

Agenda Item No:

Report To: Cabinet

Date of Meeting: 25th November 2021

Report Title: Final Report of the Section 106 Task Group

**Report Author &
Job Title:** Abi Moffatt
Policy and Scrutiny Officer

**Portfolio Holder
Portfolio Holder for:** Cllr. Neil Bell
Planning and Development



Summary: The Overview and Scrutiny Committee agreed to form a Task Group to review the council's Section 106 process.

The report provides a summary of the Task Group meetings during the review and outlines the key findings. There are a total of eight recommendations that aim to improve various parts of the Section 106 process.

The Committee are asked to approve the recommendations to be submitted to the next Cabinet.

Key Decision: NO

**Significantly
Affected Wards:** All Wards

Recommendations: **The Overview and Scrutiny Task Group recommends to the Cabinet that:-**

- I. A process mapping exercise is undertaken to provide clarity and guidance to Officers and Members involved in the Section 106 process. Once completed, the process map will inform recommendations II to VIII.**
- II. Guidance and training is provided for Officers involved in the Section 106 process to clarify roles and responsibilities of all Officers. Additionally, a 'handbook' is created for both Members and Parish Councillors, to explain the basic concepts of Section 106.**
- III. Communication over Section 106 is improved between the Planning Service and Parish Councils including key contact(s) for accessing advice.**
- IV. Training on Section 106 should be provided to Members and Parish Councils on an annual basis.**

The initial programme for the training should be reviewed by the Member Training Panel in consultation with the Chair of the Section 106 Task Group.

- V. The new Planning IT software is expected to provide information on the council's website about what Section 106 monies are available to individual parishes.
- VI. Delivery of the Infrastructure Contributions SPD should be prioritised. The SPD should provide an up to date list of what is expected of developers within a single document. This will provide clarity for all parties involved in the Section 106 process.
- VII. There is a standardising of Section 106 Agreements and use of templates where appropriate.
- VIII. Legal Services are trained to use the new IT system adopted by the Planning Department, to enable them access to relevant Planning documentation and therefore streamline the process.

Policy Overview:	The scrutiny review of the Section 106 process has formed following an initial report provided to the Committee in March 2021.
Financial Implications:	Resource implications are indicated in the Management Team Advice Sheet in Appendix B.
Legal Implications:	Two of the recommendations require some Legal resource to deliver, but this is within existing resources.
Equalities Impact Assessment:	Not required because equalities impact assessment would be carried out at the point of the implementation for each of the recommendations as necessary.
Data Protection Impact Assessment:	N/A
Risk Assessment (Risk Appetite Statement):	The recommendations from the Task Group are within the council's risk appetite. The report is intended to improve the Section 106 process and reduce any current risks associated with how the process currently operates.
Sustainability Implications:	N/A
Other Material Implications:	N/A

**Exempt from
Publication:**

NO

**Background
Papers:**

Report on Section 106 Process, March 2021

Contact:

Abi.moffatt@ashford.gov.uk – Tel: (01233 330394)

Report Title: Final Report of the Section 106 Task Group

Foreword from the Task Group Chairman

1. In this report, the Overview and Scrutiny Task Group presents its findings and recommendations from the Section 106 Review. The Task Group has examined the various stages of the Section 106 process in detail.
2. The review has highlighted that there is a need for additional guidance and education around Section 106 for Members, Officers and Parish Councils. The Witness Sessions allowed for discussion over how Members and Officers could be more informed and ultimately how Members could have greater input. The survey to Parish Councils also highlighted a number of key issues around knowledge of the process, communication and transparency. I believe that the recommendations will simplify parts of the process, increase understanding and enable Member and public access to contribution information.
3. I would like to thank the Members of the Task Group and Officers who have contributed their knowledge and experience to this review. Additionally, I would like to extend my thanks to all Parish Councils who responded to the Section 106 Questionnaire, and to those Parishes who participated in the Witness Sessions.

Introduction and Background

4. During April 2021, the Overview and Scrutiny Committee agreed to form a Task Group to review the Section 106 process. Members raised particular concern over not being involved or consulted on proposed Section 106 contributions, prior to a report being submitted to the Planning Committee. The Overview and Scrutiny Task Group has conducted an in depth review to ascertain the various stages of the process and understand where Members and Parish Councils could have greater input.

