



OVERVIEW AND SCRUTINY COMMITTEE

Notice of a Meeting, to be held as a Virtual Meeting on Microsoft Teams in accordance with Regulation 5 of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police Crime Panel Meetings) (England and Wales) Regulations 2020 on Tuesday, 9th March 2021 at 7pm.

The Members of the Overview and Scrutiny Committee are:-

Councillor Ovenden (Chairman)
Councillor Chilton (Vice-Chairman)

Cllrs. Blanford, Burgess, Campkin, Farrell, Hayward, Howard-Smith, Iliffe, Krause,
Ledger, Mulholland.

IMPORTANT INFORMATION ABOUT THIS VIRTUAL MEETING:-

Please note the public cannot physically “attend” a Virtual Meeting. However any member of the press and public may listen-in to proceedings at this ‘virtual’ meeting via a weblink which will be publicised on the Council’s website at www.ashford.gov.uk at least 24 hours before the meeting. Members of the press and public may tweet, blog etc. during the live broadcast as they would be able to during a regular Cabinet meeting at the Civic Centre. It is important, however, that Councillors can discuss and take decisions without disruption, so the only participants in this Virtual Meeting will be the Councillors concerned, the Officers advising the Cabinet, and the Officers designated to address the Cabinet on behalf of any members of the public who have registered in advance to ‘speak’ on the items to be considered. This will take the place of the usual procedure for public speaking at the Cabinet’s regular meetings at the Civic Centre. In order to register for this, written notice must be given on the Council’s website at <https://www.ashford.gov.uk/councillors-meetingsandelections/councillorsandmeetings/public-participation/application-to-speak-atapublicmeeting/> or by email to membersservices@ashford.gov.uk by 10am on the Monday before the meeting.

Summary of the Scheme of Public Participation for Virtual Meetings (referred to as “VMs”)

The public cannot physically “attend” a VM.

H.M. Government has recently changed the public’s legal right to attend meetings into a right to hear, by means of technology, the Councillors attending the VM remotely.

Written notice of a wish to speak (by means of the procedure below) at a VM must be given, either to membersservices@ashford.gov.uk or on the Council’s website at <https://www.ashford.gov.uk/councillors-meetingsandelections/councillorsandmeetings/public-participation/application-to-speak-atapublicmeeting/> by 10:00 hours on the Monday before the VM – i.e. 10:00 a.m. on Monday, 8th

March, 2021.

Those registered to speak must submit to membersservices@ashford.gov.uk by 10:00 hours on the day of the VM, a copy of their speech in written, legible English. It should be no longer than 400 words, on a single side of A4 paper, printed in 12-point non-italic sans-serif font (e.g. Arial). Any text above 400 words will not be read out.

Speeches received as above will be read to the VM by a competent Officer for and on behalf of the speakers, at the normal times and in the normal order during the VM (subject to the Chairman's normal discretion).

IMPORTANT:

An Officer reading any speech on behalf of any speaker shall have discretion to omit/edit out any inappropriate language, information or statements.

If any defamation, insult, personal or confidential information, etc. is contained in any speech received from any speaker, and/or is read to the VM by an Officer, each speaker accepts by submitting their speech to be fully responsible for all consequences thereof and to indemnify the Officer and the Council accordingly.

Agenda

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| 1. Apologies/Substitutes | |
| To receive Notification of Substitutes in accordance with Procedure Rule 1.2 (c) | |
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| To declare any interests, which fall under the following categories, as explained on the attached document: | |
| a) Disclosable Pecuniary Interests (DPI) | |
| b) Other Significant Interests (OSI) | |
| c) Voluntary Announcements of Other Interests | |
| See Agenda Item 2 for further details | |
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email: membersservices@ashford.gov.uk

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Declarations of Interest (see also “Advice to Members” below)

- (a) **Disclosable Pecuniary Interests (DPI)** under the Localism Act 2011, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares a DPI in relation to any item will need to leave the meeting for that item (unless a relevant Dispensation has been granted).

- (b) **Other Significant Interests (OSI)** under the Kent Code of Conduct relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares an OSI in relation to any item will need to leave the meeting before the debate and vote on that item (unless a relevant Dispensation has been granted).

However, prior to leaving, the Member may address the Committee in the same way that a member of the public may do so.

- (c) **Voluntary Announcements of Other Interests** not required to be disclosed under (a) and (b), i.e. announcements made for transparency alone, such as:

- Membership of amenity societies, Town/Community/Parish Councils, residents' groups or other outside bodies that have expressed views or made representations, but the Member was not involved in compiling or making those views/representations, or
- Where a Member knows a person involved, but does not have a close association with that person, or
- Where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position.

