

**REVIEW OF SECTION 106 AGREEMENTS  
(Report of the Overview & Scrutiny Panel (Service Support))**

**1. INTRODUCTION**

- 1.1 Planning obligations and agreements have become increasingly important in providing public services including highways, recreational facilities, education, health and affordable housing. Agreements can involve significant sums of money and in the light of Members' concerns about the need to ensure that money is allocated and spent in a timely fashion, the Overview and Scrutiny (Service Support) has been considering quarterly monitoring reports on the receipt of S106 money and its allocation and expenditure on specific schemes.
- 1.2 At its meeting held on 12<sup>th</sup> February 2008, the Overview and Scrutiny Panel (Service Support) decided to establish a Working Group to investigate the current Section 106 Agreement mechanism from the negotiation of agreements to the expenditure of money received. The Panel's interest in the subject was prompted by the scale of income received from this source and the time taken, in some cases, to secure its expenditure. As sums are negotiated for other public sector infrastructure providers, the Panel also was interested in ensuring that a transparent audit trail existed to ensure that receipts were being used locally. This had previously been highlighted by the Panel's Cycling Working Group which had been unable to establish a clear link from Section 106 contributions for transportation to its expenditure on individual cycleway schemes in the District.

**2. MEMBERSHIP AND DECLARATIONS OF INTEREST**

- 2.1 The Working Group comprised Councillors P J Downes, D Harty, M F Newman and R J Tuplin with Councillor Harty as its rapporteur. Councillor T D Sanderson was co-opted to the group as a result of his interest in the subject matter.
- 2.2 Councillors P J Downes and D Harty declared personal interests in the subject matter as Members of Cambridgeshire County Council.

**3. WHAT IS A SECTION 106 AGREEMENT?**

- 3.1 Planning obligations, known as Section 106 agreements, are agreements between local authorities and developers negotiated in the context of the granting of a planning consent. They enable a proposed development to contribute to the needs of a local

community associated with the development by securing developer contributions towards the provision of infrastructure and services.

- 3.2 The legislative framework for planning obligations is contained in Section 106 of the Town and Country Planning Act 1990. It permits local authorities and developers to make agreements over the use of land, including those which require sums to be paid to the local authority.
- 3.3 Through planning obligations, developers contribute towards sustainable communities and help ensure the success of new developments. They can make cash or in-kind contributions towards a range of infrastructure and services including local roads and public transport schemes, education, public spaces, community facilities and affordable housing.
- 3.4 Current Government policy contained in circular 05/2005 requires fair, open and reasonable negotiation of planning obligations, so that obligations enhance a development and enable proposals to go ahead which might otherwise be refused.
- 3.5 A local authority should not seek a contribution through a planning obligation unless it is:-
  - Necessary,
  - relevant to planning,
  - directly related to the proposed development,
  - fairly and reasonably related in scale and kind to the proposed development, and
  - reasonable in all other aspects.
- 3.6 The income received by the District Council from Section 106 agreements in Huntingdonshire during 2006 and 2007 was £447,055 and £401,273 respectively. Much larger sums are paid by the developers direct to Cambridgeshire County Council.

#### **4. WHAT CONTROLS DO WE CURRENTLY HAVE IN PLACE**

- 4.1 Currently the Section 106 process is regulated by a number of mechanisms, some of which involve Members.
- 4.2 At Member level, a Section 106 Advisory Group has been established for some time to consider the terms of any proposed agreements which are likely to involve the provision of a financial contribution towards local infrastructure, community facilities or affordable housing where the total contribution from an individual planning application is likely to be in excess of £100,000. The Advisory Group's current terms of reference are listed in Appendix A.

- 4.3 The Advisory Group, currently chaired by Councillor R G Tuplin, normally meets in advance of meetings of the Development Control Panel on an ad hoc basis to formulate recommendations for consideration by the Panel when determining a relevant planning application. Ward Members are invited to relevant meetings of the Advisory Group to comment upon proposals.
- 4.4 Financial monitoring is currently undertaken by the Overview & Scrutiny Panel (Service Support). The Panel receives a quarterly report detailing the receipt and expenditure of money negotiated under Section 106 Agreements by the Council.
- 4.5 The Council has established a Section 106 database which records monetary and non-monetary benefits generated by agreements and their expenditure which is maintained and updated by an officer with specific responsibility for this work in the Policy and Strategic Services Division.