Review Scope

5. The Task Group assembled 6 Members; Cllr Ovenden (Chair), Cllr. Chilton, Cllr. Ledger, Cllr. Blanford, Cllr. Mulholland and Cllr. Campkin to examine the Section 106 Process and, if required, make some recommendations to the full Committee.
6. The group met initially to scope the review and establish where scrutiny could be beneficial. A scoping document was agreed which outlined 4 key aims for the review:
 - a. To consider how Section 106 is used to deliver the councils priorities and how centralising this process will ensure this.

- b. Identify how Members and Parish Councils are consulted on Section 106 and find ways to formalise this communication.
 - c. Look at how the implementation of the new digital planning system will improve the Section 106 process.
 - d. To review the Section 106 monitoring process and consider how this can be improved.
7. The group discussed the ways that they could capture the Section 106 process wholly. To understand all parts of the process, Members requested that they speak to Officers in all departments relevant to Section 106; Planning and Development, Housing, Culture and Legal and Democracy.
 8. The Task Group agreed that the review should not include discussions with external infrastructure providers. This would broaden the scope of the work significantly, and so this would not be looked at in detail to keep the review timely. Additionally, it was felt that the infrastructure providers were not one of the main concerns of Members.
 9. Additionally, Members proposed that a questionnaire was compiled and sent to Parish Councils. The questionnaire would help to understand what the challenges of Section 106 were from a Parish perspective, and equally what parts of the process worked well. Analysis of the completed questionnaire would be undertaken once received and Members would aim to have a discussion with several Parish Councils at a future Task Group meeting.

Witness Sessions for Officers

10. The group agreed that a series of virtual 'Witness Sessions' would be held where Officers would be invited to attend a meeting and participate in a 'question and answer' style discussion. In advance of the meetings, Officers were provided with a set of standard questions put together by the Task Group. The following questions were asked to guide the discussions:
 - a. Please describe your role in the process
 - b. What do you think works well about the Section 106 process?
 - c. Are there any parts of the process you feel could be improved?
 - d. What is your relationship like with Parish Council's regarding Section 106?
 - e. Are there any examples of best practice by other council's you think we should look at?

Review Findings

Witness Session 1 – Planning and Development

11. The first meeting of the Task Group was to understand the Section 106 process from Planning Officer's perspectives. Members received statements from Officers in the Planning Policy and Development Management teams.

12. Members were informed that there was an Annual Report published on Section 106 monies collected and spent. A request was made that it be produced more frequently to aid Members in keeping projects fresh in their minds.
13. Officers raised issues around the complexity of the process internally in the council. It was important to keep the process as simple as possible for the benefit of Officers and Parish Councillors involved. Officers suggested that they would like to explore the idea of simplifying the process with colleagues in the Legal Service. It was also agreed that use of standard wording or templates would help streamline some parts of Section 106 agreements. It was noted that bespoke agreements often took considerable time to negotiate. **(Recommendation VII)**
14. Planning Officers felt that overall they kept good relationships with Parish Councils. Officers supported the idea that proposals for local projects which could justifiably be funded through Section 106 Agreements were created. At times, it was difficult to engage with some Parish Councils at the right time over projects in their local areas. It was noted by Planning Officers and later by Parish Councils, that it was not always clear what Parish Councils needed to do with their project lists and when the best time to create one was.

Witness Session 2 – Housing and Culture

15. Officers from teams within Culture and Housing attended this meeting to speak about their involvement with the Section 106 process. Some Officers who worked with Parish Councils felt that it was difficult to understand Section 106 and provide guidance to Parish Councils accordingly. One suggestion was that more information and training on Section 106 should be provided to all Officers involved in the process, for example, via a handbook or training session.
16. In regards to improvements to the process, it was felt that more guidance was needed for Officers to be able to advise Parish Council's accordingly. A level playing field was required in terms of what the parameters and structures are behind the Section 106 process. This could also include some clarity of the roles and responsibilities of various Officers in the process.
17. It was also mentioned that the Open Space SPD was due to be updated. It could be useful if the wording within the SPD could include all cultural provision, for example, arts, community buildings and facilities. Members were advised that a new Infrastructure Contributions SPD was being developed and that this will update the list of what is expected of developers within a single document. The Task Group welcomed this change and agreed that this will provide clarity to all parties involved. **(Recommendation VI)**

