

RESOURCE MANAGEMENT SELECT COMMITTEE TASK GROUP

SECTION 106 CONTRIBUTIONS

MINUTES

Monday 7 December 2009

Present: Councillor Laszlo Zverko, Councillor Gordon Lundie, Councillor David Rendel, Councillor Lee Dillon (Thatcham Town Council), Caroline Walsh (Special Projects Officer – S106), Gary Lugg (Head of Planning and Trading Standards), Simon Freeman (Finance Manager), Mel Brain (Housing Strategy Manager), Mark Lewis (Education Assets Manager), Stephen Chard (Policy Officer)

8) Apologies for absence

An apology for absence was received from Newbury Town Council as the meeting clashed with their full Council meeting.

An apology for absence was received from Stephanie Steevenson, Chair of Thatcham Town Council. Councillor Lee Dillon represented the Town Council in her absence.

9) Minutes of 3rd November

The minutes of the meeting held on 3 November 2009 were approved as a true and correct record.

10) Evidence from Newbury Town Council

It was noted from the information provided that Newbury Town Council was very happy that S106 monies were transferred to them by West Berkshire Council in a timely manner. The spending of such money was driven by service plans.

Instances of delays were down to, for example, merging of funds for a larger project or to allow for a consultation period to establish need.

11) Evidence from Thatcham Town Council

Councillor Dillon, in describing the process from the viewpoint of Thatcham Town Council, made the following points:

- The Town Council had a S106 working party which went through contributions received and produced a list of priorities. At the present time this working party did not report to WBC.
- At a meeting held in July 2009 the latest WBC spreadsheet listing available monies was provided by Caroline Walsh. Unfortunately it was advised by the

Council's Countryside officers present that the money listed in the spreadsheet was in fact fully allocated.

In response Caroline Walsh advised that this difficulty arose because while a service area could allocate money to a future scheme, it could not be input onto the Council's financial system, Agresso, unless it was to be spent within the financial year. Councillor Dillon felt that updated financial data was needed so that informed discussions could be held.

- Councillor Dillon went on to say that he felt there was a communication issue where WBC was aware of contributions in advance of town and parish councils and therefore had first choice on where funding would be allocated. In respect of Thatcham, it was felt that Henwick playing fields took priority over smaller areas of public open space.

Members queried who would actually make the final decision on how funding was to be put to use and Gary Lugg explained the process involved. WBC would sign the S106 legal agreement; funding, once received, would be allocated to service areas based on what was in the agreement and on agreed priorities; and the Portfolio Holder would sign off agreement to capital projects. Money could not be spent until this process was completed.

Gary Lugg added that agreement of priorities could best be resolved by town and parish councils meeting with the relevant service area, in most cases Countryside. These discussions could include Ward Members and the Portfolio Holder. Priorities would ideally be linked to a town or parish plan. Members felt that a clear procedure, to include these discussions, was a potential recommendation. The extent to which this already happened was varied and proactive work of parish clerks was highlighted as a positive way of working.

Any work undertaken would have to be as a result of the pressure created by the development. Priorities should also be identified based on evidence of need in the area concerned and regardless of whether it was, for example, a WBC or Thatcham Town Council playing area.

Councillor Dillon advised that the Town Council had no concerns in respect of receiving and spending the money once it had been allocated. They did have a list of priorities which was updated monthly and agreed that this would be shared as part of discussions with relevant service areas.

The annual reports provided to towns and parishes were referred to. Thatcham Town Council would benefit from receiving these more frequently and quarterly reports were suggested. Caroline Walsh acknowledged that there would be changes within this period but advised that any town or parish could ask for a report at any time. Gary Lugg raised a concern in respect of the impact producing quarterly reports would have on already limited resources.

It was suggested that town and parish councils should request an updated report prior to their meetings. This already happened in some instances.

At the present time data was contained on a complex database which could not be accessed by towns or parishes even though the information was publicly available. Gary Lugg described the next upgrade which would be web based and would

enable external access. However because of IT resource issues the upgrade of the system had taken over two years, although the upgrade was currently being tested. Members felt that it should be recommended that the IT upgrade be given a high priority to help reduce delays.