## **5. FUTURE PROPOSALS**

- 5.1 As part of its deliberations, the Working Group has noted the potential impact of the forthcoming Community Infrastructure Levy which is expected to be implemented from September 2009. The Levy will be a new charge which local authorities in England and Wales will be empowered, but not required, to place upon most types of new development in their area. Charges will be based upon simple formulae which relate the size of the charge to the scale and character of the development to which it relates. The proceeds of the levy will be spent on local and sub regional infrastructure to offset the impact of the development on a local area.
- 5.2 It is anticipated that the Levy will improve predictability and certainty for developers as to what they will be asked to contribute; will increase fairness by broadening the range of developments asked to contribute; will allow the cumulative impact of small developments to be better addressed; and will enable important sub-regional infrastructure to be funded. Whilst it is anticipated that local planning authorities will retain the power to enter into Section 106 Agreements for affordable housing contributions, the Working Group has noted that there are a number of uncertainties associated with the introduction of the Levy which are yet to be addressed.
- 5.3 The District Council is also in the process of preparing a new Supplementary Planning Document (SPD) for Section 106 Agreements across the District under the existing legislation to apply a tariff per household to cover the cost of local infrastructure. This is proposed as an interim measure pending the transition to the proposed Community Infrastructure Levy and is expected to be in a draft format by March 2009, subject to staff resources. The tariff

based SPD will be linked with the evolving Cambridgeshire Horizons Variable Tariff Rate for strategic infrastructure. It is hoped that the SPD will bring consistency, transparency and clarity, whilst producing an efficient and effective delivery system.

- 5.4 New legislation from April 2008 also enables the Local Planning Authority to require draft Heads of Terms for a S106 Agreement to be submitted as part of the application validation process, usually for larger developments.

## **6. THE PRESENT ARRANGEMENTS**

- 6.1 In Huntingdonshire the majority of section 106 obligations are a product of negotiation with respective developers, following consultation with various service providers. The latter include the Council's Operations, Leisure and Housing Divisions, together with the County Council and National Health Service for education, highways, transportation and health care requirements. The negotiation process is undertaken by District Council officers.
- 6.2 Those proposals involving agreements of less than £100,000 can be dealt with under the Council's scheme of delegation. Applications involving more than £100,000, affordable housing and some other benefits, must be referred firstly to the S106 Advisory Group which will submit recommendations to the Development Control Panel when the relevant planning application is being determined.
- 6.3 Once planning permission has been granted subject to a Section 106 agreement, the Head of Legal and Estates drafts and formalises the benefits, together with relevant trigger points in a formal document. Upon the agreement being sealed, the planning permission is issued. Where the benefits involve an external organisation such as the County Council that body generally becomes a party to the agreement.
- 6.4 The agreement will specify the appropriate trigger points when a payment must be made or a benefit delivered. Generally these relate to the commencement or conclusion of a development or the point at which a specific percentage of the development has been completed. The recovery arrangements are instigated by the recipient authority with the District Council not collecting and remitting payments for others. In the case of benefits to the District Council, recovery is pursued by the Division responsible for the service to which the benefit relates. The situation is also monitored by the officer in the Policy and Strategic Services Division to ensure that recovery arrangements are pursued and that payments are not overlooked.

## 7. METHODOLOGY

7.1 At the outset of the review, the Group met with the Leader of the Council, Councillor I C Bates, and the Executive Councillor for Operational and Countryside Services, Councillor C R Hyams, to ensure that the review did not duplicate similar inquiries being initiated by the Executive. As a result of those discussions, it was agreed that the study on this matter should be undertaken by the Overview and Scrutiny Panel. The Working Group's remit was

“to investigate the Section 106 process adopted by the Council including the relationship with other infrastructure partners and make recommendations if improvements are thought to be necessary”.

7.2 The Working Group has subsequently met on a number of occasions over the ensuing months and has received information on the current process and its operation from:-

- the Head of Planning Services and Development Control Manager
- the Head of Operations
- the Head of Housing Services and Housing Policy Enabling Officer
- the Policy & Strategic Services Manager and Policy Officer; and
- the Head of Legal and Estates.

7.3 This has included details of the way in which Section 106 Agreements are negotiated, the role of the Section 106 Advisory Group, expenditure of Section 106 receipts, the provision of affordable housing, the role of the Legal Division in the preparation and enforcement of agreements and the compilation and monitoring of the Council's Section 106 database which records monetary and non monetary benefits generated by agreements and their expenditure.

7.4 Information was obtained from similar scrutiny reviews carried out by other local authorities. Of those available, details of the studies undertaken by Bradford, Stoke on Trent City Council and Cardiff County Council were provided to members of the Working Group. In considering the reviews and recommendations, the Working Group was pleased that a significant number of the concerns and issues raised in those reports had already been addressed and appropriate measures implemented in Huntingdonshire.

7.5 Having regard to the role of partners in the negotiation and delivery of agreements, the Working Group also met with representatives of NHS Cambridgeshire, Cambridgeshire Constabulary and Cambridgeshire Fire and Rescue Service. Representatives of

Cambridgeshire County Council declined to attend one of the Working Group's meetings but a paper outlining the Section 106 process adopted by the County Council and how their requirements were determined was provided for the Group's attention. Subsequently, in their capacity as County Councillors, Councillors Harty and Downes met relevant County Council Officers to discuss the County Council's role in the process and its treatment and expenditure of Section 106 receipts.

- 7.7 From the discussions it emerged that NHS Cambridgeshire has only become involved in the Section 106 negotiation process in recent years and is being encouraged to develop funding formulae to provide evidence of infrastructure deficits to assist in Section 106 negotiations. Although Cambridgeshire Constabulary and Cambridgeshire Fire and Rescue Service are consulted on planning applications, they are not involved in the negotiation of Section 106 agreements. It is anticipated that the emerging Supplementary Planning Document on Planning Obligations will help define who should be consulted formally.

