2008. It was noted that contributions were index linked from the date of an agreement to the date of the monies being received. The Chairperson commented on the significant increases in house prices locally and nationwide since 2008, and a potential recommendation about the uplift of the contributions was suggested.
2. In response to questions from the Vice-Chairperson, the Planning Obligations Manager advised that: it had not been possible within the timescale to produce figures on the hypothetical position had the Community Infrastructure Levy (CIL) been introduced; as part of the new Local Plan, a viability assessment was being produced which would set a new CIL charging schedule for the future and this would be subject to public consultation; an overview was provided about the new role of 'Infrastructure Delivery Officer' which would include co-ordination of the production of the Infrastructure Delivery Plan; and the CIL arrangements allowed parish and town councils to receive a share of the relevant CIL contribution (25% for those with an adopted Neighbourhood Plan or 15% for those without) and there would still be an opportunity to submit community wish lists.

Later in the meeting, it was clarified that the potential proportional split of monies to parish and town councils was set out in the CIL legislation, so would not be determined locally.

3. In response to a question from a committee member, the Planning Obligations Manager explained that each Section 106 agreement was in place to mitigate the impact of a particular development and specified where contributions had to be spent.

4. With further details provided by the Head of Planning and Building Control, the Chairperson noted that the 'Infrastructure Delivery Officer' was a strategic infrastructure planning role and suggested that further consideration could be given to the job title. In response to questions, the Planning Obligations Manager advised that recruitment was underway and that the review of the SPD on Planning Obligations was likely to be given high priority.
5. In response to a question from a committee member, the Head of Planning and Building Control said that, in addition to work in support of the Local Plan, there would be an opportunity to review the figures in the SPD and interim arrangements could be put in place.
6. The Cabinet Member Environment said that the current Cabinet had not yet had a specific discussion on the direction of travel with Section 106 / Infrastructure Levy and the outcomes of this scrutiny committee meeting could be a springboard for such a discussion.
7. In response to questions from a committee member, the Planning Obligations Manager advised that: the length of time available to spend contributions was individual to each agreement, with the usual starting point being ten years; and the [Section 106 contribution search](#) facility provided details of the income available, pending and spent from each development site. Noting that this data was populated through a spreadsheet currently, the Chairperson suggested that consideration could be given to graphical presentation of key information. The Programme Manager commented on some of the complexities (e.g. there could be a number of projects for primary, secondary, special educational needs, and post-16 education) and resource implications, but acknowledged that this should be explored.
8. The Programme Manager reported that risks had been identified in relation to the potential return of unspent or uncommitted parts of Section 106 monies to developers due to expiring timescales but the review of processes during 2023 had minimised those risks; around £7k of highways and transport contributions had been returned to date.
9. A committee member questioned how the authority could judge whether planning obligations were set at the most efficient level. The Planning Obligations Manager: re-iterated that work was underway on the Local Plan viability assessment; confirmed that there were only two planning applications with viability assessments currently; said that the potential uplift of contribution requirements could result in more challenges from developers on viability grounds; and advised that viability assessments submitted by developers were looked at independently by the government's district valuer service.

The Cabinet Member Environment commented on the need for careful consideration of viability given the delicate balance to bring economic growth and housing to the county whilst securing appropriate contributions towards community infrastructure, including biodiversity net gain.

The Head of Planning and Building Control said that, in discussions about viability assessments, developers often sought to negotiate adjustments to the level of affordable housing, particularly social rented units.

10. The Chairperson noted that the authority maintained a community ideas / wish lists database and this was available on the council's website as a static document currently [[link to parish and town council Section 106 wish lists](#)]. It was questioned: if the facility could be made more accessible and searchable; should the wish lists

be updated, noting that some requests dated back to 2011/12; and whether there was active community engagement to inform the wish lists. In response, the Planning Obligations Manager said that: the committee may wish to make a recommendation about improving the format of the wish lists database; parish and town councils were invited to submit their wish lists annually and there may be valid reasons for retaining suggestions over a longer period (e.g. a new community building may take longer to deliver); and Talk Community officers were now being invited to community engagement events.

In addition to welcoming general ideas for future community infrastructure, the Chairperson suggested that the correspondence to parish and town councils could set out current balances to help concentrate minds on specific spending proposals.

