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| REPORT TO: | ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE | AGENDA ITEM: 20 |
| DATE OF MEETING: | 15 August 2019 | CATEGORY: DELEGATED |
| REPORT FROM: | STRATEGIC DIRECTOR (SERVICE DELIVERY) | OPEN |
| MEMBERS' CONTACT POINT: | TONY SYLVESTER HEAD OF PLANNING AND STRATEGIC HOUSING | DOC: |
| SUBJECT: | SECTION 106 AGREEMENTS AND ADOPTION OF OPEN SPACE ETC. | REF: |
| WARD(S) AFFECTED: | ALL | TERMS OF REFERENCE: FM05 |

1.0 Recommendations

- 1.1 The Committee endorses the proposed enhanced process for the delivery of high quality public open space and recreational facilities negotiated as part of new development in the District.
- 1.2 The Committee notes that work is being undertaken in relation to the Council's policy for the adoption of land and sustainable urban drainage systems (SUDS) which will culminate in a further report to committee in due course.

2.0 Purpose of Report

- 2.1 A recent analysis of the Section 106 process for the adoption of public open space as it affects the Council has been undertaken in the light of sustained and increasing high levels of development. It is now necessary to appraise the Committee of the outcome and the proposed working practices going forward. It is not the task of this report to cover other obligations secured under Section 106 agreements. This report concentrates on obligations insofar as the Council itself is the recipient of funds.

3.0 Executive Summary

- 3.1 With the continued increase in housing growth in the District it was deemed sensible to analyse and review the provision of public open space and other recreation facilities. The scope of the analysis included the in-house process to deliver facilities from pre-application stage through to adoption and maintenance; to ensure that the Community Infrastructure Levy (CIL) Regulations are met and that a comprehensive and efficient system is

developed to deliver both Council and community aspirations. Longer term the Council needs to determine its policy with regards to the adoption or otherwise of: public open space/recreation facilities (POS); built facilities such as community and leisure buildings; and Sustainable Urban Drainage systems (SuDs). These policy matters will be the subject of a subsequent report.

4.0 Detail

4.1 Background

It is first necessary to set out the background to the process by which land and facilities destined for public use are brought about as a result of residential development.

- 4.2 In the early 1990s the system was quite different than it is today. House builders used to set out their open space requirements, in accordance with Council space standards and then apply to the Council to adopt them accompanied by a sum for maintenance. Later in the 1990s when Councils started to make use of the provisions of Section 106 of the Town and Country Planning Act 1990¹, it thus became more usual to secure funding through commuted sums as planning obligations. This ensured that sums were collected upon adoption and were more enforceable in law. To this end, adopted policy set out in the document '*Section 106 Agreements – a Guide for Developers*' (2010)² has sought contributions towards affordable housing, recreational open space, education, healthcare, national forest planting and River Mease contributions from all new residential development over four dwellings (but revised by committee resolution in 2015 as a result of the Government's change to the National Planning Policy Guidance barring contributions for less than 11 dwellings). This has enabled the collection of various sums for various purposes in order that there was some contribution towards mitigation of the impact of the development on local infrastructure. The level of open space/recreation provision was then secured through Supplementary Planning Guidance (the relevant rates are also set out in the Developers Guide). As a result of the policy, the Council is now in possession of many areas of public open space which it has been paid to maintain, albeit only allowing for an initial ten year period.

4.3 The current process

The process to deliver adopted public space and facilities is still evolving and adapting to the changing pace and dynamic way in which developments are being delivered. Indeed, work is on-going to ensure that the system is efficient and as robust as possible so that the facilities delivered on the ground will be fit for purpose. Currently, the developer can take one of two routes to ensure the delivery of the facilities: by request to the Council for any on-site space to be adopted subject to a maintenance sum; through a management company charged with the maintenance and management of the facilities.

¹ <https://www.legislation.gov.uk/ukpga/1990/8/section/106>

² <https://www.southderbyshire.gov.uk/our-services/planning-and-building-control/planning/planning-policy/supplementary-planning-documents>