## **8. DELIBERATIONS**

- 8.1 The Working Group raised a series of questions with the Head of Planning Services and the Development Control Manager arising from their initial investigations. A copy of the answers provided by the Head of Planning Services is available on request from the Democratic Services Section. The Working Group's investigations can be divided into a number of distinct areas:-

- negotiation of Agreements,
- Section 106 Advisory Group / information provided to District Council Members,
- local involvement,
- monitoring and accountability,
- expenditure of receipts, and
- enforcement action.

### **Negotiation of Agreements**

- 8.2 As part of its deliberations, the Working Group discussed the present arrangements for the negotiation of agreements with developers.
- 8.3 The current negotiations are undertaken by the Development Control Officer responsible for the relevant planning application. Officers have to make a judgement against what is reasonable for a particular application to deliver in terms of infrastructure funding. The Working Group was told that this can vary depending upon the economic climate and any particular characteristic of the site which can affect its development value. In so doing, the Working Group

debated whether Members should be more actively involved in the negotiation process, having regard to their local knowledge. In particular, Members were aware that by the time that a report is submitted to the Members Section 106 Advisory Group, the negotiations with applicants and other infrastructure providers have been completed and there is little opportunity for the Advisory Group to make changes at such a late stage in the process.

8.4 In addition, all requests for Section 106 contributions have to be supported by up to date policies and evidence. While Ward Members may be able to offer a local perspective on community needs, the Working Group recognised that without sufficient justification, some proposals could not be supported. Where a particular development is unable to finance all of the obligations being sought by infrastructure providers, a reasoned judgement has to be made as to which are the most important, initially by Officers and subsequently by the Advisory Group and Development Control Panel. Competing infrastructure requirements are therefore considered on a case by case basis taking account of evidence, need and applicable policies and having regard to any relevant corporate and local objectives. Any contentious or problematic discussions with other public bodies are referred for consideration by the Section 106 Advisory Group, after the relevant organisations have been asked to justify their requirements. Having regard for the need for the content of Agreements to be evidence based and in line with approved strategies and plans, the Working Group did not consider it appropriate for Members to be involved earlier in the negotiation process.

8.5 Members also discussed whether the District Council should be negotiating more generalised agreements as opposed to those that are site specific. However with the exception of developments that have been negotiated for transportation purposes, the Head of Planning Services has demonstrated to the satisfaction of the Working Group that current S106 Agreements must be directly related to the proposed development and fairly and reasonably related in scale, although this is likely to change with the introduction of the Community Infrastructure Levy referred to earlier. This could introduce the possibility of the pooling of Section 106 receipts so that funding can be provided for key service centres and local settlements which are unlikely to generate Section 106 receipts of their own.

#### **Section 106 Advisory Group / Information provided to District Council Members**

8.6 As part of its deliberations, the Working Group considered the role of the Section 106 Advisory Group and its method of operation. Members were generally of the opinion that the current arrangements work well. A possibility that was discussed in a

similar vein to greater involvement by Ward Members, was for the Advisory Group to become involved earlier in the negotiation process for individual development proposals. The argument in its favour is that Members can provide a local dimension and the Advisory Group becomes involved too late in the process to effectively make any change. However this was discounted by the Working Group for the same reasons as more Ward Member involvement, i.e. the need for an evidential base and compliance with approved plans and strategies.

- 8.7 Nevertheless the Working Group recognised that Members inevitably will have an interest in what is being proposed in their wards and may have local knowledge of infrastructure deficits. It was felt that this is best dealt with by way of a clear explanation to all Members of the Section 106 process and a reminder that Members receive notification of all new planning applications via the weekly planning list. This serves to alert Members to the submission of proposals affecting their respective wards and gives them an opportunity to ask for an individual application to be determined by the Development Control Panel on material planning grounds. This also can be used to provide Members with an opportunity to notify the relevant Development Control Officer, whose names are listed in the weekly list, of any local issues that they think might be suitable for possible inclusion in a Section 106 agreement connected with that application. This will enable all developments, including those of less than the £100,000 threshold for consideration by the Advisory Group to be addressed and it is suggested that an indication should be made on the weekly list to demonstrate where Section 106 Agreements are likely to be proposed. The Working Group therefore **recommends that a guidance note be prepared and drawn to the attention of all Members to illustrate how they can comment on applications and the potential heads of terms for S106 Agreements by reference to the weekly planning list notification.**

- 8.8 It has been suggested also that Members should have access to completed agreements which will help them improve their knowledge of the infrastructure negotiated for their areas. This is feasible using the Public Access Software system and the Working Group has welcomed the fact during the course of its review, arrangements have been put in place for the content of completed Section 106 Agreements to be recorded and made available on the Council's website.

