

**Agenda Item No:**

**Report No: 190/09**

**Report Title: Scrutiny Review on Section 106 Agreements:- background papers and draft questionnaire to gather information from other local planning authorities**

**Report To: Scrutiny Panel**

**Date: 24 September 2009**

**Ward(s) Affected: All**

**Report By: Director of Planning and Environmental Services**

**Contact Officer(s):**

- Lindsay Frost, Director of Planning & Environmental Services
- Catherine Knight, District Solicitor

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**Purpose of Report: To provide the Panel with a package of background information to assist in progressing the review and to consider a draft questionnaire to go out to other local planning authorities.**

**Officer Recommendation(s):**

- 1 To note the package of background information provided with this report and to use this material to inform the review.**
- 2 To approve the attached draft questionnaire (Appendix A) as a basis for seeking information from other local planning authorities and to authorise officers to send out the agreed questionnaire with a view to reporting back to the Panel in December 2009.**
- 3 The terms of reference for the Review, as agreed by Scrutiny Committee on 3 July 2009, be sent to:**
  - East Sussex County Council
  - Town & Parish Councils in Lewes District
  - The Lewes District Local Strategic Partnership and area partnerships
  - The South Downs Council for Voluntary Service
  - The Planning Service User Group
  - Home Builders Federation
  - British Property Federation

**and comments be invited on the various matters included in the Review.**

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**Reasons for Recommendations: To carry forward the Scrutiny Review in line with the agreed terms of reference.**

## 1 Information

- 1.1 At its meeting on 3 July 2009 the Scrutiny Committee agreed terms of reference for a review of Section 106 agreements attached to the grant of planning permission and appointed Cllrs Cutress, Howson, Hawthorne, Lambert, Rogers and Russell as a Panel to carry out the review.
- 1.2 The Scrutiny Committee asked officers to prepare a set of background information to assist the Panel in carrying out the review. The following material has been assembled and is provided as a package along with the agenda papers for this meeting:-
- A. Town & Country Planning Act 1990, Section 106 (It is important to note that legislation relates to **agreements** between the local planning authority, and persons with an interest in the land. It is not dictated to, and imposed upon, landowners by the LPA)
  - B. ODPM Circular 05/05, Planning Obligations (Note especially, the Secretary of State's Tests in B8 – B10) July 2005.
  - C. South East Plan, Policy S6 on Community Infrastructure, May 2009
  - D. East Sussex County Council, A New Approach to Developer Contributions, October 2003 (Sections dealing with other areas outside LDC area are omitted).
  - E. Lewes District Council, Local Plan, Policies ST1, ST2, RES19, RES20, T1 and T14.
  - F. Report to LDC Cabinet, 24 November 2004, Protocol for securing development contributions towards local infrastructure.
  - G. LDC Supplementary Planning documents on
    - (1) Provision of outdoor play space as part of new residential development (February 2002)
    - (2) Provision of affordable housing as part of new residential development (September 2003)
    - (3) Provision of kerbside recycling as part of new residential development (January 2004)
  - H. LDC Development Contributions spreadsheet, July 2009
  - I. LDC Schedule of Developer Contributions 2009 (incorporating items from ESCC schedules)
- 1.3 Members of the Panel are asked to become familiar with this material and to use it to inform their work on the review. Officers will be happy to answer any questions Members may have at the meeting.
- 1.4 Since benchmarking LDC's policies and procedures against other local planning authorities, and learning from good practice elsewhere, are key elements of the review, the Scrutiny Committee asked for a draft questionnaire to be prepared as a basis for seeking information from other authorities in East Sussex and in LDC's "family group" of councils (as identified by the Chartered Institute of Public Finance and Accountancy). This would be about 30 councils in all. A draft questionnaire is attached for Members' consideration and comment.

- 1.5 Lastly, it would be useful to seek views from a range of local organisations on the various matters covered by the review. These include the County Council; the Town and Parish Councils; the Local Strategic Partnership and area partnerships; the South Downs Council for Voluntary Service; and the Planning Service User Group. Comments from the viewpoint of the development industry would also be useful and it is proposed to also write to the Home Builders Federation and the British Property Federation. It is suggested that a copy of the review's terms of reference be enclosed with a letter inviting comments and observations.

## 2 Financial Appraisal

There are no financial implications arising from the recommendations in this report. All printing and postal costs can be absorbed within existing budgets for this work.

## 3 Environmental Implications

There are no significant environmental implications as a result of these recommendations.

## 4 Risk Management Implications

I have completed a risk assessment in accordance with the Council's Risk Management methodology and the following risks and mitigating factors have been identified:-

Risk	Mitigating Factor
The background information provided to the Panel is not sufficient.	Additional material can be provided to meet any identified gaps in background information.
Poor response to questionnaire survey and resultant lack of benchmarking information to assist completion of the review.	Follow up phone calls to any non-responders and assistance in completing the questionnaire.

