

# **RESOURCE MANAGEMENT SELECT COMMITTEE TASK GROUP**

## **SECTION 106 CONTRIBUTIONS**

### **MINUTES**

**Tuesday 3 November 2009**

**Present:** Councillor Laszlo Zverko, Councillor Gordon Lundie, Councillor David Rendel, Caroline Walsh (Special Projects Officer – S106), Gary Lugg (Head of Planning and Trading Standards), Stewart Souden (Grounds Maintenance Manager), Jon Winstanley (Highways Projects Manager), Mark Edwards (Head of Highways and Transport), Stephen Chard (Policy Officer)

**Apologies:** Simon Freeman (Finance Manager)

#### **1) Election of Chairman**

Councillor Laszlo Zverko was elected as Chairman of the Task Group.

#### **2) Apologies for absence**

An apology for absence was received from Simon Freeman.

#### **3) Final agreement of the scope and terms of reference**

Bullet point one of the terms of reference was amended to include attendance by outside bodies who were in receipt of contributions.

Subject to this amendment the terms of reference were agreed.

#### **4) Review of RMSC minutes of 30 June 09 and updated data**

Questions of clarity were asked in respect of some of the points made in the minutes of 30 June 2009:

Bullet point five – ‘contributions could not be collected until development work had commenced’ - it was queried whether this was required by law and whether the system could be changed. Officers pointed out that:

- This was negotiated between the Council and developers, although if the contribution was paid up front it could not be spent until development work started.
- Not all planning applications were implemented.
- This was an issue nationally. Officers were not aware of a better system.

Testing work on an enhanced database was being conducted by ICT.

Since April 2009 £1.86m had been invoiced, this was an increase from the figure of £1.5m in June. Caroline Walsh advised that there was still a substantial backlog of invoices to be raised. Gary Lugg added that this had been delayed by additional work created by the interest of Parish Councils, Members and the press, and associated meetings.

The need to understand the delays in the process was raised and Caroline Walsh agreed to provide, in time for the next meeting, a flow chart of the process covering the following stages:

- The determination of the planning application and agreement to S106 contributions.
- Developer invoice.
- Invoice paid.
- Funding utilised.

Issues at each stage of the process would be highlighted to inform discussion and help the task group identify where any delays could occur. **Action: Caroline Walsh**

## 5) Countryside and Environment

The combined total of contributions of less than £5k was referred to. This totalled £177k for Countryside, £74k of which was unallocated. The database contained information dating back to 1998.

Caroline Walsh agreed to provide a total figure for each of the service areas taking part in this work, of contributions where the unspent balance was less than £5k.

**Action: Caroline Walsh**

Stewart Souden then made the following points from the viewpoint of Countryside and Environment:

- Once a planning application was received contact would be made by the planning case officer. If there was no on site provision for public open space then an appropriate financial contribution would be requested to mitigate against the harm from the development for parks and open spaces. This was in line with supplementary planning guidance.
- Once funding had been received from an approved application it would be banked to a holding account. A project would be drawn up and agreement would be needed for its use by the Portfolio Holder, there were monthly meetings in place for this purpose.
- Parish and town councils were consulted as part of this process and Gary Lugg added that there was wide consultation, which also included the public and developers.
- The allocation formula was based on the number of bedrooms, i.e. occupancy rate and was calculated to cover both the initial work and maintenance of the particular project or equipment for 20 years.
- If funding was available for a town or parish then they would need to advise of their needs. However there could sometimes be a delay when waiting to hear feedback as town and parish councils often only met quarterly and only

advised of their needs on a reactive basis, although this was followed up. This was less so the case for larger parish and town councils which were more proactive, had a Parish Plan in place and would come forward with projects, thereby speeding up the process. Newbury Town Council was given as a positive example.

Gary Lugg advised that the importance of this had been promoted at parish conferences and through distribution of leaflets. Funding levels per parish were communicated annually, and town and parish councils were offered to come forward more frequently.

Members discussed ways in which parish and town councils could be encouraged to be more proactive.