[Note: Where an item would be likely to affect the financial position of a Member, relative, close associate, employer, etc.; OR where an item is an application made by a Member, relative, close associate, employer, etc., there is likely to be an OSI or in some cases a DPI. ALSO, holding a committee position/office within an amenity society or other outside body, or having any involvement in compiling/making views/representations by such a body, may give rise to a perception of bias and require the Member to take no part in any motion or vote.]

Advice to Members on Declarations of Interest:

- (a) Government Guidance on DPI is available in DCLG's Guide for Councillors, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5962/2193362.pdf
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, and a copy can be found in the Constitution alongside the Council's Good Practice Protocol for Councillors dealing with Planning Matters. See <https://www.ashford.gov.uk/media/2098/z-word5-democratic-services-constitution-2019-constitution-of-abc-may-2019-part-5.pdf>
- (c) Where a Member declares a committee position or office within, or membership of, an outside body that has expressed views or made representations, this will be taken as a statement that the Member was not involved in compiling or making them and has retained an open mind on the item(s) in question. If this is not the case, the situation must be explained.

If any Member has any doubt about any interest which he/she may have in any item on this agenda, he/she should seek advice from the Director of Law and Governance and Monitoring Officer, or from other Solicitors in Legal and Democracy as early as possible, and in advance of the Meeting.

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OVERVIEW AND SCRUTINY COMMITTEE

Minutes of a Meeting of the Overview and Scrutiny Committee held as a virtual meeting on the **9th February 2021**.

Present:

Cllr. Ovenden (Chairman)

Cllr. Chilton (Vice-Chairman)

Cllrs. Blanford, Burgess, Campkin, Farrell, Hayward, Howard-Smith, Iliffe, Krause, Ledger, Mulholland.

Also Present:

Cllrs. Bartlett, Bell, Feacey, Shorter, Sparks, Wright.

Chief Inspector. Sparkes, Detective Inspector. Johnson.

Head of Corporate Policy, ED & Communications, Community Safety and Wellbeing Manager, Community Safety and Resilience Team Leader, Community Safety Officer, Compliance & Data Protection Manager, Governance & Data Protection Officer, Policy & Scrutiny Officer, Member Services & Ombudsman Complaints Officer, Member Services Officer.

221 Declarations of Interest

Councillor	Interest	Minute No.
Bartlett	Made a "Voluntary Announcement" as he lived adjoining to the Sevington IBF	223
Chilton	Made a "Voluntary Announcement" as his relative worked for Kent Police	223
Farrell	Made a "Voluntary Announcement" as he had undertaken voluntary work for Ashford Vineyard	227
Krause	Made a "Voluntary Announcement" as Deputy Portfolio Holder for Finance & IT, he would withdraw from the meeting for the item on Budget Scrutiny	226
Hayward	Made a "Voluntary Announcement" as she was a member of Ashford Vineyard	227

222 Minutes

Resolved:

That the Minutes of this Committee held on the 10th November 2020 be approved and confirmed as an accurate record.

223 CSU Annual Update

The Portfolio Holder for Community Safety and Wellbeing introduced the report and explained that a holistic approach had been taken to tackle crime and anti-social behaviour in the Borough and the CSU continued to work effectively with all partners in their efforts.

The report was then opened up to the Committee and the following questions and points were raised: -

- In response to a question asking whether the same case could have been reported twice, the Community Safety and Wellbeing Manager explained that this was a possibility. However, the CSU and Kent Police met regularly to discuss cases and to ensure the appropriate agency was handling.
- A Member spoke about the Border Control Project (BCP) and the criminal implications that it may pose e.g. smuggling, human trafficking and theft. He wondered how much that would feature as part of the CSU efforts over the coming years. Chief Inspector. Sparkes explained that the BCP site was being independently run and had contracted a security team. There was a strong multi agency effort for the border exit plan and daily figures were being monitored by Kent Police for any increase in criminal activity, of which there had been none. Control measures had been built in and moving forward, Kent Police would work in partnership with local and national government to ensure the site remained free from issues that could impact on the local community. Detective Inspector. Johnson added that the Police and the ABC Brexit Cell met fortnightly to monitor community tensions and understand the local impact of the Inland Border Facility sites. The Community Safety and Resilience Team Leader explained that protocols were in place for safeguarding issues in conjunction with KCC and with the Counter Terrorism Police also. She encouraged Members and the public to use the Report It App for any issues including HGV parking, community tension, EU transition transportation issues/general congestion issues.
- Consideration was then given to the different type of crimes that occurred through lockdown because people were living each day in closer proximity. Chief Inspector. Sparkes explained that there was a definite change in the calls being received, and it was important to bear this in mind when reviewing

the statistics. The predicted spike in domestic abuse calls had not been as high as anticipated, but criminals had found innovative ways to continue their activities throughout the lockdown; drug dealing had swiftly adapted and anti-social behaviour and community tension was abundant, which unfortunately could often be a pre-cursor to more severe crime. Young people had been particularly affected by the lack of social interaction and support networks e.g. youth centres, and the concern for them going forward would be on a national scale. Members of the public could still utilise the 101 or 999 telephone number to report any type or level of crime, or alternatively via social media/online reporting as before Covid-19. The Community Safety and Resilience Team Leader reinforced the benefits of the Report It App, to analyse the statistics and consider any lessons learned. It enabled the CSU to identify and observe where ASB may be arising, and helped to manage expectation. Establishing new partnerships with other agencies was also key to assist in lower level disputes that would fall below the radar of the Council or the Police. Mental Health and Wellbeing were anticipated to be major issues arising from Covid-19.