In the meantime it was suggested that a full town/parish report could be provided on the website on a quarterly basis.

The example parish/town report provided in the papers was then referred to and it was queried who undertook monitoring of the development to check whether it had commenced. This was undertaken via a combination of Building Control records, Enforcement work and information provided by town and parish councils. However the only fully accurate way was to undertake checks on site, but officer time did not allow for this. Another difficulty with monitoring was differing legal agreements, for example on a large site.

12) Housing and Performance

Mel Brain made the following points in respect of Housing data:

- £4.7m of contributions were classed as unallocated/unspent.
- However the majority of this funding had been allocated to 3 main schemes – Waring Court, Sovereign schemes and the equity loan deposit scheme.
- £1.89m of the funding then remained, its use had been identified but was not as advanced as the 3 main schemes.
- Despite funds being allocated at a service level, they did not show in the S106 database in cases where spend was not within year. This meant that the reports produced from information in the database differed from the service level reports.

As a way to resolve this Caroline Walsh advised that there was a comments field in the database to detail this type of information, although it would have to be regularly updated. Mel Brain offered to undertake this task. It was felt that this should be widened to all relevant service areas.

13) Education

Mark Lewis introduced the item and made the following points:

- The spreadsheet provided by Planning was worked through annually to identify monies received. This work linked to Education's review of schemes. In addition Education had their own separate database for monitoring purposes.
- For larger developments it was possible to make plans in advance. However many contributions were small and therefore funding was pooled together over a period of time.
- In principle the time taken for some schemes (7-8 years) was too long.
- Legal agreements specified a school catchment area where contributions had to be spent to mitigate harm and could not be used to resolve a current issue.

The Theale Green catchment project was discussed. Funding had been allocated for the primary school library, however this was subject to a large development in the area proceeding which had been delayed due to external factors and therefore the library project was also delayed. There had been no indication from the developer that there would be a delay.

The potential to alter plans in the event of a delay was discussed. Gary Lugg advised that there had been only limited cases where a developer was willing for their contributions to be allocated differently from what was originally agreed in the legal agreement.

If contributions were not sufficient to conduct a major piece of work in a school it was queried whether it could be used for a smaller project. Gary Lugg commented that although this could be negotiated and there was flexibility for this, a Headteacher might wish to hold money to, for example, build a new classroom. Mark Lewis added that the admissions process and forecasting of pupil numbers were considerations as part of this.

Mark Lewis advised of delays where plans for developing a school were made by Diocesan Boards. However delays, some of them lengthy, had been resolved in many cases and there were plans to spend the majority of contributions in 2010/11.

Members queried whether negotiating agreements was a common delay. Gary Lugg responded by saying that the process had improved and, with the assistance of Legal, agreements were being made as flexible as possible. This work had been undertaken following a scrutiny review in 2005. However some agreements were still very tightly worded at the request of developers.

Gary Lugg went on to say that in his view further flexibility of legal agreements was not possible and could lead to funding being lost at appeals when a developer could challenge the basis for the contribution. This was not the case under the current arrangements. Another difficulty with negotiating agreements was the current economic climate, it was becoming more often the case that a developer wished to negotiate payment terms which they could legitimately do.

Mark Lewis felt that there was flexibility of using a contribution in another school as long as it remained within the catchment area. This was possible, for example, if the demographic pressure eased in the original school.

Gary Lugg described the Community Infrastructure Levy that was being introduced in April 2010. This would remove the need for legal agreements (other than for affordable housing), would mean that flexibility could be enhanced and actual payment of contributions made as a condition of approval.

Members then queried the work undertaken to progress delayed projects. Mark Lewis advised that much time and effort was devoted to these projects which were often the most complex and additional resources would be a benefit with this work. However Mark Lewis maintained that in general the majority of funding was spent and would continue to be spent in a timely manner. A Member suggested that investing in resources would be of benefit in resolving delayed projects.

A view was given that WBC was not focussed as an organisation on this issue. The potential to look at levels of contribution by developer was also suggested so

that negotiations could take place with larger developers to progress projects in more timely fashion.

