

## **ECONOMY AND ENVIRONMENT OVERVIEW AND SCRUTINY PANEL 1 July 2016**

### **HIGHWAYS DEVELOPMENT MANAGEMENT PROCESSES – SECTION 278 AND 106**

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#### **Summary**

1. The Economy and Environment Overview and Scrutiny Panel will receive an overview on the Council's highways development management processes, which is part of the Panel's work programme, as requested at the Panel's last meeting.
2. The Head of Strategic Infrastructure and Economy and the Cabinet Members for Highways, and for Economy, Skills and Infrastructure have been invited to the meeting.

#### **Background**

3. The overview will include:
  - explanation of the Council's role and statutory obligations under the relevant planning legislation
  - the sectional agreement process – including explanation of Section 278 and 106 processes and examples
  - the Council's highways development management processes relating to Section 106 – types of schemes and negotiation involved
  - involvement of councillors as schemes are developed
  - the new approach for emerging work
4. The Council's highways development management processes is an area of work carried forward from the Panel's 2015/16 work programme. As discussed at the recent 18 May meeting, in particular, panel members are keen to understand processes and obstacles around more efficient use of funding received from developers for infrastructure development.
5. Appendix 1 provides an overview of Section 106 obligations, and further information will be provided through a presentation at the meeting.

#### **Section 278 agreements**

6. A section 278 agreement allows private developers to either fund or complete works to public highways outside or beyond the development site itself, such as traffic calming and capacity improvements, as part of the Highways Act 1980.

7. Following the issue of planning consent for a new development, either by the District Planning Committee or the Planning Inspector at a Planning Appeal, the junctions required to connect the development to the existing highway network, as well as other off-site alterations and improvements to the highway deemed necessary to ensure the efficient and safe operation of the highway network are pursued by the developer through their consultants and contractors.

8. As neither the developer nor their contractors have the right to work on public highway, they are required to enter into legal agreement through Section 278 of the Highways Act 1980 (Sec. 278) with Worcestershire County Council (the Council), which enables the developer and their contractors to undertake works on the highway.

9. The Council, in its role as Local highway Authority (LHA) check the detailed design and inspect the construction of these works on the existing highway. It is important that the design and construction complies with the appropriate national and local design standards to ensure safety, accessibility, minimal impact on the current highway network and durability.

10. The design is checked against current national and local standards as indicated in our Highway Design Guide, (N.B. this is currently being updated to ensure it is in line with the latest available guidance). Once the design is approved the legal agreement is pursued by legal together with a bond for the works. Construction on the public highway can be booked once this agreement is in place, whilst construction off the public highway can commence with inspections as soon as technical approval of the design is given. Construction is regularly inspected to ensure adherence to both the specification and the approved design drawings.

11. When the works are substantially complete a certificate is issued and the bond reduced. After 12 months the road is re-inspected and once any remedial work has been completed satisfactorily the road is adopted.

12. In terms of workload between April 2013 and April 2016 – the Council

- received 70 new Sec. 278 submissions
- technically approved 65 Sec. 278 schemes
- completed 68 Sec. 278 legal agreements
- issued 29 Provisional Certificates of Completion (PCC), which enabled the scheme to commence its maintenance period
- issued 44 Final Certificates of Completion (FCC), which enabled the scheme to be adopted.

13. The scale of the Sec. 278 schemes can vary greatly; from relatively minor scheme which involve the creation of the site access junction, to complex scheme that involve the construction of new bridges, roundabout and traffic signals, with overall scheme value in excess of £5m.

14. In terms of issues affecting the Sec. 278 process, these can differ considerably, but some of the more common issues consist of:

- Although Sec. 278 schemes mainly involve works to the existing highway, there can be new areas of highway to be adopted as part of the process. The adoption process requires the owner of the land over which the new highway passes, to surrender their rights to this land. Obviously, if the developer doesn't control all of the land required to deliver the scheme, this represents a major barrier to the adoption of the scheme. This situation can occur when additional land is required to deliver satisfactory highway works which weren't considered at the planning stage when the preliminary design was agreed i.e. adequate visibility splays for the speed of traffic.
- The developer may be required to complete additional legal agreements with third parties, in order to be able complete the legal agreement with the Council. For example, the Council require that all highway drainage discharges into a drainage system which is controlled and maintained by a statutory body and in order to achieve this, the developer will need to enter into an agreement under Sec. 104 or 106 of the Water Industry Act 1991 with Severn Trent Water (STW) in order to get the drainage infrastructure for the scheme adopted. The time taken to complete this additional agreement often delays the overall Sec. 278 process.