Witness Session 3 – Legal and Democracy

18. During this meeting, Officers from the Legal Service ran through the stages of the Section 106 process from a legal perspective. Four stages were identified – policy making and identifying the need, requesting the money, collection of the money and the spending of the money. Overall, it was felt that the council has a well-developed Local Plan which includes comprehensive policies regarding the delivery of infrastructure. It was also explained that Officers have a good level of experience and expertise with negotiating Section 106 agreements.

19. Members were advised that the current Supplementary Planning Document on the provision of Affordable Housing through Section 106 agreements, and on contributions to Public Green Infrastructure, are 12 and 9 years old respectively. In order to better support requests for such infrastructure, both in negotiations and at Appeal, it was felt these needed to be updated.
20. It was also suggested to the Task Group that earlier input from Parish Councils in identifying potential projects in their areas would be very beneficial to the process. Similarly, ensuring the Legal Service were involved at early stages of Section 106 would also make the process easier.
21. Members were concerned with the difficulty with recruiting to some vacant posts within the Legal Service. However, it was advised that consultants are going to be looking at the recruitment package and improve what was being offered for some of the senior legal posts.
22. Members raised other queries around the new Planning IT system and whether Legal Services could be part of this. Although it was advised that this could not be possible with the nature of some confidential records held by Legal, it was suggested that if Legal Officers had better access to planning documents, then some parts of the process could be progressed more quickly. **(Recommendation VIII)**

Parish Councils and Section 106

Section 106 Questionnaire

23. Prior to the witness session, Parish Councils were asked to complete a survey regarding their experience with Section 106. A copy of the questionnaire can be seen in Appendix A. In total, 23 Parish Councils and 1 community forum responded to the questionnaire online and the responses were varied in terms of detail. Five of the responses were selected for the Task Groups consideration.

Parish Council Questionnaire Responses – Summary and Analysis

24. Responses showed that there was a mixed level of understanding of the process amongst Parish Councillors but mainly this was little or none. Suggestions from Parish Councils included the creation of Section 106 guidance documents and/or annual training events. Some Parish Councils advised that they can have a frequent turnover of Councillors and therefore it would be useful to have a guidance booklet on Section 106 specifically. This turnover meant that training materials needed to be readily available so that new Parish Councillors understand the process. **(Recommendation II)**
25. Parish Councils felt that more transparency was required during various stages of the process. In particular, Parishes felt that they did not have enough involvement during the early stages.
26. Areas particularly highlighted through the questionnaire as needing improvement were
 - a. Education and training: 58%

- b. Transparency: 42%
- c. Greater communication: 42%
- d. More involvement: 46%

27. A high number of the responding Parish Councils advised that they had a list of priority projects in place and many of these were reviewed against a set process and involved consultation with local residents.

28. The following tables A to C demonstrate some of the responses to specific questions asked within the Parish Council survey:

Table A

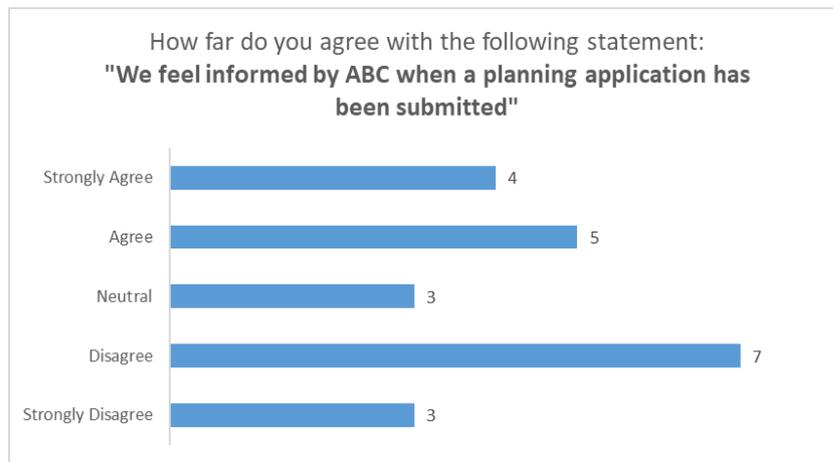
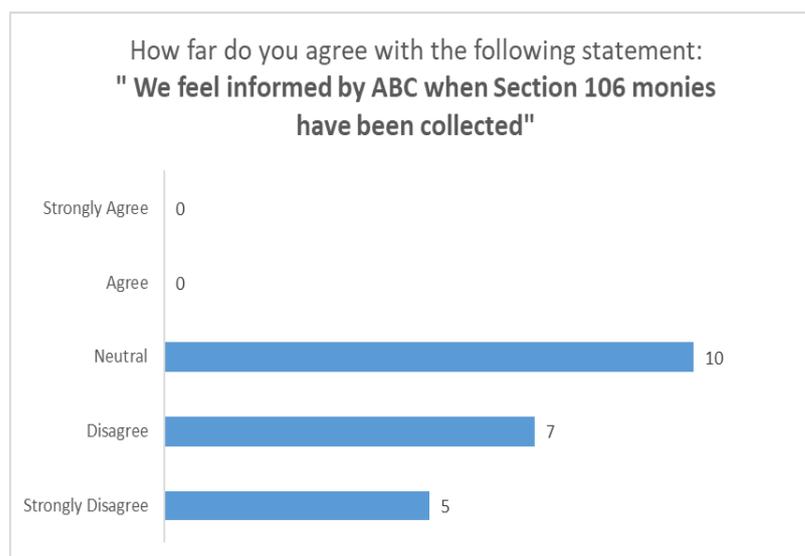


Table B



Table C



29. Table A shows that the majority of Parish Councils partaking in the survey strongly agreed or agreed with the statement. This indicates that there are Parish Councils who had previously felt informed by the council to some extent when a planning application was submitted. However, nearly 60% of responses were either neutral or disagreed/strongly disagreed with the statement. Therefore, this suggested that there was not enough accessible information for Parish Councils regarding their planning applications.
30. Similarly in Tables B and C, there were no respondents who agreed that they were well informed by the council once a Section 106 agreement had been signed. These results suggested that more could be done to improve the communications between the Planning Department and Parish Councillors and ensure updates to Section 106 agreements are easily accessible.
31. Some Parish Councils felt informed when a planning application had been submitted. There was some indication that this part of the process worked well in principle. Comments were also made indicating that it was felt the Section 106 helped local Parishes plan for the future. In particular, one Parish advised they had a good experience when drawing down money to use on playgrounds and added that in this instance, Officers were both helpful and flexible.
32. Overall, many responses indicated that their Parish Council did not feel informed by Ashford Borough Council during the development of the Local Plan, when a planning application is submitted, when an Section 106 agreement has been signed or when Section 106 monies have been collected. To improve on this, the Task Group suggested that the council issue more frequent communication and updates regarding these processes. It was felt that the new planning IT system could support the provision of this information on the website.

(Recommendation V)

Witness Session 3

33. After reviewing the survey responses, Members were presented with the findings. It was then agreed that three Parish Councils would be asked to attend a future Witness Session with the Task Group. Members agreed it was important to select both rural and urban Parishes and Parishes of different sizes, to understand if there was a difference in perspectives. The following Parish Councils were selected:

- a. Wittersham Parish Council
- b. Kingsnorth Parish Council
- c. Tenterden Town Council

34. In preparation for the Witness Session, questions were compiled for the attending Parish Councils to guide the discussion. The questions were based on their responses to the questionnaire:

- a. Please outline how local priorities are identified in your Parish.
- b. How can ABC help your Parish understand the Section 106 process better?
- c. How can communications be improved from ABC regarding future planning applications and Section 106 agreements?
- d. How can communications from ABC be improved during the development of the Local Plan?
- e. Do you have any specific positive or negative experiences working with the Section 106 process?
- f. Do you have any other ideas on how the Section 106 process could be improved?