- In response to a query about the conditions for a Public Space Protection Order (PSPO), the Community Safety and Wellbeing Manager advised that a PSPO could be applied to a public space experiencing high levels of ASB, with prohibitions being applied to that geographical area. It could also be adapted to the need of the area e.g. gated areas. She explained the process which included evidence gathering, public consultation, and delegated authority by the Head of Community Safety and Wellbeing.
- A Member asked about the impact of Covid-19 on the Traveller community. Chief Inspector Sparkes made the distinction between the established traveller site at Chilmington, and the wider transient community that move around different sites. The latter had decreased, probably owing to the robust stance the Council had taken towards unlawful encampments. Legislation had been produced to protect encampments from Covid-19, as they were deemed a vulnerable group due to lack of engagement with medical services. The Police had therefore taken a more tolerant stance across the county, except where crime or ASB had occurred and the usual law enforcement would be carried out. Support had remained for the established travelling community in Ashford, which included advice on medical concerns and social distancing.

Resolved:

That the report be received and noted.

224 Safeguarding Annual Update

The Portfolio Holder for Community Safety and Wellbeing introduced the report, which outlined the council's obligation to work in partnership to protect children,

young people and adults at risk from abuse or neglect, preventing impairment of their health and development.

In response to a question asking whether safeguarding training could be made compulsory to both staff and Members, the Community Safety and Wellbeing Manager explained that the face-to-face training had recently been revised and moved over to a virtual platform, and it was hoped that compliance would therefore increase, with staff and Members now working remotely.

Resolved:

That the report be received and noted.

225 Quarter 3 Corporate Performance Report

The Governance & Data Protection Officer introduced the Quarter 3 Performance Report, which covered the period from October to December 2020. The report summarised the Council's performance against the Key Performance Indicators covered in the Recovery Plan. The report demonstrated that the pandemic had impacted upon a number of performance indicators over the period, as additional lockdowns and other preventative measures had altered economic activity and our ways of life.

With regards to RPKPI91 about Section 106 files, it was confirmed that these were solely within the Legal Dept. A report on this topic would be coming to O&S in the next few months.

Resolved:

That the report be received and noted.

226 Report from the Budget Scrutiny Task Group

Cllr Krause left the meeting.

The Policy & Scrutiny Officer introduced this item and confirmed that the Budget Scrutiny Task Group had scrutinised the Council's draft 2021/22 budget over four meetings. The Group had covered key areas including Planning service including the budget risk regarding Stodmarsh, the risk to commercial income in light of Covid-19 implications, the impact of proposed operational savings on the delivery of Council services, specifically the Legal department and details of funding for Council projects. She highlighted that in reference to recommendation IV, Management Team had recommended that in order to quantify the additional funding mentioned, assessments would need to be undertaken to cost the Carbon Neutrality Action Plan. The Chairman expanded on this and endorsed that the Committee keep track of this

particular recommendation once it had been quantified. He thanked all the Members and Officers that had attended those meetings.

The report was then opened up to the Committee and the following questions and points were raised: -

- The Portfolio Holder and Chairman invited those Members voting against the budget to outline their reasons why. Cllr. Chilton confirmed that he was voting against the recommendations, as he did not believe the budget was sound and deliverable, and did not support the restrictions being placed on Parish Councils, or the Council Tax increase being imposed on residents. Cllr. Farrell agreed with the points raised by Cllr. Chilton, and highlighted that a Section 25 assurance from the Section 151 Officer was necessary to say that the administration's budget was sound and deliverable. He added that the budget had been drafted based on the Council's priorities, of which he did not associate himself with, and therefore was voting against the report. Cllr. Campkin voted against the report because of the increase in Council Tax and possible cuts to services, but wanted to add this was by no means a criticism of the Council's Financial Team.
- The Chairman reminded Members that the Budget Scrutiny Task Group was an open forum for all Members to attend and voice their concerns.

The Chairman invited a proposer for the report, since he had been involved with the Budget Scrutiny meetings. Cllr. Burgess proposed the report and the Chairman seconded it.

Recommendations:

The Overview and Scrutiny Committee endorse the recommendations of the Budget Scrutiny Task Group to the Cabinet as follows:

I) The Council's draft budget is sound and deliverable as can be at this time, recognising that the economic impact of Covid-19 is yet to be fully determined.