It was suggested as a potential recommendation that parish and town councils should follow best practice of having a Parish Plan in place to help them be more proactive in assessing and communicating their needs. More frequent funding updates were also suggested both on the current level and when there was potential for new developments and therefore additional funding. Gary Lugg pointed out that a guidance note had been circulated to encourage best practice and this would be circulated to the task group. An example of the report sent to parishes was also requested. **Action: Gary Lugg/Caroline Walsh**

The link between Members and the towns and parishes in their Wards was another area to be investigated with the potential to improve processes.

Stewart Souden pointed out that there were a number of Council sites that attracted visitors and required investment.

Discussion then followed in respect of the 20 year maintenance contribution. Stewart Souden advised that the funding was not split between the cost of equipment and its maintenance. Using the example of a parish council they might use the total cost to fund equipment and consider that they have the necessary funds to maintain it themselves. If this was the case then the liability for maintenance would rest with the parish. This was also true of Council sites where maintenance was often covered by revenue funding rather than S106 contributions. Gary Lugg advised this did not delay the spending of the funds listed in the database as revenue costs were held in a separate account. For S106 purposes this funding would be viewed as spent.

There was concern that if contributions were spent solely on capital work then the Council's revenue costs could be increased. It was agreed that Finance would be asked to respond to this point. **Action: Simon Freeman**

In respect of timeframes Gary Lugg confirmed that although it was often negotiated that funding would need to be spent within 5 years, there was no end date in the current legislation and guidance, as was the case previously. Therefore maintenance funding could legally be kept and spent over a gradual period of time. This changed policy was intended to provide more flexibility and be of greater benefit to communities.

Funding could only be claimed back by a developer when it was spent contrary to a legal agreement.

Parishes were not audited, although they were asked to provide detail of the intended purpose for the funding and copies of receipts once work was undertaken.

The differing levels of unspent monies in separate service areas were queried. The total unspent in Countryside was 53% whereas in Highways it was 78%.

Stewart Souden advised that Countryside projects were often shorter term schemes than those in Education and Highways. Mark Edwards agreed that many highways projects were long term and added that a difficulty for his service area was with allocating smaller amounts of funding to a scheme. Gary Lugg pointed out that these smaller contributions were often not allocated to a specific scheme.

In the instance where there was a clear understanding of where contributions should be used, it was queried whether it could be identified if funding had been allocated for its specific purpose. It was confirmed that there was an audit trail to identify this as each area of funding was given a reference number and therefore spend against parish, school catchment area, open space etc could be identified.

The capital amount allocated in the table was confirmed as being money available for expenditure. S106 funding was generally for capital expenditure (28% in Highways and 64% in Countryside).

The project in Station Road, Theale was referred to where funding of just over £10k had been in the holding account for almost five years. Stewart Souden explained that this was for a Council site which he was not directly responsible for. One reason for delay was because the funding had not been allocated to a cost centre.

Members felt this could potentially be a systematic problem and Stewart Souden was asked to identify where improvements could be made. Stewart advised that the unspent contributions report was a useful list and it would be beneficial if it was circulated on a monthly basis to help track and manage projects, particularly those that had been in the holding account for some time. Gary Lugg offered to provide this monthly for all relevant service areas. **Action: Gary Lugg**

The delay already identified with town and parish councils was again referred to and the potential to reallocate money if it was not spent by a certain time to another appropriate area was queried. Gary Lugg advised that in principle this could happen although evidence would be needed to prove that the use was in line with the terms of the S106 agreement.

The significant reduction in contributions from a year ago of approximately £200k was referred to. Gary Lugg advised that whilst this was partly down to the backlog of invoices, this had tailed off, in particular for major developments. The recession was named as the prime cause of this.

Stewart Souden assured Members that there was concentrated work in Countryside and it was hoped that unspent funding could be reduced by up to 50% over the next six weeks.