- 4.4 The issue of the adoption of SuDs though is currently less clear. In the past the local water Company has required developers to ensure that the local authority adopts the main surface water features such as the main detention pond(s) in order that it would then adopt the surface water sewers on the site. As such the Council has adopted several surface water features and now has a duty to maintain them in perpetuity. However, it now seems that the water company may have relaxed its stance and is allowing features to be adopted by management companies. This is currently being researched and will be the subject of further discussion with the water company.
- 4.5 Recently the whole internal process leading from pre-application meetings to delivery on the ground has been reviewed (assuming adoption has been requested) and the following describes this in more detail. Where a developer prefers the private management company route, the Section 106 agreement still requires certain management controls to be met to ensure that a satisfactory outcome is achieved and maintained. The overall process is shown in outline below but is shown in more detail in Annexe A:

| Detailed stage | Personnel involved |
|--|---|
| <u>Pre-decision</u> | Planning officers, Cultural Service Officers, grounds maintenance |
| Consider POS etc. needs from strategies and developer's guide ³ | |
| Prepare set of requirements (on and off site) To include S106 agreement negotiations – prepare draft | |
| Developer designs scheme | |
| Planning application process – internal and external consultation | Planners, POS team, grounds maintenance, members, other external |
| <u>Planning decision</u> | |
| Issue decision with relevant planning conditions (where matters undetermined) and S106 agreement to secure provision/maintenance/management | Planning officers, Cultural Service Officers, Lawyers, occasionally external advisors |
| <u>Post Decision/pre-build</u> | |
| Receipt of details to discharge conditions: <ul style="list-style-type: none"> • Landscape details • SuDs • Trees • Recreation and POS – on and off site • Biodiversity/ecology | |
| <u>Build Phase</u> | Planning enforcement, Cultural services, grounds maintenance |
| <u>Build Complete</u> (by phase if applicable) <ul style="list-style-type: none"> A. Assess management of POS and SuDs arrangements: <ul style="list-style-type: none"> • Developer notifies Council of completed site • Pre-meeting of all relevant officers • Site inspection | Planning officers, Cultural Service Officers, grounds maintenance |

³ Consideration of need for POS etc. working from existing strategies and strategies yet to be written

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| <p>B. Agreed management arrangements</p> <ul style="list-style-type: none"> • Report passed to consultees and developer to highlight any issues • On-going inspections in accord with agreed arrangements – can 12 month monitoring period start? Y or N | <p>Cultural services, grounds maintenance, planning enforcement (if necessary)</p> |
| <p>Y - Monitoring period starts</p> <ul style="list-style-type: none"> • Interim inspections and issue schedule for remedial action where applicable • Final inspection – if acceptable instruct Legal team to adopt (includes management/ maintenance plan) • Receive maintenance payment⁴ (commuted sum) <p>N – Pre-meeting setting out management responsibilities because it is either (a) unfit for the period to start or (b) contracted out to a management company</p> | <p>Cultural services, grounds maintenance</p> <p>Legal team</p> |
| <p>If (b) monitoring regime commences in accordance with agreed management/maintenance plan by management company</p> | <p>Cultural services</p> |
| <p>Instruction to Legal Services to adopt – form sent to Finance - plot on GIS</p> | <p>Cultural services</p> |
| <p>Operational Services to add into schedule</p> | <p>Operational Services</p> |
| <p>Legal reports to all that adoption has been completed</p> | <p>Legal Services</p> |
| <p>Commence S106 agreement monitoring – check triggers for payment etc</p> | <p>Planning</p> |
| <p>Application for release of funds sent</p> | <p>Cultural services</p> |

⁴ Equivalent to ten years maintenance

| | |
|--|----------|
| from Cultural Services to Planning and Finance | |
| Planning invokes audit trail (forms) to final cash release | Planning |

4.6 Next steps

Over the past couple of years or so a new approach to the provision of on-site open space (and potentially SuDs) has been emerging. It seems that housebuilders are attempting to capitalise the latent value of the cost of maintenance of on-site space to the extent that it is being sold to the highest bidder. Management companies are then purchasing the open space from the housebuilder with a maintenance contract, but then passing on the cost to individual householders on the site as an annual charge. Most Section 106 agreements enable this to be operated legitimately, although it may not have been envisaged that it would be operated in this way. From a planning authority view, the material issue is to ensure that the requisite on-site space is provided and properly maintained for public use – primarily but not exclusively for the use of the new residents on the site. It is beyond the planning authority's powers to dictate exactly how this is done, hence the option that appears in many agreements.

4.7 The Council currently has no formal policy relating to whether to adopt open space, SuDs or any other public community facility; or whether to ensure that a management company formed of local groups in the community take on the responsibility. It is intended that a report be prepared for presentation to this committee in the coming weeks which seeks to establish that policy.