II) It is recognised that there is sufficient reserves to manage the economic risks to the 2021/22 budget. It is recommended that these reserves are maintained particularly given the current uncertainties in the economy.

III) To continue to monitor the performance of the council's commercial income units through regular budget monitoring reports whilst businesses recover from the impacts of Covid-19.

IV) Additional funding should be allocated towards the emerging Carbon Neutrality Action Plan, to ensure that the Council is able to deliver its pledge to become carbon neutral.

V) Cabinet should consider a one-off grant to the disproportionately affected Parishes from the removal of Council Tax Support grant to help smooth the transition to full removal of the Council Tax Support Grant.

227 Future Reviews Tracker

A Member spoke about the process by which grants were allocated to organisations via the Voluntary Emergency Response Appeal (VERA) fund, as highlighted earlier in the Corporate Performance Report (RPKPI24). He raised a concern that more scrutiny should be applied, in particular to organisations/charities with a religious or political basis that were promoting their own membership, an example of which was the Ashford Vineyard. There was a need to ascertain what due diligence was undertaken prior to that funding being awarded. He added that he had no objection to the work they were undertaking in the community, only that he wished to review the processes and policy on grant funding to such organisations. The Chairman agreed and requested a report be brought forward on this issue.

Other topics suggested by a Member for the Tracker were reports on the Better Choice for Property Company, how the housing market would be impacted post-Covid-19, and the proposed changes by Government to the Public Works Loan Board.

Resolved:

That the report be received and noted.

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Agenda Item No: 4



Report to Overview and Scrutiny Committee

[Report on the Section 106 Process]

The Overview and Scrutiny Committee is asked:

1. To note and support the contents of the report and raise any points for further discussion.
-

Date of O&S meeting: 9 March 2021

Chair of O&S Committee: Cllr Ovenden

Relevant Portfolio(s): Planning & Development

Summary: The Overview and Scrutiny Committee has asked for a paper to be shared on the S106 process, for discussion. In response, officers from the planning and the corporate policy departments have produced this paper. It seeks to:

- explain the broad S106 process,
- establish how the Council request and collect money from development,
- set out how the Council then administer the process,
- establish the role of members and the Parish Council in the process,
- identify the actions that relate to S106 from the Council's perspective.

Exempt from Publication: NO

Background Papers: N/A

Contact: daniel.carter@ashford.gov.uk – Tel: (01233) 330 238

Report Title: The Section 106 Process

Introduction and Background

1. The Overview and Scrutiny Committee has asked for a paper to be shared on the S106 process, for discussion. In response, officers from the planning and the corporate policy departments have produced this paper.
2. It follows on from recent training conducted by the interim Head of Service for Planning. This training was recorded and can be shared with members, if requested.
3. This paper seeks to:
 - Explain the broad S106 process (part a)
 - Establish how the Council request and collect money from development (part b and c)
 - Set out how the Council then administer the process (part d)
 - Establish the role of members and the Parish Council in the process, (part e) and,
 - Identify the actions that relate to S106 from the Council's perspective (part f).

a) Overview of the S106 Process

4. Section 106 or S106, is a legal agreement (or obligation) between an applicant seeking planning permission and the Local Planning Authority which may also involve other parties (e.g. KCC). It provides the legal framework to secure both financial and non-financial contributions from a development.
5. In the case of financial contributions, these are often used to help pay for additional (or improved) infrastructure that is needed to mitigate the impact from a development. The overall S106 process has four main stages, as follows:
6. **Stage 1 - Identifying the need:** The Council, alongside our public-sector partners, assess the capacity of services and facilities to understand where the stresses are, and what additional infrastructure is required to support new housing growth (this work is ongoing). This identifies specific projects (e.g. buildings, spaces, improvements to services) and establishes what role developer finance plays in delivering them.
7. **Stage 2 - Requesting the money:** When the Council receive a qualifying planning application (for the purpose of S106), various stakeholders will request money (based on evidence) to fund, completely or in part, the projects for which a need has been identified (see above). This is often broken down into a 'per dwelling' figure.

8. **Stage 3 - collecting the money:** Once the Council are satisfied that the requests for developer funding is justified, the Council will enter into a S106 agreement with the developer as part of the planning permission process. This will set out the amount of money to be paid and when, and on what project or type of project.
9. **Stage 4 - Spending the money:** Once developer contributions are paid to the Council (in most cases ABC are the collecting authority), the money can be spent on delivering, completely or in part, the projects identified in line with what the S106 Agreement sets out. This includes paying money to partners to deliver their agreed projects. Once collected (in most circumstances), if the monies are not spent within ten years of receipt they are liable to be paid back to the developer.