The Planning Obligations Manager commented on the level of engagement from parish and town councils in the preparation of Neighbourhood Development Plans and in terms of wish lists. The committee was advised that a pro forma for wish lists would be provided to parish and town councils going forward to encourage communities to provide more detail about existing and future needs. It was confirmed that the matters identified in Neighbourhood Development Plans were not added to the wish lists database.

In response to questions from the Vice-Chairperson, the Programme Manager: welcomed the suggestion of providing feedback to town and parish councils to inform realistic wish lists, and commented on the need to understand better the potential problems anticipated by communities; and acknowledged the need to consider best practice in terms of community engagement.

The Planning Obligations Manager emphasised that Section 106 agreements could not be used to remedy existing deficiencies in local infrastructure.

11. With reference to paragraphs 4.8.5 of the Constitution, the Planning Obligations Manager explained that, in the case of a major planning application, there would be a first point of contact with the local ward member to identify whether an application triggered the need for a Section 106 agreement, and the second point of contact would be to discuss the draft Heads of Terms to ensure that local mitigations measures were incorporated appropriately.
12. In response to a question from a committee member, the Planning Obligations Manager advised that any person commenting on a planning application could identify potential infrastructure requirements and these would be taken into account.
13. A committee member commented on the current lack of a Neighbourhood Development Plan for Hereford City Council.

The Service Director Economy and Growth outlined how infrastructure needs for the city area and as a hub for the wider county were being looked at through the development of the Local Plan, Hereford City Masterplan, and the Economic Plan.

14. The Cabinet Member Environment commented that, where no Neighbourhood Development Plan was in place, further consideration could be given to the means for town and parish councils to identify local infrastructure requirements.
15. A committee member commented that requirements may change during the time span of a Section 106 agreement. The Planning Obligations Manager said that, whilst the authority tried to be as flexible as possible, statutory tests had to be met and planning obligations had to be set out in detail in the legal agreement.

16. A suggestion was made about exploring the relationships between Herefordshire Council and town and parish councils. The Chairperson noted that a specific topic could be given consideration as part of the committee's work programming activity.

[Note: There was a short adjournment]

17. In response to a question from the Vice-Chairperson, the Head of Education Development and the Sufficiency Planning and Capital Investment Manager explained that separate contributions were sought for education settings and for youth provision.
18. The Planning Obligations Manager confirmed that officers would have regard to the whole content of a Neighbourhood Development Plan in drawing up Head of Terms; members were invited to contact the team about queries relating to developments in their wards.

## **Delivery**

19. The Programme Manager reported that the Programme Management Office (PMO) had been established to drive delivery of capital and transformational projects across the directorates, and a team was working on the backlog of Section 106 funded schemes. The Cabinet Member Environment said that consideration would need to be given to the arrangements for the management of future schemes.

In response to a question from the Chairperson, the Corporate Director – Economy and Environment considered that extra dedicated resource was needed to oversee the whole process and consideration would need to be given as to where this function should sit within the organisation going forward.

20. The Vice-Chairperson questioned whether any interest accrued on banked Section 106 contributions could be ring-fenced to additional resource to manage down the backlog. As there was no representative from the finance team in attendance to comment on the treasury management approach, the Cabinet Member Environment said that a recommendation from the committee would provide the opportunity to explore this.
21. In response to a question from the Chairperson, the Programme Manager advised that the current PMO activity on the delivery of the backlog schemes was being funded from PMO revenue budget.

The Service Director Economy and Growth said that project management costs were now being built into new Section 106 agreements, and other delivery models were being explored, including the potential for developers/contractors to deliver schemes themselves. The Chairperson expressed concern about information asymmetry in this scenario. The Service Director acknowledged the need to ensure that value for money was achieved in any developer/contractor delivered schemes but said that there were possible time and money savings by utilising resources already on the ground, rather than finding and mobilising other parties.

22. In response to a question from a committee member, the Programme Manager and the Senior Project Manager outlined the arrangements for design work on the backlog schemes; AECOM had been engaged as a design partner for larger projects, through a competitive framework, and additional quotes were being sought from small to medium sized enterprises for smaller projects. It was noted

that some schemes, already at advanced stages, were still being delivered by Balfour Beatty Living Places.