4.8 It is important to note that SuDs can be subject to separate processes in some cases and these may be subject to longer maintenance periods. For example, where although the main public recreation spaces may be managed by a private company, often house builders prefer the Council to adopt main balancing facilities and claim that Severn Trent Water require such to enable the completion for its adoption as public sewers.

5.0 Financial Implications

5.1 Currently, all Section 106 agreements contain the means to enable the Council to ensure that sufficient space is dedicated to public recreation use and there appear to be no undue new burdens on the Planning Service especially since the Planning Service Review.

5.2 However, the sustained scale and volume of development in the district is providing challenges for the current level of staffing in the Cultural Services Unit. With regard to the adoption of open space the unit has a significant role to play throughout the whole adoption process including review and comment on relevant planning applications and S106 agreements through pre-application and up to approval. Support is also required as part of the build phase and

monitoring phases leading up to adoption. At adoption the unit will have management and maintenance or monitoring responsibilities including on occasion new buildings. Further where Section 106 capital sums have been secured the unit will lead on delivery of the associated capital programme linked to priorities identified within the Open Space, Sport and Community Facility strategy.

- 5.3 There also may be opportunities for the Council to compete for private maintenance contracts should spaces continue to be privately managed.

6.0 Employee Implications

- 6.1 No further burdens would ensue in the Planning Service. It is anticipated the the new Head of Culture and Community Services will review the staffing and resource requirements within her service to effectively manage the tasks outlined as part of the adoptions process.

7.0 Corporate Implications

- 7.1 The on-going requirements described seek to ensure that facilities can be delivered in alignment with the priority actions within the Council's Corporate Plan. The process will therefore have a direct positive impact on the Council's ability to deliver actions against the key objectives of:

- Progress
- Place
- People

8.0 Community Impact

- 8.1 **Consultation:** None

- 8.2 **Equality and Diversity Impact:** The more efficient and economic delivery of public facilities will assist in meeting the diverse needs of all established and future residents and non-residents across the District. Certain elements of proposed improvements to the system are intended to address existing gaps and shortfalls in the adoption process and will thus assist in achieving improved quality of facilities.

- 8.3 **Social Value Impact:** Enhancement of the process will assist in securing high quality facilities going forward; the provision and enhancement of sustainable developments will enhance public health and well-being.

- 8.4 **Environmental Sustainability:** Better performance management will contribute toward the achievement of economic, social and environmental objectives.

9.0 Conclusions

- 9.1 Towards the end of last year, a review of the adoptions process has led to an enhancement of the way in which the Council will take on public facilities. The proposals set out to improve the quality of the proposed facilities to ensure that

greater resources are directed towards more efficient working and the continued management of Section 106 contributions. A period of phased implementation will result in a number of enhancements and improvements to take the process forward over the next few years.

- 9.2 The report also identifies possible future opportunities for the generation of additional income to help meet the cost of maintenance and offer a more comprehensive management of the Council's facilities. There is also an opportunity to review the current rates charged by the Council for the maintenance of space.

Annexe A - Open Space Process Mapping

| | PLANNING | | S.106 | | ADOPTION | | LEGAL/FINANCE | |
|---------------|----------|--|---|---|---|-------------------------------|---|---------------------------|
| | | | | | | | | |
| | | | Money will be entered as spent in Exacom | Planning | | | Money released | Finance |
| | | | | | | | Will transfer money to correct accounts | Finance |
| | | | Application for maintenance monies form to be filled in for release of maintenance and inspection monies – <u>sent to Finance and Planning</u> Form will include the split of maintenance money between POS and Grounds Maintenance teams. Form will set out whether new equipment is required to help with maintenance. | POS Grounds maintenance Finance Planning | | | | |
| | | | Check agreement for triggers | Planning | | | | |
| | | | | | Grounds team add into maintenance/schedule | Grounds Maintenance | ADOPTION - Legal reports to all (Planning, POS, Grounds and Finance) that formal adoption of land has been completed. Money conterminously transferred at point of adoption. | Legal team Finance |
| POST DECISION | | | | | INSTRUCT Legal team if all OK to adopt (include Planning App No). Send form ⁱ 'X' with a copy to Finance Plot on GIS ⁱⁱ | POS team | Separate out S106 monies | Finance |
| | | | | | | POS team Grounds | | |
| | | | | | Has the site inspection been passed? | POS team (will instruct Legal | | |