The Basic Principles

10. The following basic principles underpin the S106 process. A S106 agreement:
 - Is part of a long established mechanism and is an integral part of the system. See link: <https://www.gov.uk/guidance/planning-obligations>
 - Is governed by regulations and as such operates within strict legal parameters.
 - Can only be pursued if it is:
 - i. necessary to make the development acceptable in planning terms,
 - ii. directly related to the development in question,
 - iii. fairly and reasonably related in scale and kind to that development.
 - Can only be spent, once the money is collected, as per the legal agreement - i.e. what the money was originally collected for. For example, a S106 payment for the delivery of allotments can't be subsequently spent on the delivery of new sports pitches.
11. These basic principles are enshrined by law and repeated in the National Planning Policy Framework (NPPF 2019) which sets out the Government's national planning policy agenda.
12. Conversely, a S106 Agreement is **not**:
 - About 'planning gain', which is often the perception i.e. many people view S106 monies as a pot of finance that can be flexibly spent by the community on any project. This view is sometimes held, as communities tend to feel that they are the ones facing the 'burden' of new development, and as such should be 'compensated',
 - A means by which existing deficiencies in provision or infrastructure can be 'topped up'. For example, if an area is deficient in play facilities, a development of 100 homes can only be required to mitigate the impact from these 100 homes, it cannot be required to 'top up' any existing deficit in the area,

- A tax on development. There is no default requirement for development to pay S106 contributions. If no need is generated from a new development, or in situations where the need generated can be met via existing provision, no money should be requested. It would not be lawful to do so.
13. It is also important to note that in most cases the Council is both the decision-making authority (in terms of what to collect for) and the spending authority (once money is received). As such, the Council carries the highest risk of legal challenge if any agreement is not adhered to.

b) The role of the Local Plan 2030

14. In terms of the broad four stages of the S106 process identified above, the Local Plan's main role relates to Stage 1 – 'Identifying the need'.
15. The NPPF (2019) is very clear that the Local Plan should provide clarity to the market and stakeholders as to what infrastructure is required to meet the housing need identified in the plan. This should include a list of projects (i.e. facilities, buildings, space) and also where and when these projects are to be delivered. More detail is required at the early stage of the plan, given that providers should be clearer on their needs in the short term.
16. Furthermore, the NPPF 2019 also requires that the level of money being asked for from developers, to deliver the projects identified, must be viability tested. This is to ensure that new development is not unduly burdened by contributions in a manner that would render new housing unviable.
17. Like much of planning, a balanced approach is therefore needed. On the one hand, there is pressure on infrastructure coming from new housing growth. On the other hand, there is a limit on what role developer finance can play to help deliver that infrastructure. Failing to achieve the balance would essentially result in no new housing coming forward, as it would be unviable.
18. Much of this debate should be progressed through Local Plans as a way of ensuring that the process remains a plan-led one (which is enshrined in law). The Council is fortunate in that it has a recently adopted Local Plan in place (February 2019). In the context of infrastructure delivery, the most relevant policies are summarised below.
19. Policy IMP1 'Infrastructure Provision' – sets out that the Council's starting point is that all qualifying proposals will contribute and help deliver for the needs generated by the development.
20. Policy IMP2 'Deferred Contributions' – sets out that in the rare circumstances where policy IMP1 cannot be complied with, the Council may seek to utilise a deferred contributions approach (to be secured through a S106 agreement). E.g. development contributions that are normally paid could be deferred until later in the build out, in the hope that viability improves. There is a risk that no

contributions are paid (if the market does not improve). Accordingly, this policy tends to only apply for schemes that – in themselves - provide wider planning benefits.

21. Policy COM1 'Meeting the communities needs' – this policy sets out a list (not exhaustive) of what infrastructure and facilities need to be provided to mitigate new developments. The uses covered include education, sports, community, art and health. This is the main policy hook on which to base future S106 agreements.
22. Policy COM2 'Recreation, Sport, Play and Open Spaces' – sets out how the facilities and infrastructure, mainly within the control of the Council, will be delivered. This includes the identification of a number of strategic sports hubs that will be the focus of most new investment.
23. The Local Plan 2030 policy framework was (and remains) supported by a range of relevant evidence that needs to be kept up to date, as resources allow. This includes:
24. The Infrastructure Delivery Plan (IDP) and Schedule: An iterative Plan which sets out (in the Schedule) a rolling five year of projects to be delivered within certain identified categories (those listed in Policy COM1). It also provides information about how some of these projects might be funded, i.e. the role development finance will play. The last update of the Plan was early 2017. The IDP is also informed by evidence produced by our public partners, such as evidence from KCC about future school placings.
25. Supplementary planning documents: A number of existing supplementary planning documents exist which also help to identify projects for S106 to spend money on. For example the 'Green Spaces and Water Environment SPD' (2012) sets out the scale of contributions for open space and strategic parks and identifies where this money should be spent.
26. A range of other studies and documentation. For example, the Council produced a Sport's England endorsed 'Sports and Indoor Sports Building Strategy' in 2017. This allows us to use the national Sport's England calculator to calculate development monies to deliver the projects identified in the 2017 strategy. Similarly, Cultural Services produce a variety of Council endorsed strategies relating to projects and the role development finance might play.
27. The above means that, in practice, much of the contributions we ask for from developers is in the public domain and is transparent. Developers are broadly aware of many of the projects we want to deliver and the Local Plan policies have been viability tested (in 2018).
28. However, much of the Council's evidence base needs reviewing and updating. There also needs to be a better focus on actual project delivery, (i.e. what buildings, space or areas are needed in the next five years). Many of our

