

Appendix B - Scrutiny Briefing Note

Background

This note has been prepared in order to assist Members of Scrutiny on the background to the responses of some of the questions put before officers.

Policy Formulation

New policy formulation will need to be adopted in conjunction with the update and adoption of the Local Plan (LP). The Local Planning Authority (LPA) are unable to bring forward new planning policy outside of this process. This also means that no changes can be made to spatial allocations within masterplans at the current time.

Until such time the Council has an Infrastructure Delivery Plan (IDP) which provides for the infrastructure necessary to support the proposed allocations within the emerging LP. Progress toward a new Community Infrastructure Levy (CIL) will not be able to proceed until the LP is agreed. This is because a viability assessment will be needed to demonstrate that the CIL charge is viable. Therefore until the spatial allocations are made, post reg19 (LP adoption) a CIL is not possible.

Planning Obligations

The Council adopted a Planning Obligations Supplementary Planning Document (SPD) in 2008, which was accompanied by a Sustainability Appraisal. The SPD was consulted on in accordance with the Council's Statement of Community Involvement. The policies imbedded into the SPD (S2(9) & DR 5) were approved by the Inspector at the Public Inquiry for the Core Strategy in 2015.

Planning Obligations are sought during the determination of planning applications. Development proposals should not produce a financial or environmental burden on existing infrastructure or the environment. When a planning application is assessed, consideration has to be given to how any impacts resulting from the proposed development can be mitigated. Mitigation is carried out by a combination of both planning conditions and developer contributions. This can either be in full or a percentile contribution towards mitigation measures. For example, a capital project such as cycling improvements which is not fully funded but in the longer term contributes to mitigation measures.

In order to secure contributions any such project will need to be costed and justified in terms of need in relation to lack of existing capacity.

Contributions towards infrastructure must meet the test as set out in Reg 122¹ of the Community Infrastructure Levy Regulation 2010. Which requires it to be:

- Necessary to make the development acceptable in planning terms.
- Directly related to the development.
- Fair and reasonably related in scale and kind to the development.

¹ This regulation applies where a relevant determination is made which results in planning permission being granted for development. See: <https://www.legislation.gov.uk/ukxi/2010/948/regulation/122>

During the determination of a planning application the planning officer consults all statutory consultees, such as Highways and Education for example. The statutory consultee makes an assessment of the applications and advises the Planning Authority of its support or objection, or whether mitigation measures are needed and if so when, during the course of the development they are required to be instated.

These requirements are set out in the Planning Officer's report, providing the justification in detail and are included in the Heads of Terms agreement. The allocation will then either be determined under delegation or by members of the Planning Committee. Following determination the Planning Officer works with the Council's Planning Lawyer to lawfully set out the requirements in a S106 legal agreement or a Unilateral Undertaking whichever the most appropriate. The wording on the majority of occasions is significantly influenced by the statutory consultee's request. During the process there is often significant negotiation on the detail of the wording and payment phasing and trigger points involving lawyers on both sides.

The Planning Authority will monitor the payment of contributions. It is then the responsibility of each statutory authority, such as Highways, Health or Education, to ensure that the contributions are spent at the correct time on the required infrastructure. The Local Authority are only able to require funds to be retained pending the provision of these services for a set number of years - unusually no more than 10 and in most cases significantly less. Failure to spend the monies within the allocated time period results in the LPA being required to return the funding to the developer.

Impact on planning application submissions

The Planning Department's application target is historical. Since this time there has been an assumption of year on year growth or maintenance of numbers of applications. There is no evidence to suggest that this is the case on a national level or even a regional level. Indeed I understand that recent survey figures (yet to be released) will show that Herefordshire are in the top 50 LPA's in England & Wales in relation to number of applications. We are waiting for the detailed information to come out later this year. The Planning Inspectorate's recent figures have shown a slowdown of application submissions in the region of around 10% throughout England & Wales.

On a more local level Herefordshire Council has significant issues with the constraints on certain geographical areas due to issues with phosphate within certain water catchment zones. This has created significant restrictions on the determination of applications in certain areas of Herefordshire, even though we now have a small amount of phosphate credits which have only just become available to offset against new developments as a consequence of the wetland project at Luston. Taking into account the cost implications of submitting a planning application, applicants for Major applications within the impacted areas may continue to hold back on their developments until there is a clear pathway for delivery. This, therefore is also having an impact on the submission of applications that generate very large receipts from processing fees.

Whilst considering the implications of cost versus income, it is important to note that over the past five years the LPA has secured £10m in developer S106 contributions

and a further £11m in New Homes Bonus payments from government. It is also important to note that whilst application income is vitally important to the delivery of the service, officers in Planning also work closely with the Housing Team to ensure the delivery of new homes - including affordable and specially adapted homes which meet the specific needs of communities across Herefordshire as well as contributing on an ongoing basis to Council Tax income.

The LPA also charge for 'pre-application advice' to developers which increases the likelihood of their applications having a smooth passage through the planning process by identifying and addressing likely issues at the earliest stage. However, we have seen a reduction in the take-up of this service in most recent months and we will be considering our charges for this service and how we can improve take-up as part of the transformation review of the service.

We will also be looking to implement the use of Planning Performance Agreements where applicants for significant major schemes enter into an agreement at the pre-application stage through to signing of a S106 legal agreement. We will advise Councillors accordingly once we have a process drafted for detailed consideration.

Communication and Working Practices

It is now two and a half years since the Council went into lockdown and new working from home practices came into force. Over a period of time this has had an impact on how we communicate with each other and, whilst officers have continued to perform their duties to the best of their ability, it will be beneficial to review our practices and procedures, and to take stock of how we can communicate more efficiently with our customers, members of the public and elected Members and ensure our officers continue to support and learn from one another on the job.

This will also include a health check on our decision making processes including training for members of the Planning Committee and ensuring that junior members of staff get the training they need.

Improving our ways of working will also reviewing the software systems which support service delivery. The current system used by both Planning and Building Control is out of date. The Council have recently reviewed new systems which assist officers in managing applications and enable a smarter and more streamlined process. The current and future needs of the planning service are being fed into the current work on developing a digital strategy for the council and ensuring the planning service has procedures and systems which support flexible and integrated working within the service and across to statutory services elsewhere is now a priority.