| | | | | | | | | |
|---|-------------------------------------|--|---|---|---|---|--|--|
| | | | | | YES - 12 month period can start 1. Interim inspections can take place 2. Final inspection after 12 months 3. If OK then instruct Legal team to adopt the land 4. Maintenance continues by the housebuilder until the land has been formally adopted NON-ADOPTION If not adopting land then at this point the agreed management arrangement is invoked and monitored as set out in the agreement. | team) Grounds ⁱⁱⁱ | | |
| | | | On-going Inspections ^{iv} | POS team Planning Enforcement | Has the site inspection been passed? NO - 12 month period ^v cannot start 1. Further inspections at adoption point 2. If acceptable then 12 month period can start 3. If not then continued Inspections until agreed 12 month period can start | POS team Grounds | | |
| | | | Agreed management arrangement ^{vi} | Planners | Report passed to consultees and passed to developer to highlight any issues | POS team to complete report Planners | | |
| | | | Assess management of POS and SUDS arrangements ^{vii} | Planners POS team Others Legal Grounds maintenance | SITE INSPECTION ^{viii} in accordance with S.106 agreement | POS team ^{ix} Grounds Trees SUDS/external | | |
| | | | NO | | Pre-meeting of all involved ^x | Planner to coordinate | | |
| BUILD COMPLETE (by phase if applicable) | | | Has the build been completed? YES - See adoption column | Planners | Developer notifies of completed site | Planners | | |
| | | | ADOPTION of POS | | | | | |
| BUILD (by phase if applicable) | Planning Enforcement POS team | | POS, SUDS and Recreation Provision submissions made (what is to be implemented including management company | Planners POS team Other externals Grounds | | | | |



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|------|--------------|--|--|--|--|----------|--|-------|--|
| TIME | PRE DECISION | | | if relevant) | maintenance | | | | |
| | | Receipt of details to discharge conditions • Landscaping ^{xi} • SUDS ^{xii} • Trees • Recreation • Biodiversity • Grounds ^{xiii} | Planners POS team Grounds Maintenance Other external | Final S.106 agreement signed Notify POS and Grounds Maintenance team of the final S106 ^{xiv} | Planners | | | | |
| | | ISSUE PLANNING DECISION | | DRAFT TERMS | | | | | |
| | | Planning Decision NB. Relevant Planning Conditions Issue form to POS team informing S.106 negotiations and invitation to feedback on detail | | Further Negotiation | Planners Developers | | | | |
| | | Consultation ^{xv} Internal/External | Planners POS team Grounds Maintenance Other external | S.106 Agreement negotiations ^{xvi} | Planners Developers POS team ^{xvii} | | | | |
| | | Developer Designs Scheme | Planners | | | | | | |
| | | Set of requirements (on-site and off-site) | Planners | | | | | | |
| | | Early Stages • Pre Application • Outline Application • Reserved Matters/Full Application • Generate Planning POS form including tree appraisal ^{xviii} | Planners Open Space team Grounds maintenance team | | | | | | |
| | | Consider POS needs ^{xix} through an update SPD. To include POS strategy, Playing Pitch Strategy, SUDS, Biodiversity, Trees, Cemeteries, Allotments | | | | | | | |
| | | PLANNING | | S.106 | | ADOPTION | | LEGAL | |

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- ⁱ Form required
 - ⁱⁱ Schedule of adoptable assets/infrastructure by POS team/grounds maintenance. Details to be mapped which will require assigning data owners and responsibilities.
 - ⁱⁱⁱ SDDC Officers to maintain in the 12 month period before adoption?
 - ^{iv} Mapping of management companies or lists
 - ^v Initial Maintenance Period – owner manages and maintains the open space ensuring it is free of defects for a 12 month period.
 - ^{vi} Management arrangement/agreement should include: annual report to householders on POS etc and to include reporting lines for complaints. Management Company will absolve SDDC of all duties under the Environmental Protection Act. What other minimum requirements for minimum standards assurance.
 - ^{vii} Management Company shopping list – a document to be sent out and Adoption in phases? Also see 7
 - ^{viii} Guidance note for inspection visits
 - ^{ix} Technical support for built facilities
 - ^x Plans available to all at inspection
 - ^{xi} Landscape Architect required
 - ^{xii} Engineer – business case to be written
 - ^{xiii} Conditions (consult direct services) and consider land levels/maintenance
 - ^{xiv} Form needed?
 - ^{xv} Wider internal consultation required
 - ^{xvi} S.106 terms verified by POS team
 - ^{xvii} SDDC offers to maintain POS as a ‘competitive bid’ and Legal Question re: Management Companies
 - ^{xviii} Would a TPO be required in future?
 - ^{xix} Review Developer Contributions document