requests stem from a variety of sources and this can often lead to confusion and uncertainty. In addition, the Infrastructure Delivery Plan has not been updated since 2018.

29. Updating our approach is now required to ensure that the limited amount of development funding collected is targeted towards the right projects – projects which the Council (as a whole) consider will best meet additional community needs as the population grows and want to see delivered. This may well involve prioritising some projects over others.
30. One of the central reasons for the recent restructure of the Planning & Development service was to prioritise infrastructure delivery by moving it into the Spatial Planning Team, with officers' revised job descriptions reflecting this change in focus. Part d of this paper (below) identifies some work areas to ensure a more centralised process is progressed from this point forward.
31. The role of **Neighbourhood Plans** (NP) also needs to be highlighted. These Plans provide the opportunity for communities (and the Parish Council) to identify specific projects related to meeting the needs of the development planned in their areas and they are subject to less stringent tests than a Local Plan (in terms of what it can cover and progressing through an Examination). NPs can also provide the platform to prioritise projects, so any contributions can be targeted accordingly.
32. However, NPs do still need to be broadly consistent with the policies in the Local Plan 2030 (see above) – unless specific evidence is produced to show any 'departures' are justified. Any requests for money from development or projects identified are also required to be in line with the NPPF (2019) and the established legal tests (see part A). These apply to all plan makers.

C) The Development Management Process

33. In terms of the four stages of the S106 process identified above, the Development Management process relates mainly to Stages 2 and 3 – 'requesting the money' and 'collecting the money'.
34. A planning permission is not issued until any associated S106 Agreement is signed and thus is part of any such permission.
35. With regards to the process, (in most circumstances) before any application is submitted, applicants will have already familiarised themselves with both the Council's and the County Council's requirements as contained in the documents listed above. For complex applications, most developers will usually have had preliminary discussions with Council officers so that by the date the application is submitted, broadly speaking, the contributions that are likely to be required will be known.
36. Notwithstanding any preliminary discussions, when the Council receives a qualifying application (for S106 purposes) it will then formally consult the relevant bodies who may then respond identifying the scale of need generated

by the proposed development and requesting money towards a project(s) they want to deliver in order to mitigate that need. This includes internal consultation with departments such as Cultural Services, and consultation with public-sector partners (such as KCC, the Clinical Commissioning Group (CCG) or a Parish Council).

37. As part of the application process, planning officers may challenge or query the requests being made to ensure they meet the legal tests of the S106 process (see part a). Given that a legal framework steers what S106 requests can legitimately be made, it is imperative that the Council are able to demonstrate that requests for money are justified and compliant with the legal tests.
38. Developers and agents now utilise significant resource to challenge and debate emerging requests, and it is therefore important to note that the S106 process often requires negotiation with developers and other service providers such as KCC and the CCG. In some cases negotiations can be lengthy and complex.
39. With regard to decision making, the requirement for a Planning Obligation/Agreement and the proposed 'Heads of Terms' will be formally set out and appraised in either the officer's report to Committee or the report for a delegated decision. Once a resolution has been agreed at Planning Committee or by an Authorised Officer under Delegated powers, the detailed S106 Agreement is drafted.
40. This stage can be prolonged as Heads of Terms are converted into a detailed set of legal obligations. Legal teams for the Council and developer (plus any third parties to the Agreement) will need to receive detailed instructions and a period of negotiation will often take place. Delegated authority to conclude the Agreement lies with the Strategic Development & Delivery Manager and the Development Management Manager whose role is to ensure that the detail within the final Agreement remains within the scope of the Heads of Terms agreed by Members. The Agreement is then signed at the point at which all parties are satisfied with its content/wording and only at this stage is the planning permission issued.
41. In cases where a developer or applicant disagrees with the required contributions they may not want to agree to a proposed set of Heads of Terms for a S106 agreement. In these cases, applications may be recommended for refusal because proper provision has not been made for the required infrastructure contributions (subject to viability considerations – see below).
42. A developer or applicant may also appeal to the Planning Inspectorate, to challenge the Council's decision. Doing so means the decision making powers are taken out of the Council's hands. Developers also have the right to apply to vary a S106 at a later date.