35. In response to these questions, Parish Councillors made some key comments and suggestions:

- a. Comments were made that it would be useful to have more information regarding Section 106 and what is available to the Parish. Parish Councillors agreed that more engagement with the council regarding Section 106 would be useful regarding how much money could be requested. A Parish Councillor highlighted that South Oxfordshire use their website to provide up to date information on what Section 106 monies are available.
- b. The Task Group were advised that it was difficult to get hold of Officers and it felt like there were some resource issues in the Planning Service. It was also a struggle to get hold of Section 106 contribution information. The Parish Council suggested that a dedicated Section 106 officer would help improve communications. **(Recommendation III)**
- c. Members queried the communication issues raised during the meeting and asked if there was capacity in Planning to respond to regular questions from Parishes, if recommended by the Task Group.

- d. It was explained that there was some confusion over when Section 106 project ideas should be submitted.
- e. It was felt that there was some imbalance in knowledge between Officers and Members of the Parish Council.
- f. Parish Councillors had difficulty with understanding complex Section 106 agreements and what was being offered. They recommended that more education on this topic for Parish Councils was required. Members agreed that training needed to be led by Ashford Borough Council and this should be incorporated in to the recommendations. **(Recommendation IV)**

36. Overall, the Task Group agreed that understanding the views of Parish Councils was an important part of the review. The Witness Sessions were extremely informative and were consistent with themes identified in the questionnaire. Comments made within the Witness Session were used to inform many of the recommendations.

Wrap Up

37. The Overview and Scrutiny Task Group finalised their conclusions in a final Wrap Up meeting. The recommendations reflect discussions had over the last six months in the series of Witness Sessions. Both oral and written evidence was provided by Officers and Parish Councils to help the Task Group understand the Section 106 process.

38. Following Member discussions, the Task Group insisted that a process mapping exercise of the Section 106 process is undertaken prior to progression of the later recommendations. It was agreed that once all the stages of the Section 106 process had been mapped out, this information would inform the details necessary to implement recommendations II to VIII. **(Recommendation I)**

Consultation

39. The Overview and Scrutiny Committee were consulted on the recommendations and support them. The council's Management Team have also been consulted and were fully supportive of the recommendations and their advice to Cabinet is set out in Appendix B.

Recommendations

40. The Task Group would like to endorse the following recommendations to the Cabinet:

- I. **A process mapping exercise is undertaken to provide clarity and guidance to Officers and Members involved in the Section 106 process. Once completed, the process map will inform recommendations II to VIII.**

- II. Guidance and training is provided for Officers involved in the Section 106 process to clarify roles and responsibilities of all Officers. Additionally, a 'handbook' is created for both Members and Parish Councillors, to explain the basic concepts of Section 106.**
- III. Communication over Section 106 is improved between the Planning Service and Parish Councils including key contact(s) for accessing advice.**
- IV. Training on Section 106 should be provided to Members and Parish Councils on an annual basis. The initial programme for the training should be reviewed by the Member Training Panel in consultation with the Chair of the Section 106 Task Group.**
- V. The new Planning IT software is expected to provide information on the council's website about what Section 106 monies are available to individual parishes.**
- VI. Delivery of the Infrastructure Contributions SPD should be prioritised. The SPD should provide an up to date list of what is expected of developers within a single document. This will provide clarity for all parties involved in the Section 106 process.**
- VII. There is a standardising of Section 106 Agreements and use of templates where appropriate.**
- VIII. Legal Services are trained to use the new IT system adopted by the Planning Department, to enable them access to relevant Planning documentation and therefore streamline the process.**

Contact and Email

41. Abi Moffatt, *Policy and Scrutiny Officer*
Tel: 01233 330394

S106 Questionnaire to Parish Councils

No	Question
1	Name of Parish Council/Community Council
2	Main contact (we may wish to follow you up on the questionnaire)
3	As a Parish Council, how well do you feel you understand the S106 process?
4	Do you have a process for identifying local priorities within your Parish? If yes, please explain in this box. <i>E.g. do you have a S106 Committee or dedicated person who coordinates this?</i>
5	Do you consult with residents on the local priorities for the area? If so, please explain how.
6	Do you have a current list of projects you have identified that could be eligible for S106?