## 6) Highways and Transport

Mark Edwards introduced the item and made the following points:

- Highway projects were often complex and related to larger amounts of funding than in Countryside.
- There was an appropriate formula to calculate the level of contribution required and negotiations also took place with developers.
- Overall the system was successful and raised millions of pounds to mitigate against harm of developments.
- Although 78% of contributions were unspent and it was acknowledged that there was a backlog, year on year the funding received was spent. In 2008/09 £2.3m of funding was received in Highways and £3.2m had been spent (this was a combination of in year funding and money in the holding account). Thus far in 2009/10 £1.4m had been received and there were plans to spend £2.4m. Two large contributions of £400k were part of the £1.4m.
- The data recorded in Highways was organised by parish and this enabled funding levels to be quickly identified at this level.
- Town and parish councils were contacted to discuss areas of work and potential schemes, this linked to parish plans where these were in place. This happened routinely and as soon as notification was received from a developer that a contribution was to be made. Parish meetings were attended as part of this, fliers were distributed and there were positive examples where this worked well. The intention was to link work as much as possible in order to achieve a joined up transport system across the district.
- A distinction was needed between allocated money and money left unspent in the holding account. Funding was allocated for Highways as part of a five year capital programme and after considering all the schemes in the programme £1.3m was currently left unallocated. This was felt to be a healthy picture.

Jon Winstanley described an area of delay which was with linked developments. This was where some schemes could not be commenced until a linked development had started or completed work. The work at Kings Road was an example.

It was queried whether capital S106 money for a delayed project could be utilised elsewhere with money efficiently reallocated as necessary so that the original project was still funded. Officers advised that capital funding was mostly required to be spent in year, also capital S106 money was to mitigate harm and was not for maintenance purposes. However it was confirmed that there was some legitimate room for manoeuvre with capital S106 money in the way described, there was greater potential for this with more recent schemes. It was suggested that a recommendation could be to use capital S106 funding as flexibly as possible.

There were standard legal agreements in place which helped with flexibility, although larger projects were more specific. Caroline Walsh advised that less than 10% of legal agreements had end dates and offered to provide a copy of a recent legal agreement. **Action: Caroline Walsh**

The Kings Road example was returned to. Jon Winstanley confirmed there was approximately £200k of funding collated for the project, this was mostly for work on the junction between Boundary Road and Kings Road. The precise use of this funding was not specifically named in a legal agreement, rather improvement to the local surrounding area including Boundary Road and Kings Road.

Contributions of less than £5k, which amounted to £467k for Highways, were referred to. Jon Winstanley advised that in instances where there were a number of small amounts for one parish, the parish concerned would be contacted with a view to considering whether combining the contributions was an option to taking a development forward. Funding would still be spent in line with the terms of the legal agreements regardless of any delay.

The issue of contributions being received for initial work and for maintenance was queried for Highways. Mark Edwards advised that commuted sums, where longer term maintenance work was required, such as with sustainable urban drainage systems, were held in a separate account to S106 funds. Simon Freeman would be asked to comment on how this was managed by Finance. **Action: Simon Freeman**

It was queried whether the delay caused by waiting to collate smaller sums of money could be resolved by the Council funding a budget shortfall from the capital programme, at least in the short term. Gary Lugg advised that this was a possible approach if the project was seen as a priority. Mark Edwards added that if all other avenues of funding had been exhausted for highways work then use of Council funds would be considered.

Examples of where contributions had not been spent for some time were referred to. It was agreed that those service areas which were present today and those due to attend the next meeting would be asked to provide a list of the 10 oldest receipts together with the reasons for delays in spending. **Action: Stewart Souden/Jon Winstanley/Caroline Walsh to ask others.**

## 7) Future meeting dates and activity

The next meeting was arranged for Monday 7 December, 6.15pm in Committee Room 1.

Appropriate officers from Education and Housing would be invited to attend and make a brief presentation. In addition they would be asked to provide an analysis on the 10 oldest receipts in advance. **Action: Stephen Chard**

In respect of outside bodies it was agreed that it would be of most use to invite town or parish councils. Both Newbury and Thatcham Town Councils would be invited to describe their experience of the system, problems encountered etc. **Action: Stephen Chard**