Viability

43. In some circumstances developers or applicants may allege that development will be rendered unviable if it is required to meet the full range of contributions

required by policy. In circumstances where this applies, developers or applicants are required to satisfy the criteria set out in Policy IMP2 of the Local Plan. Policy IMP2 facilitates a flexible approach (a key requirement of the NPPF).

44. The prescribed approach to dealing with matters of viability in this context is set out on national planning guidance <https://www.gov.uk/guidance/viability>. The Council engages independent consultants to advise on developers' viability reports and their conclusions are routinely reported to the Planning Committee when proposals come forward for a decision.
45. Where site specific viability evidence can robustly demonstrate that the required developer contributions cannot be met, Policy IMP2 allows the Council to secure 'deferred contributions' through a S106 Agreement. Using this approach, the Council may agree that some normal S106 financial contributions can be forgone on the proviso that, should sales values increase beyond an agreed benchmark in future, some or all of the previously under-funded contributions will be made up. Whilst the Plan is based on a whole plan viability approach to show that realistically it is able to be delivered, the approach adopted through Policy IMP2, provides both the Council and developers with important flexibility to allow development to proceed in changing market conditions over the course of the plan period.

D) The Administration of the S106 Process by the Council

46. In terms of the four stages of the S106 process identified above, the administration of S106 Agreements mainly relates to Stage 4 – 'spending the money'.
47. Once a S106 Agreement has been signed, there will be requirements on the developer to pay money to the Council based on the parameters established through that Agreement. For example, money due on the completion of a certain numbers of houses.
48. The Council employs a S106 Monitoring Officer, who now sits within the Spatial Planning Team. This Officer mainly has responsibility for:
 - Recording when money has been paid and for what project,
 - Liaising with developers about the progress of their schemes (to determine if money is owed),
 - Checking that requests for spend, and the money collected, align with the relevant agreement,
 - Monitoring the process to ensure that the S106 money collected is spent on projects that are consistent with those identified in the relevant S106 agreement.

49. These various tasks are not straightforward and can be very complicated indeed, especially for large schemes with several S106 agreements related to them. This is further complicated as the Council's current IT software is simply not designed in a way that enables the data to be interrogated easily. It currently requires manual examination which can take significant time.
50. Accordingly, the process is not as transparent or straightforward as it needs to be, for officers, members or the public. This is not a criticism of our process alone. The Government has long recognised that the S106 process is not as accessible and transparent as it needs to be. Partly in response to this, they have introduced the requirement for Councils to produce Infrastructure Funding Statements (IFS) each year. These Statements are publicly accessible documents that are required by law to report on S106 spending, including monies received, monies spent, and for what typology of infrastructure (nationally categorised such as education, sports etc.). The Council produced its first IFS in December 2020, please see here:

https://www.ashford.gov.uk/media/ditjdikc/abc00360_section-106-infrastructure-doc_for-web.pdf

E) The Role of Borough Members and Parish Councils

51. So far, this paper has solely focused on the 'operation' of the S106 process. However, members have questioned their role and that of the Parish Council, in the wider process.
52. In the longer term, it is clear that the greatest influence members, and the Parish Council, can have on the S106 process is early in the plan making process.
53. Accordingly, the Local Plan review will be a primary driver to set out this information and that will frame future S106 requests. Departing from this agreed approach will be difficult afterwards, for the reasons outlined in part (a) of this paper.
54. Members will be required to help shape and evolve both the topic policy approach for a future Local Plan, and what infrastructure projects should be subsequently delivered. This will ensure that a streamlined approach is adopted – one that delivers what the Council actually want to achieve. However, this is a longer-term aspiration, as the Local Plan Review has not yet been triggered.
55. Nevertheless, there are several work areas that can be progressed now, to 'align' the current approach and make sure it is as up to date as possible. In doing so, this work will also help shape a future Local Plan.
56. It is important to note that a Local Plan can only ever be a snapshot in time. As such, the Council are encouraged to keep the list of on-going projects up to date. Accordingly, we should now progress an update to our Infrastructure

Delivery Plan (IDP) and Infrastructure Delivery Schedule (IDS), both produced in 2018.

57. This work will involve discussions with infrastructure providers to review their current project list and what role development finance play in their delivery. This includes internal Council providers such as Cultural Services, and external providers such as the Kent County Council. Discussions will also be needed with the various Parish Councils to understand their requirements.
58. All of these updates will lead to an 'Infrastructure Contributions Supplementary Planning Document' (SPD). This will be led by the planning service and will essentially provide a 'shopping list' of the contributions developers will be expected to make – based on a series of identified projects. Members of the Local Plan and Planning Policy Task Group will play a lead role in the production of the SPD.
59. As per the process, this SPD will need to be subject to public consultation – and this will include the opportunity for the development industry to comment as well.