7	<p>If yes, please list the projects</p>
8	<p>How regularly do you review your list of local priority projects?</p>
9	<p>Is the list publicly available?</p>
10	<p>Thinking about the S106 process, to what extent do you agree with the following statement:</p> <p>I feel well informed by Ashford Borough Council (strongly agree, agree, neutral, disagree, strongly disagree):</p> <p>a. During the development of the Local Plan b. When a planning application is submitted c. Once a S106 agreement has been signed d. Once S106 monies have been collected</p>
11	<p>To what extent do you agree with the following statement:</p> <p>It is easy to communicate with Ashford Borough Council over S106 matters?</p> <p>Strongly agree, agree, neutral, disagree, strongly disagree</p>
12	<p>How could communications over S106 be improved between Ashford Borough Council and Parish Councils?</p>

13	What communications over S106 from Ashford Borough Council do you find useful?
14	Please use this box to explain what you think works well about the S106 process <i>Please include any examples.</i>
15	Please use this box to explain what the council could do to improve the S106 process?

O&S Review of the Section 106 Process – Management Team Advice for Cabinet

Recommendation	Resource Implications	Management Team Advice
<p>I. A process mapping exercise is undertaken to provide clarity and guidance to Officers and Members involved in the Section 106 process. Once completed, the process map will inform recommendations II to VIII.</p>	<p>Some additional resources required to deliver the process mapping exercise.</p>	<p>Accept: A time period of 6 months has been recommended for delivery of the process maps. To help ensure these timescales are met it is recommended that additional resources are allocated to enable the exercise to be led by either an internal or external specialist team. The Head of Planning would oversee the implementation of this.</p> <p>Timescales for the rest of the recommendations will be determined following completion of the process mapping.</p>
<p>II. Guidance and training is provided for Officers involved in the Section 106 process to clarify roles and responsibilities of all Officers. Additionally, a ‘handbook’ is created for both Members and Parish Councillors, to explain the basic concepts of Section 106.</p>	<p>Some resource will be required to create the ‘handbook’.</p>	<p>Accept: Provision of additional training for Officers will increase overall understanding of the Section 106 process. This will ensure queries from Members and the public are dealt with correctly. A handbook will be beneficial for new Members/Parish Councillors to ensure they have a good level of understanding.</p>
<p>III. Communication over Section 106 is improved between the Planning</p>	<p>Within existing resources.</p>	<p>Accept: The Planning Service will provide a list of key contacts for Members and Parish Councils to</p>

<p>Service and Parish Councils including key contact(s) for accessing advice.</p>		<p>speak to regarding Section 107 monies. This will ensure queries are directed to the most appropriate Officers.</p>
<p>IV. Training on Section 106 should be provided to Members and Parish Councils on an annual basis. The initial programme for the training should be reviewed by the Member Training Panel in consultation with the Chair of the Section 106 Task Group.</p>	<p>Within existing resources.</p>	<p>Accept: Annual training sessions will ensure Members are kept well informed over Section 106 matters. The Member Training Panel will be able to review the programme and ensure it considers the main queries raised by Members and Parish Councils.</p>
<p>V. The new Planning IT software is expected to provide information on the council's website about what Section 106 monies are available to individual parishes.</p>	<p>Within existing resources.</p>	<p>Accept: Members, Parish Councils and the public will have greater access to Section 106 information online.</p> <p>The Planning Service will liaise with Arcus Global to implement this.</p>
<p>VI. Delivery of the Infrastructure Contributions SPD should be prioritised. The SPD should provide an up to date list of what is expected of developers within a single document. This will provide clarity for all parties involved in the Section 106 process.</p>	<p>Significant resource needed to achieve this including necessary time for discussion with Councillors and the public.</p>	<p>Accept: The work will need to be balanced with other significant priorities, including the Policy Framework for Stodmarsh and implementing the new planning system.</p>

<p>VII. There is a standardising of Section 106 Agreements and use of templates where appropriate.</p>	<p>Within existing resources.</p>	<p>Accept: The use of standard templates will streamline this part of the process.</p>
<p>VIII. Legal Services are trained to use the new IT system adopted by the Planning Department, to enable them access to relevant Planning documentation and therefore streamline the process.</p>	<p>Within existing resources.</p>	<p>Accept: Following implementation of the new Planning System, colleagues in the Legal Service will be provided with access to some planning documentation.</p>