### **Local Involvement**

- 8.9 The Working Group discussed the role and involvement of town and parish councils in the process, whether their views should be formally invited on the content of Section 106 Agreements and whether representatives should be invited to attend meetings of the



Advisory Group. Members concluded that the same considerations apply as in the case of ward members. Individual town and parish councils have an opportunity to comment on planning applications in their areas and to address the Development Control Panel if an application is to be determined in that forum. The Working Group has been advised that the new 1APP planning application format requires applications for major development to be accompanied by a document setting out the proposed Section 106 heads of terms which will provide a greater opportunity for town and parish councils and other interested parties to comment as part of the planning process.

- 8.10 It was suggested to the Working Group that some local councils might be reluctant to comment on Section 106 agreements if they were recommending refusal of an application. However commenting in this way does not weaken a town or parish council's recommendation on an application itself and is similar to the District Council's position at local inquiries when defending decisions to refuse applications. Nevertheless the Working Group acknowledges that local councils have a valuable role to play in the planning process and is aware that there has been a perception in the past on the part of local councils that insufficient weight is attached to their views. The Working Group therefore **recommends that clear guidance is given to town and parish councils on how to comment on the potential content of agreements for development in their areas as part of the normal consultation arrangements and speaking at Development Control Panel meetings.**
- 8.11 Part of that guidance should take the form of a flow chart showing the process for local member and town and parish council involvement and models agreed with the Development Control Manager are attached at Appendices B and C.
- 8.12 In a similar vein and having regard to its earlier recommendation concerning the use of an indicator on the weekly planning list to alert Members where it is likely that a Section 106 agreement will be required, the Working Group **recommends that town and parish councils be advised of the introduction of a marker on the weekly list and reminded to review these on a regular basis with a view to making comments on potential heads of terms for Section 106 Agreement in their areas.** It is hoped that the provision of an early indication in this way will improve parish/district liaison.
- 8.13 Town and parish councils can of course also demonstrate their infrastructure requirements through their own Parish Plans which can provide a useful evidence base of local need. The Working Group concluded that, where possible, town and parish councils should be encouraged to prepare Parish Plans in order to provide

the necessary evidence to support their requests for infrastructure improvements.

### **Monitoring and Accountability**

- 8.14 The Working Group discussed the arrangements for monitoring the receipt of funds from Section 106 Agreements and their expenditure. The Group was aware that an extensive Section 106 database has been created in recent years, which contains details of Agreements, trigger points, funding and non monetary benefits. The monitoring of income and expenditure is currently undertaken by the Overview and Scrutiny Panel (Service Support) which receives quarterly monitoring reports, the format of which has become more extensive at the Panel' request. Overall, Members were content with the information contained in the reports submitted to Overview and Scrutiny although comments were made as to some of the terminology used, such as the phrase "schemes in place" which it was thought could be misleading as it incorporated schemes that had not yet started. With this in mind, the Working Group has suggested a number of changes to the monitoring report including the use of the terminology "schemes identified", together with the anticipated date when a scheme is expected to commence and a brief description of the proposals. Concern was also expressed that other Members of the Council may not be aware of the monitoring report's existence and the funding which is retained for expenditure in individual wards. As a result, the Policy and Strategic Services Division has been asked to ensure that copies of the report are circulated on a quarterly basis to all Members of the Council. **The Working Group recommends that copies of the quarterly report prepared by the Policy & Strategic Services Division detailing income and expenditure from Section 106 money be provided to all Members the suggested changes to the content of the report be implemented at the earliest opportunity.**
- 8.15 The Working Group was of the opinion that it would be logical to extend the remit of the Section 106 Advisory Group to include the monitoring role and for its terms of reference to be amended accordingly. However it was recognised that monitoring will need to be undertaken on a regular basis. Given the ad hoc basis upon which dates for meetings of the Advisory Group are currently arranged, it is suggested that dates for meetings of the Advisory Group should be reserved in the Council's calendar of meetings to enable monitoring to take place on a quarterly basis. To enable the Advisory Group to have a greater input into the development of agreements it was suggested also that meetings should be held one week prior to the Development Control Panel to provide an opportunity for investigations or clarifications to be provided, if requested by the Advisory Group, before the Panel meets to

determine the planning application and content of the Section 106 Agreement. The Working Group therefore **recommends that the remit and terms of reference of the Section 106 Advisory Group be expanded to include monitoring and meetings be convened on a more regular basis with dates reserved in the Council's calendar one week prior to each Development Control Panel as set out in the terms of reference appended at Appendix D.**