23. A committee member queried the implications of 2024/25 council-wide savings, including the Mutual Early Resignation Scheme (MERS) which identified savings of £4.5m, on the capacity within services to support the delivery of Section 106 funded schemes. The Cabinet Member Environment commented that services had to be delivered in an efficient way, re-iterated that consideration would be given to delivery models for the longer term, and noted that appropriate charges should be included in Section 106 agreements.
24. The Chairperson drew attention to the question received from Councillor David Hitchiner about Section 106 money from phosphate credits and the potential for funds to be ring-fenced and invested appropriately in order to accrue interest (see Appendix 2 to the minutes). With reference made to the decisions of Cabinet on 26 May 2022 ([minute 119, Phosphate Credit Pricing and Allocation Policy](#) refers), the Service Director Environment and Highway advised the committee that interest was ring-fenced. The Vice-Chairperson considered that this should be held in a separate account to ensure that it was not subject to policy changes in the future.
25. In response to a question from a committee member, the Programme Manager said that the delivery of Section 106 funded schemes was a challenge for all local authorities and backlogs were higher in some areas.

The Planning Obligations Manager reported that research was being undertaken on benchmark local authorities to identify the range of fees and charges, the forms of developer contributions, and the software systems being used.

In response to further questions from the Chairperson, the Planning Obligations Manager said that 17 benchmark local authorities had been selected by the research team, and the Head of Planning and Building Control said that the exercise should be completed over the next six weeks.

26. In response to a comment from a committee member, the Programme Manager, Engineering Manager, and Senior Project Manager provided an overview of the statutory process and indicative timescales for the making of Traffic Regulation Orders.
27. With attention drawn to the sentence in the report ‘... in most cases, projects are value engineered within the set budget parameters’ (report paragraph 39, agenda supplement page 10), the Chairperson questioned whether the authority could do better at matching Section 106 funding with other sources of funding. The Programme Manager commented that the team was working with the historic backlog, on a case by case basis, and would look to bring together different funding streams where possible. As this involved historic budgets, value engineering focused on working smarter with the design and delivery to provide best value for money to achieve the overall objectives.

As an example, the Planning Obligations Manager said that the authority worked with the Football Foundation in terms of certain sports facilities. It was also reported that, in conjunction with Talk Community, sources of funding were identified to town and parish councils as potential opportunities for match funding.

In response to a further question from the Chairperson, the Head of Planning and Building Control confirmed that the Infrastructure Delivery Plan would identify relationships between strategic projects, contributions from development sites, and other funding streams.

28. The Programme Manager acknowledged the need to consider how to enhance stakeholder engagement and to raise public awareness of projects funded through Section 106 contributions.
29. In response to questions from the Vice-Chairperson, the Sufficiency Planning and Capital Investment Manager provided clarifications about the 'notional catchment area' used for denominational schools.
30. With attention drawn to Appendix 10 (Overview of Projects Delivered 23/24, agenda supplement page 51), the Chairperson commented that an opportunity had been missed to put financial information into the public domain. With reference made to report paragraph 21 (agenda supplement page 8), it was noted that some information had been provided for the period 2019-2024 but committee members had requested information dating back ten years, and for this to be provided in a graphical format.

The Chairperson emphasised the need to communicate more clearly around Section 106 in order to enhance public understanding; it was noted that Section 106 funding could provide for capital infrastructure but not revenue to run services.

31. Noting that 'The backlog is forecast to be delivered over financial years 2024/25 and 2025/26' (report paragraph 35, agenda supplement page 9), the Chairperson emphasised the importance of maintaining grip on the management of this matter.
32. The Planning Obligations Manager and the Programme Manager commented on the hard work being undertaken within the service areas to support the programme of delivery.
33. In response to a comment by the Vice-Chairperson, the Cabinet Member Environment acknowledged that delays in delivery could impact on both public perception and on overall costs. The Cabinet Member added that there was a need for capacity to ensure there was a streamlined, efficient and timely process.

At the conclusion of the discussion, the Chairperson noted that there was consensus that this was an important issue, a lot of progress had been made with the backlog, and projects needed to be taken forward as quickly as possible.