## 5 Background Papers

All are listed in Section 1.2 of this report plus reports to LDC Scrutiny Committee meetings of 2 April and 3 July 2009.

## 6 Appendices

- A Draft Questionnaire

Lindsay Frost  
Director of Planning &  
Environmental Services

Catherine Knight  
District Solicitor

07/09/09



# Lewes District Council

[www.lewes.gov.uk](http://www.lewes.gov.uk)

## SCRUTINY REVIEW OF SECTION 106 AGREEMENTS ATTACHED TO THE GRANT OF PLANNING PERMISSION

SEPTEMBER 2009

Q1 Name of local authority .....

Q2 Name of person completing form .....

Q3 Phone and e-mail contacts                      Phone .....

E-mail: .....

Q4 How many planning permissions did you grant in the 2008/9 financial year (1 April 2008 – 31 March 2009) with Section 106 agreements involving developer contributions? .....

Q5 Please tick the types of physical, social and economic infrastructure for which you seek developer contributions in appropriate cases:

- |  |   |
|--|---|
| <input type="checkbox"/> Affordable Housing                              | <input type="checkbox"/> Education  |
| <input type="checkbox"/> Public Open Space/play facilities               | <input type="checkbox"/> Libraries  |
| <input type="checkbox"/> Site accessibility/transport                    | <input type="checkbox"/> Social Services                                    |
| <input type="checkbox"/> Waste & Recycling facilities                    | <input type="checkbox"/> Environment, Countryside Management, Rights of Way |
| <input type="checkbox"/> Economic Development, incl. Skills and Training | <input type="checkbox"/> Flood Defence                                      |
| <input type="checkbox"/> Crime Prevention                                | <input type="checkbox"/> Fire Services                                      |
| <input type="checkbox"/> Health Services                                 | <input type="checkbox"/> Other (Please specify)                             |

.....  
.....

Q6 For each of the above items of infrastructure where you may seek developer contributions, please tick the box in the matrix below which most closely reflects **who**

determines the **scope and content** of the S.106 agreement, on the local planning side.

- A - The local planning authority alone (incl. other council departments such as housing or parks and open spaces).
- B - The local planning authority in consultation with external service providers (e.g. education authority, highways dept, NHS)
- C - The local authority in consultation with Town and Parish Council, local strategic partnership or community groups
- D - The local authority in consultation with external service providers, Town and Parish Councils, local strategic partnerships or community groups.
- E - Some other arrangement (please specify)

<b>Type of infrastructure</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>Not Applicable</b>
Affordable Housing						
Education						
Public Open Space						
Libraries						
Site accessibility/transport						
Social Services						
Waste & Recycling facilities						
Environment, CM, RoW						
Economic Development						
Flood Defence						
Crime Prevention						
Fire Services						
Health Services						
Other:						
1						
2						
3						

Q7 For each of the above items of infrastructure where you may seek developer contributions, please tick the box in the matrix below which most closely reflects **who** determines the **allocation** of developer contributions to specific projects, on the local authority side.

Type of infrastructure	A	B	C	D	E	Not Applicable
Affordable Housing						
Education						
Public Open Space						
Libraries						
Site accessibility/transport						
Social Services						
Waste & Recycling facilities						
Environment, CM, RoW						
Economic Development						
Flood Defence						
Crime Prevention						
Fire Services						
Health Services						
Other:						
1						
2						
3						

Q8 If you have ticked boxes C, D or E in any of the responses to questions 6 and 7 could you please set out on a separate sheet(s), how these arrangements work, or alternatively tick the box below to confirm that we can ring you to seek further details.

OK to ring for further details

Q9 Are your **policies** for seeking developer contributions set out in publicly available documents (Please tick any which apply)

LDF or Saved Local Plan Policies

Supplementary Planning Guidance

Informal guidance

Q10 Are your **policies and procedures** for **allocating** any funding received from S.106 agreements set out in any published document or on the Council's website?

Yes

(Please indicate name of document or website below)

.....  
.....

No

Q11 Does your Council publish on its website a regularly updated schedule of S.106 agreements involving developer contributions indicating where money is allocated, committed or remains unspent.

Yes (Please indicate web link below)

.....

No

Q12 Are you aware of any examples of good practice in the scoping and allocation of Section 10.6 developer contributions, particularly involvement of councils with other partners to the planning process?

## **Suggested Distribution**

### **East Sussex Districts:**

- Wealden \*
- Eastbourne
- Rother \*
- Hastings

### **CIPFA “family group”**

- Cornwall UA
- South Lakeland
- East Devon
- North Devon
- South Hams
- Teignbridge
- Purbeck
- West Dorset
- Weymouth & Portland
- Rochford
- Tendring
- Tewkesbury
- Fareham
- Havant
- New Forest
- Canterbury
- Shepney
- Fylde
- Scarborough
- Sedgemoor
- Suffolk Coastal
- Adur
- Arun
- Worthing
- Chichester

\* Wealden and Rother are also in the family group