- 8.16 The Working Group has discussed the fact that meetings of the Section 106 Advisory Group, in line with other Council Advisory Groups, are not open to the public. Having regard to the fact that the monitoring report is currently submitted to the Overview and Scrutiny Panel (Service Support) and given that it is desirable to maintain this level of transparency and openness, the Group has suggested that the monitoring report should be submitted to the Development Control Panel on a quarterly basis with any recommendations/comments from the Advisory Group. **The Working Group recommend accordingly.** The Working Group also wish to ensure that the Advisory Group has the ability to ensure that relevant officers are invited to attend meetings as and when Members raise concerns about progress with particular schemes and that the Policy Officer with responsibility for monitoring agreements is in regular attendance.
- 8.17 The Working Group has discussed whether there is a role for the District Council to monitor the receipt of funding and its expenditure by other infrastructure providers but has concluded that the Council does not have the necessary remit or responsibility to monitor or scrutinise the actions of other public bodies, especially as those providers are often signatories to the individual agreements themselves. The Working Group was aware of previous concerns expressed by another working group about the difficulty in establishing a clear link between Section 106 contributions and its expenditure on individual schemes in Huntingdonshire and has been pleased to note that the County Council recently has appointed a dedicated officer with responsibility for Section 106 monitoring which hopefully will improve communication and transparency. With regard to the expenditure of S106 receipts in Huntingdonshire where they relate to development in the District, the Working Group has acknowledged that the cost of individual education and highway schemes will often outweigh the contribution from an individual development. It is inevitable therefore that the County Council will need to pool funding to enable some projects to proceed and the Working Group accepts there is no further action that can be taken to improve the transparency of the process under the existing system. However the Working Group is of the view that it would be helpful if the Advisory Group was provided with regular updates on the progress of transportation projects funded with the assistance of Section 106 receipts in Huntingdonshire.

- 8.18 Currently responsibility for securing financial payments contained in Agreements rests with the Policy & Strategic Services Division, with officers pursuing recovery when the trigger points are reached. Non financial contributions are secured by the spending Divisions. The Working Group queried whether there were advantages to be derived from centralising all contributions, potentially by the Policy and Strategic Services Division which maintains the S106 database. However Members have been informed that there would be capacity and technical problems if this were to be pursued. Support is already provided by that Division which reminds others when trigger points have been reached and the Working Group is satisfied that the present arrangements are working well. In addition the Legal and Estates Services provide support to Divisions in the event that there are disputes with developers. Moreover the arrangements will need to be reviewed as part of the introduction of the Community Infrastructure Levy.
- 8.19 The Working Group is of the opinion that there is a need to improve executive accountability internally with the District Council for the receipt and expenditure of Section 106 money. Currently each executive councillor has responsibility for the recovery and expenditure of S106 receipts in his or her portfolio. There is no clear collective responsibility when problems arise, other than through Cabinet as a whole and the Working Group considers that it would be helpful if a single executive councillor is given a remit to ensure that the process is working effectively in terms of recovery of payments and expenditure of receipts. In the event of questions with regard to the quarterly monitoring report and any other others of a general as opposed to a specific nature, it will then be clear who is accountable. The Working Group considers that the logical choice in this case is the executive councillor for Finance and Environment. The Working Group therefore **recommends that the Executive Councillor for Finance and the Environment becomes responsible for ensuring that the mechanism for securing payments and expenditure of receipts under Section 106 Agreements is working effectively, with individual executive councillors remaining accountable for the delivery of benefits and projects contained in the Agreements relevant to their areas of responsibility.**

#### **Expenditure of Receipts**

- 8.20 The scale of the funding available from Section 106 Agreements is significant. As at November 2008, a total of £646,000 remains unspent from payments already received. The total payments due by all infrastructure providers from developments already commenced in the District is £12.5 million with a further £2 million due from developments yet to start. Much of the latter will be

collected by the County Council for education and highways expenditure direct from the developers.

- 8.21 The Working Group has queried the process for expenditure of the money received as this is not shown separately in the Council's budget and MTP. Members' attention was drawn to the Council's Code of Financial Management which makes provision for a head of service to spend money received from Section 106 Agreements on projects or services defined in the Agreement up to £30,000 revenue and £50,000 capital per annum on each project, after which consultation is required with the relevant Executive Councillor. In all cases the Head of Financial Services must be notified of the expenditure.
- 8.22 In such circumstances, the Working Group is satisfied that the necessary controls are in place to regulate the expenditure of money received.

### **Grampian Conditions**

- 8.23 The Group was informed that, on occasion, Grampian conditions are used in planning permissions to secure payment for infrastructure provision as opposed to S106 Agreements. The expression derives from the decision in Grampian Regional Council v City of Aberdeen (1984) and in essence provides for a planning condition to be imposed that precludes the implementation of a development permitted by a permission until a required step is taken such as the payment of money for local infrastructure improvements. Grampian conditions offer certain advantages compared to Section 106 Agreements inasmuch as the Council has enforcement powers under planning legislation for breach of condition if a payment is not made. This compares with the more cumbersome recovery arrangements through the courts in the case of non-payment of a Section 106 payment.
- 8.24 The Working Group noted that the central register maintained for Section 106 Agreements extends to Grampian conditions. However, the Group has been informed that such conditions have been used infrequently by the Council in the past and that, as a result of recent advice by Government to the Planning Inspectorate, they are unlikely to be used in the future. The Working Group, therefore, concluded that, unless the use of Grampian conditions grows in the future, there is no need to change current arrangements.