F) Actions

60. **Continue to review existing S106 Agreements:** Planning officers are already reviewing existing S106 Agreements and some of this work fed into the recent Infrastructure Funding Statement. This work needs to continue and there is a lot of work that remains to be done to ensure we are aware of all the payments to be received, and to ensure that these payments are being collected in accordance with the timeframes set out in the terms of the S106 and that they are targeted on the right projects. Management Team have agreed for extra resource to assist this important work area.
61. **Progress the digital transformation:** Crucial to the successful interrogation of S106 money is to make sure the IT system is fit for purpose. This will benefit everybody and allow us to deal with member and public requests more speedily. It will also help the Council identify priority projects moving forward. Furthermore, it is crucial to enable us to accurately report on all relevant data required within the IFS. This work is ongoing as part of Planning's digital transformation project.
62. **Centralising the S106 process:** As stated in this paper, it is crucial that the Council work in a more collective way to ensure that the limited amount of S106 money available is targeted towards projects that can be delivered. This may require the prioritisation of projects. Discussions to be held at a future management team, led by the Planning Service and the Corporate Policy Service. The S106 working group is to be re-established with a clear terms of reference.

63. **Progress a Developer Contributions Supplementary Planning Document:**
The planning service are currently working on new SPD, as per the above (see part e). This will flow from a review of the current Infrastructure Delivery Plan (IDP) and the Infrastructure Delivery Schedule (IDS).
64. **The Local Plan Review:** Once the Local Plan review has been commenced, there will be a need to identify specific projects to be delivered that meet the needs generated by the housing number identified. This may require specific sites to be allocated for such infrastructure. Again, members of the Local Plan and Planning Policy Task Group will play a key role.

Recommendation

65. **The members of the Overview and Scrutiny Committee are asked to note the contents of this Paper and support the actions identified.**

Contact and Email

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Overview and Scrutiny Committee

Report Tracker – March 2021

Current Work Programme			
Report Title	Date due to O&S	Reporting Service	Scope of what is to be scrutinised
Funding Voluntary Organisations	April 2021	Culture	A review of the grant funding process and policies.
Consultation and Engagement	April/May 2021	Corporate Policy, Economic Development and Communications	Involvement and engagement of the public with the consultation process for corporate issues.
Overview and Scrutiny Work Programme 2021/22	April/May 2021	Corporate Policy, Economic Development and Communications	To consider the current topics on the report tracker and discuss new ideas to be put forward for the work plan for 2021/22
Overview and Scrutiny Annual Report	May 2021	Corporate Policy, Economic Development and Communications	Annual report of the Overview and Scrutiny Committee outlining work carried out by the Committee in during the last year.

<p><u>Scrutiny</u> <u>Topic</u> <u>Selection</u> <u>Matrix</u></p>	<p>1. Represents a key issue for local people.</p>	<p>2. The issue is strategic and significant.</p>	<p>3. The topic falls within a community or corporate priority area.</p>	<p>4. Scrutiny of the issue will lead to effective outcome.</p>	<p>5. Had the topic been covered elsewhere? <i>(Yes = low score</i> <i>No = high score)</i></p>	<p>6. Represents an issue of concern to stakeholders and partners.</p>	<p>7. The issue is of community concern or there is a high level of dissatisfaction with one or more services.</p>	<p>8. The scrutiny activity is timely.</p>	<p>Score</p>	<p><i>Rank</i></p>	<p>Review Type</p>
<p>Consultation and Engagement</p>	<p>5</p>	<p>3</p>	<p>4</p>	<p>4</p>	<p>3</p>	<p>2</p>	<p>3</p>	<p>3</p>	<p>27</p>	<p><i>1</i></p>	<p>TG</p>
<p>Funding voluntary organisations</p>	<p>3</p>	<p>3</p>	<p>3</p>	<p>4</p>	<p>3</p>	<p>4</p>	<p>1</p>	<p>5</p>	<p>26</p>	<p><i>2</i></p>	<p>R</p>

Each of the topics are scored for degree of 'fit', e.g. 1 (low) to 5 (high). The reviews with the best fit achieve the highest score.

1. Represents a key issue for local people.
2. The issue is strategic and significant.
3. The topic falls within a community or corporate priority area.
4. Scrutiny of the issue will lead to effective outcomes.
5. Has the topic been covered elsewhere in other services? (Yes = low score No = high score)
6. Represents an issue of concern to stakeholders and partners
7. The issue is of community concern or there is a high level dissatisfaction with one or more services.
8. The scrutiny activity is timely.

Review Type:

Each topic has an indicated review type: Task Group (TG), One-off report (R), Member Briefing (B), Other (O)

Score	What the score means
31 to 40	The issue/item has a high likelihood of entering the Scrutiny Work Programme but should be prioritised according to score
20 to 30	Item/issue has less chance of gaining a place on the Scrutiny Work Programme and should be held in abeyance
Under 20	Item/issue should not normally gain a place on the Scrutiny Work Programme

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