There was a short adjournment to enable committee members to consider potential recommendations. The meeting recommenced, the draft recommendations were read out by the Statutory Scrutiny Officer, and the following resolution was agreed by the committee.

**Resolved: That it be recommended to the executive:**

1. **Review the future schedule of rates for Section 106 as contained in the Supplementary Planning Document on Planning Obligations dated 1st April 2008 to ensure they reflect current costs, and are updated annually.**
2. **Introduce interim arrangements for Section 106 funding to ensure changes to schedules of rates can be updated rapidly, while a decision on adopting Infrastructure Levy is reviewed.**
3. **Improve parish council, councillor and local resident engagement in updating community wish lists.**

- 4. Invite parishes who do not currently have a neighbourhood development plan to submit a parish infrastructure development plan.**
- 5. Publish the community wish list in a more accessible format.**
- 6. Consider using interest on banked section 106 contributions to help expedite delivery of the Section 106 project backlog.**
- 7. Ensure that the costs of Section 106 delivery are integrated into the S106 contributions collected to ensure that there is ongoing adequate capacity to enable prompt delivery of projects, both in terms of project management capacity and in terms of delivery capacity within the relevant service areas.**
- 8. Clarify how delivery of Section 106 projects will be managed once the Programme Management Office (PMO) backlog project comes to an end.**
- 9. Improve presentation of information on Section 106 funding received and spent, including greater graphical representation of funding, to enable greater public understanding of the process.**
- 10. Report back to the committee on the results of the Section 106 benchmarking exercise within three months.**

The meeting ended at 5.10 pm

**Chairperson**



## Item 5, Questions from members of the public (plus supplementary question)

<b>Questioner:</b>	Peter McKay, Leominster
<b>Question:</b>	
<p>Would you review the text of the Long List item in your work programme to ensure that it covers both the specific highway and path record issues I suggested be a topic for scrutiny back in December 2022, namely the process for addressing long standing anomalies, etc., in our highway and path records, such as those that Leominster Town Council has requested be addressed as part of the 2021-41 Place Shaping Local Plan, and the Green Lanes shown as footpaths that come about due to use of the non-statutory term CRF, which your research guidance glossary advises where intended to be shown as RUPP's, but were shown as footpaths with use by others than walkers being extinguished in 2031, along with some indication of when could expect scrutiny of these two specific aspects of the highway and path records?</p>	
<b>Response:</b>	
<p>Yes, the committee will review the Long List as requested and will respond on the substance of the question at the next public meeting.</p>	
<b>Supplementary question:</b>	
<p>I wish to express my disappointment that the substance of my question is not to be considered at this meeting, with the next meeting being in May, some 18 months after scrutiny topic was suggested to the Government Support Team in conformance with your 'Get Involved' webpage encouragement to do so, so may I ask why your work programme, or any other business is not a routine part of the agenda to cover such matters?</p>	
<b>Response:</b>	
<p>Thank you for your question.</p> <p>I have been advised that it is considered not good practice for committees to have an 'any other business' section. This is because, for council meetings held in public, there are rules about papers being provided in advance so that everybody has the opportunity to look at them.</p> <p>I can let you know that we are in fact going to be having a work programme meeting next week. Although this is not a meeting in public, we will be taking the issue that you have raised to the work programme meeting and will write back to you.</p>	



## Item 5, Questions from members of the council

<b>Questioner:</b>	Councillor David Hitchiner
<b>Question:</b>	<p>Appendix 6 of Item 7 refers to £556,100 of s106 money from phosphate credits. As I recall, this is money required to keep the wetlands operating for 40 years so of a different character to other s106 monies which are to be spend over a relatively short period.</p> <p>So far as I know, these monies will not accrue interest although the council currently benefits from investing at a rate of c5%. Could the Committee consider recommending that funds be ring-fenced and invested appropriately (maybe including a portfolio of shares) and as a minimum they should be increasing from the date of receipt at the 5% rate. The alternative is that the money in the pot devalues each day due to inflation and the intention that there is enough money to pay for maintenance and repair, to the detriment of future generations of council tax payers.</p>
<b>Response:</b>	<p>Thank you for your suggestion; we will consider it under item 7 of the meeting.</p>