*(NB – Following their discussion on Grampian conditions, the Working Group has been informed that there is some uncertainty over the future use of these conditions. Members therefore suggest that their findings should be reviewed once the situation becomes clearer.*

## **Enforcement Action**

- 8.25 The Group discussed the current arrangements for undertaking enforcement action against developers for non-compliance with Agreements and acquainted with the courses of action available through the Courts. Where necessary, authorisation to pursue this course of action is required from the Development Control Panel.
- 8.26 Members noted that a new procedure recently has been adopted under which developers who have not complied with a Section 106 obligation are referred to the Legal and Estates Division after two requests for payments have not been met. Non-payment has rarely proved to be a problem in the past and the Working Group, therefore does not consider that any more stringent recovery arrangements are necessary.

## **9. CONCLUSION**

- 9.1 Overall the Working Group was satisfied that the current system is working well and that the necessary controls are in place. In comparison to those planning authorities who have undertaken similar reviews, it seems clear that the Council has already addressed issues that were identified by those authorities. The Section 106 system will change with the introduction of the Community Infrastructure Levy in 2009/10 but, in the interim, there are a number of suggested improvements that the Working Group recommends to improve the present processes and procedures.
- 9.2 The Working Group's report has been discussed with the Executive Councillor for Planning Strategy and Transportation and the Head of Planning Services at a meeting of the Overview and Scrutiny Panel (Service Support). Having regard to their comments, a number of minor amendments have been incorporated into the recommendations reproduced below.
- 9.3 During the Panel's discussion, comment was made as to whether it would be appropriate to share the outcome of the Working Group's investigations with the County Council and other local authorities. However it was concluded that this could best be dealt with on an informal basis by County Council members. The Panel has also welcomed an offer by the Head of Planning Services to include information in forthcoming training sessions to town and parish councils on how to best comment on the potential content of Agreements for developments in their areas.
- 9.4 The Panel therefore resolved to endorse the Working Group's report and recommendations and commend them to the Cabinet and Development Control Panel.

## **10. SUMMARY OF RECOMMENDATIONS**

- (a) that a guidance note be prepared and drawn to the attention of Members to illustrate how they can comment on applications and the potential heads of terms for Section 106 Agreements by reference to the weekly planning list notification;**
- (b) that clear guidance is given to town and parish councils on how to comment on the potential content of agreements for development in their areas as part of the normal consultation arrangements and speaking at Development Control Panel meetings;**
- (c) that Parish Councils be advised of the introduction of a marker on the planning weekly list and reminded to review these on a regular basis with a view to making comments on the potential Heads of Terms of Section 106 agreements in their areas;**
- (d) that copies of the quarterly report prepared by the Policy & Strategic Services Division detailing income and expenditure from Section 106 money be provided to all Members and suggested changes to the content of the report implemented at the earliest opportunity;**
- (e) that the remit and terms of reference of the Section 106 Advisory Group be expanded to include monitoring and meetings be convened on a more regular basis with dates reserved in the Council's calendar one week prior to each Development Control Panel as set out in terms of reference appended at Appendix D;**
- (f) that copies of the monitoring report be submitted to the Section 106 Advisory Group on a quarterly basis and also to the Development Control Panel with any comments from the Advisory Group; and**
- (g) that the Executive Councillor for Finance and the Environment becomes responsible for ensuring that the mechanism for securing payments and expenditure of receipts under S106 Agreements is working effectively with individual executive councillors remaining accountable for the delivery of benefits and projects contained in the relevant Agreements.**

## **CONTACT OFFICER**

**Claire Bulman, Democratic Services Officer  
(01480) 388234**

## **BACKGROUND INFORMATION**

Notes and agendas of working group meetings (20/05/08, 03/07/08, 21/07/08, 28/08/08, 07/10/08)

City of Bradford Metropolitan District Council – Scrutiny of Section 106 Agreements

Section 106 Obligations: A report and recommendations from a task group: Stoke on Trent

Section 106 Agreements: A report of the Economic Scrutiny Committee (November 2005) County Council of the City of Cardiff

Questions and answers prepared by the Head of Planning Services

Presentations by / discussions with Head of Planning Services, Head of Housing Services, Policy Officer and Head of Operations