In response Gary Lugg made the following points:

- It was acknowledged that there was less focus on this work previously because of inadequate resources.
- Current resources had helped to more tightly manage the process and work was focussed to allocate and spend contributions, although some schemes still took some time. Mark Lewis advised that the average time lag to complete large Education projects was 2 years and 8 months, although it was hoped this would be reduced.
- Education was referred to as an example. There was currently £5.2m unspent, but this had reduced from a peak of £8m. Contributions received more recently were being put to use and older schemes were being reprioritised. The level of unspent contributions for Education was forecast to reduce to £4m by year end. This reduction was predicted to continue in future years and across service areas.
- It was difficult to assess what the position should be as West Berkshire was ahead of others in the country on this work and there was therefore no benchmarking data. The recession was also an issue.
- The level of expenditure was exceeding the funding being received, this began to be the case prior to the recession.

The fact that each service area had individual ways of managing their contributions, which differed to the central database, was a concern for Members who felt that only one central database should be in place. Gary Lugg agreed this was an issue and this was part of the IT upgrade that had been delayed.

Gary Lugg added that it was also hoped that a live link to Agresso would be possible, at present manual updates were required which took up to two days of officer time a month. It was agreed that a paper would be pulled together for the next meeting that detailed the upgrade and timescales for its completion. **Action: Caroline Walsh**

14) Matters arising and update on actions

Pinch points

The flow chart provided that detailed the pinch points in the process was discussed.

Point A

- The developer did not notify the Council as required in the S106 Legal Agreement.
- There were limited resources within the Developer Contributions Team to undertake proactive site monitoring.

It was queried what sanctions were in place if developers did not notify WBC. Caroline Walsh advised that legal agreements required developers to notify the Council within 14 days of commencement. If there was a breach then interest would be charged on a daily basis at the Bank of England base rate, however this only amounted to a minimal charge which might not deter some developers. This would change as a result of the Community Infrastructure Levy to be implemented in April 2010.

Point B

- Limited resources could result in a backlog of invoices to be raised when resources were prioritised elsewhere.
- Delays when invoices were not paid. This had been an increasing problem recently because of the impact of the recession.

Point C

- Contributions were pooled to ensure that the best possible solution could be carried out. It could take time to collect in the expected funds.
- Insufficient funds could delay schemes, as other sources of funding would need to be identified.
- There was a defined process to take a scheme from conception to construction through the Capital Programme – this could take approximately 18-24 months.
- Larger contributions were sometimes paid in instalments; schemes might have to be delayed until the last instalment was received.
- In some cases a contribution was to be paid over to a town or parish council. A lack of prioritised schemes could cause delay, as could infrequent town or parish meetings.

The potential for additional flexibility was returned to and the point was made that although increased flexibility could be helpful the timeframes for spending contributions had not been exceeded and no funding had been returned to date.

Point D

- Issues could arise during the feasibility stage or during planning that could delay the scheme.
- Where funding was pooled, the availability of funds could affect the progress of the project.
- The availability of Council resources to implement and progress the scheme might delay projects.
- Schemes had to be timetabled to be carried out at appropriate times of the year e.g. during school holidays or planting seasons.

Service summary report

The difficulty with spending smaller amounts was discussed. These had increased following the introduction of the Supplementary Planning Guidance. It was noted that some small amounts dated back to Berkshire County Council, but these had all been spent. The main delay with spending smaller amounts was the pooling of funds for a particular project that still met legal agreements and were still considered a priority.

The Primary Care Trust was aware of their funding allocation and it was up to them to invoice WBC.

Revenue costs

Simon Freeman acknowledged that WBC's revenue costs could be increased if contributions were spent solely on capital work. However there was not a history of increasing revenue budgets, for example on maintenance work.

Legal agreements

Caroline Walsh clarified that both interest payments of 4% above the Bank of England base rate and indexation payments could be received simultaneously.

Commuted sums

Simon Freeman advised that commuted sums were held separately as part of investment funds and the interest attracted could be used to meet maintenance costs. Commuted sums could be kept for a maximum of 10 years.

15) Future meeting dates and activity

It was agreed that an additional meeting was required to consider a report and draft recommendations arising from the two meetings held.