### **Developer Contributions - Section 106 agreements**

15. Section 106 agreements are drafted when it is considered that a development will have significant impacts on the local area that cannot be moderated by means of conditions attached to a planning decision. For example, a new residential development can place extra pressure on the social, physical and economic infrastructure which already exists in a certain area.

16. Section 106 agreements were introduced as part of the Town and Country Planning Act, 1990 and secure contributions to offset the impact of development. These agreements can be secured against any development type, although they are most frequently secured against housing development.

17. For the County Council, the majority of section 106 agreements include capital sums for transport and education; contributions for other matters are rarely requested. Districts, as Local Planning Authorities, may secure contributions for other matters such as open space, sport and recreation and affordable housing. They are legal agreement, which once signed can only be used in accordance with the matters stated on the agreement.

18. Prior to the post 2008 recession many housing developers were content to pay all reasonable section 106 requests, with the rising housing market ensuring that properties would sell, and that schemes were viable. Post 2008, section 106 contributions have been under greater scrutiny both from developers and from Government.

19. The Principle concerns are:

- Transparency; lack of clarity as to how and when contributions were being spent by local authorities.
- Use of tariff based contributions; difficult to relate to the direct impact of an individual site
- Relationship between the site and contributions requested unclear
- A more challenging economic environment resulting in developments becoming unviable and no longer able to support the level of section 106 contributions requested.

20. To address this, a new approach has been introduced, the Community Infrastructures Levy, and new rules introduced for section 106 contributions.

### The Future of Section 106 Contribution

21. As from 1 April 2015, the use of section 106 agreements will be restricted and they will be required to meet three statutory tests:

- Necessary (to the planning application)
- Directly related (to the development)
- Fairly and reasonably related in scale and kind (to the planning application)

22. The pooling rule will apply which means that a maximum of 5 obligations can be secured for one type / piece of infrastructure (backdated to 2010)<sup>1</sup>

23. Section 106 contributions must, therefore be directly linked to the development. They cannot be used to address existing problems, although where a development exacerbates an existing problem, a section 106 contribution can be sought to address the additional impacts which arise from the development.

24. There are no such restrictions on s278 agreements.

### Evidence Base

25. The adopted and emerging district local plans are all supported by Infrastructure Development Plans which set out the all the infrastructure required as a result of the development identified in the local plan. These form a part of the evidence base for contributions and identify the schemes which we will be bringing forward to offset the impact of development.

26. Districts are also working on Developer Contributions Supplementary Planning documents, to outline how and when developer contributions will be sought from developers.

### Viability

27. In seeking section 106 agreements, Worcestershire County Council will consider its evidence bases, including the Infrastructure Development Plan, traffic modelling data, Local Transport Plan etc. This will form the basis for the section 106 request which subject to complying with the three tests outlined above will be submitted to developer and the districts with negotiations following.

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<sup>1</sup> Paragraph: 099 Reference ID: 25-099-20140612 (nPPG)

28. Viability is paramount in these discussions, and the sums requested by the Council are frequently reduced as a result of individual sites restricted viability, and the combination of requests from WCC and the districts.

## **Purpose of the Meeting**

29. Following the discussion, the Economy and Environment Overview and Scrutiny Panel is asked to agree whether any further information or scrutiny work is required.

## **Supporting Information**

Appendix 1 - S106 Overview from the Planning Advisory Service

## **Contact Points**

### County Council Contact Points

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### Specific Contact Points for this report

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## **Background Information**

In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) the following are the background papers relating to the subject matter of this report:

- Agenda and Minutes of the Economy and Environment Panel on 18 May 2016, available on the website [here](#)