## **APPENDIX A**

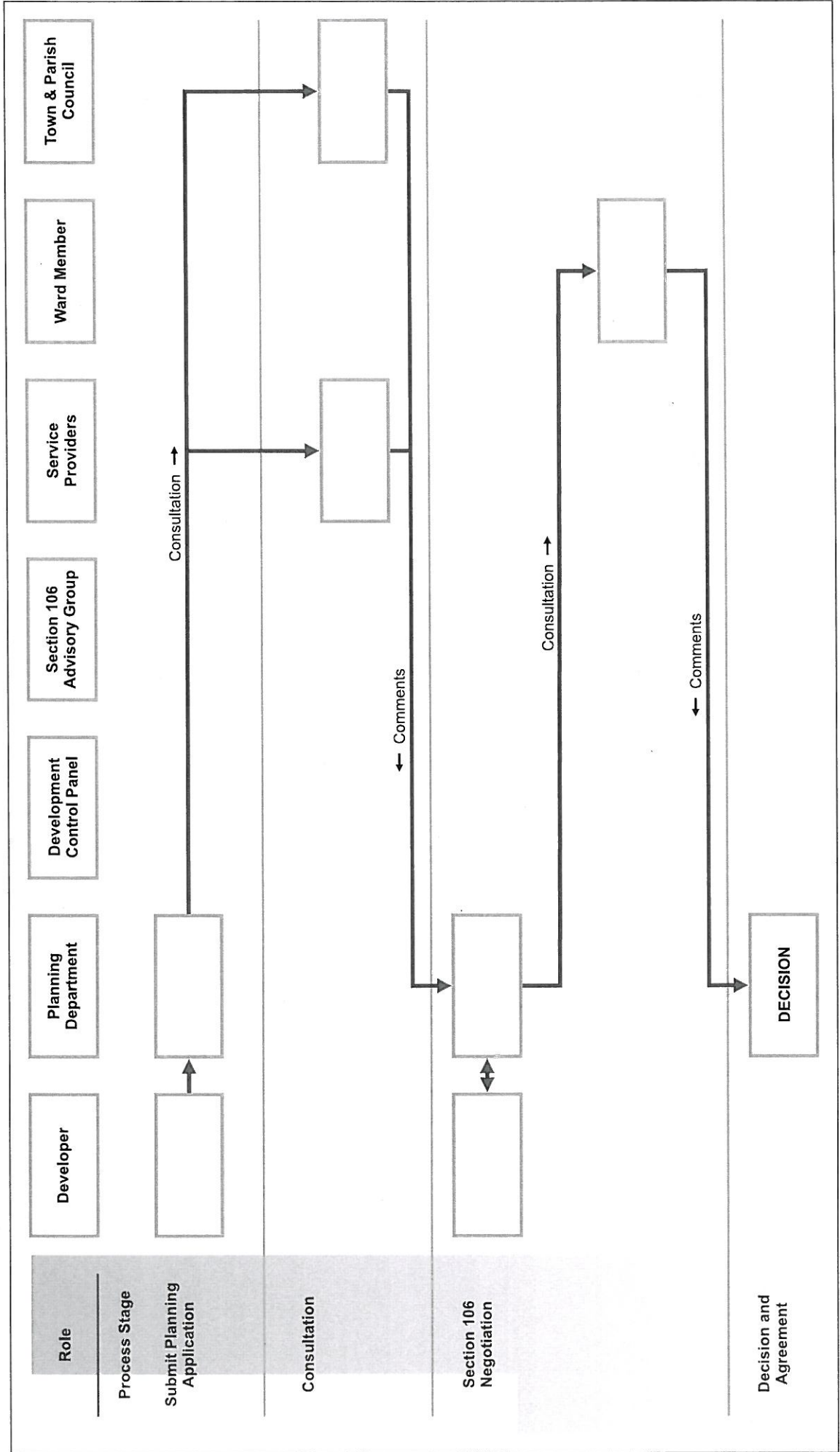
### **SECTION 106 AGREEMENT ADVISORY GROUP**

#### **TERMS OF REFERENCE AND METHOD OF OPERATION**

1. The Advisory Group will consider recommendations from and formulate guidance for the Head of Planning Services on the content of Section 106 Agreements to be negotiated as part of the development control process.
2. The Advisory Group will consider the terms for any proposed Section 106 Agreements which are likely to involve the provision of or a financial contribution towards local infrastructure, community facilities or affordable housing and any variations thereto as a result of the process of negotiation with the applicant, where the contribution to be made totals more than £100,000 or its equivalent.
3. The Advisory Group's comments on an individual Section 106 Agreement will be incorporated in the report of the Head of Planning Services to the Development Control Panel meeting at which the relevant planning application will be considered for determination.
4. The Development Control Panel normally will delegate authority to determine the final content of a Section 106 Agreement to the Head of Planning Services subject to the reference back to the Advisory Group/Panel of any significant variation following negotiation with the applicant.
5. The Advisory Group will meet as and when required and the quorum for meetings shall be not less than 3 Members.
6. The Advisory Group will be deliberative and non-executive – it will not have delegated authority to determine the content of S106 Agreements and its meetings will not be open to the public.
7. An opportunity will be provided for Ward Members to address the Advisory Group on a particular Agreement or by way of written representations.
8. Notes of meetings of the Advisory Group will be compiled for submission to their ensuing meeting as a record of their discussions.

# Appendix B

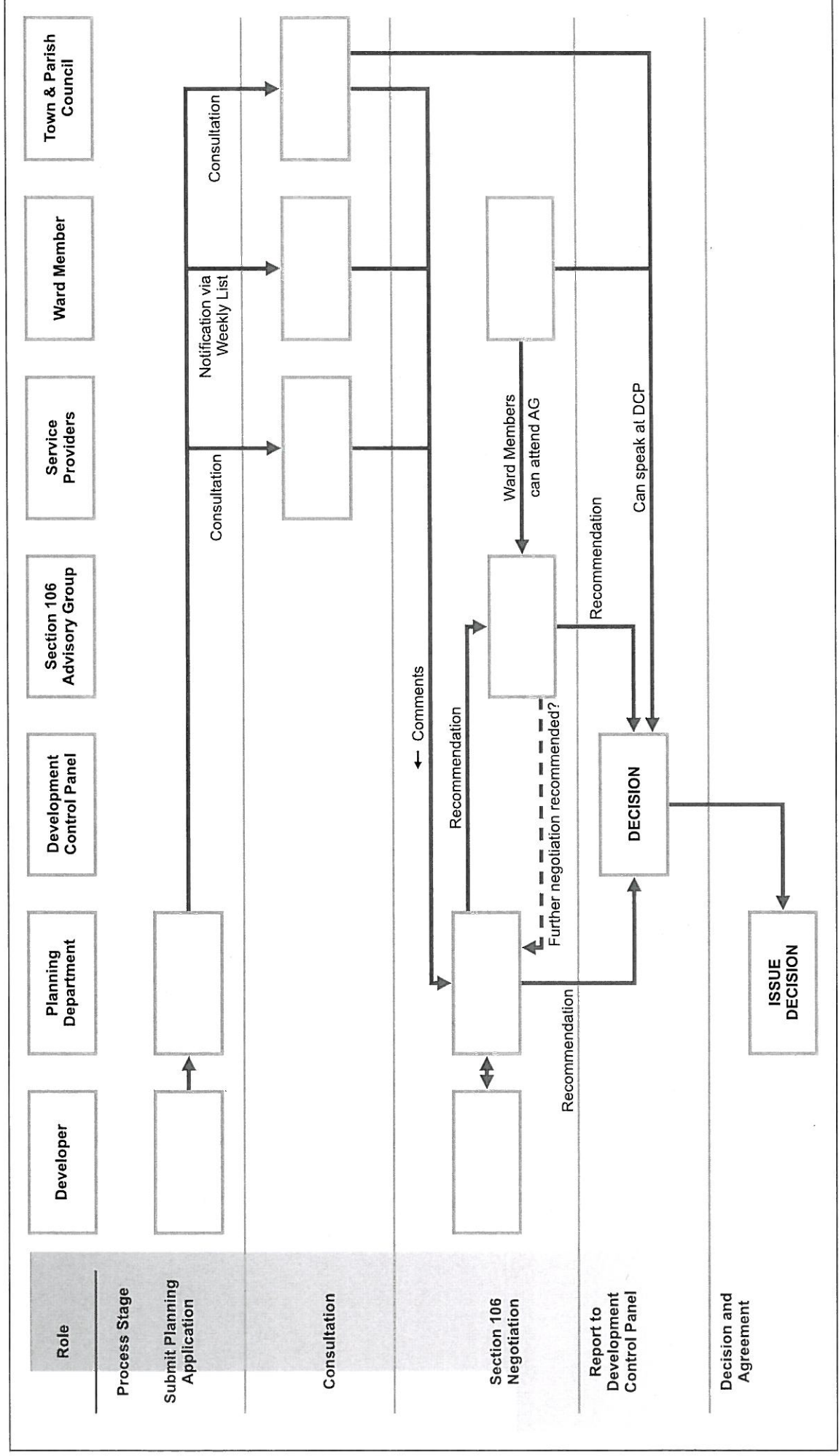
## Delegated Route



Note: even though the S. 106 element of these applications is delegated and won't therefore be referred to S. 106 AG, the application may still be referred to DCP for another reason

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# Advisory Group Route



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## APPENDIX D

### SECTION 106 AGREEMENT ADVISORY GROUP

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2. The Advisory Group will consider the terms for any proposed Section 106 Agreements which are likely to involve the provision of or a financial contribution towards local infrastructure, community facilities or affordable housing and any variations thereto as a result of the process of negotiation with the applicant, where the contribution to be made totals more than £100,000 or its equivalent.
3. The Advisory Group's comments on an individual Section 106 Agreement will be incorporated in the report of the Head of Planning Services to the Development Control Panel meeting at which the relevant planning application will be considered for determination.
4. The Development Control Panel normally will delegate authority to determine the final content of a Section 106 Agreement to the Head of Planning Services subject to the reference back to the Advisory Group/Panel of any significant variation following negotiation with the applicant.
5. ***The Advisory Group will also monitor the receipt and expenditure of Section 106 money on a quarterly basis and have the ability to invite officers to attend meetings to respond to their concerns about the progress of a particular scheme.***
6. ***Scheduled meetings will be incorporated with the Council's Calendar of meetings one week prior to each meeting of the Development Control Panel*** and the quorum for meetings shall be not less than 3 Members.
7. The Advisory Group will be deliberative and non-executive – it will not have delegated authority to determine the content of S106 Agreements and its meetings will not be open to the public.
8. An opportunity will be provided for Ward Members to address the Advisory Group on a particular Agreement or by way of written representations.
9. Notes of meetings of the Advisory Group will be compiled for submission to their ensuing meeting as a record of their discussions.