

Place and Environment Scrutiny Committee

Tuesday 30th April 2024 – 7pm

Report Title	Developer Contributions Scrutiny Panel Final Report
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Are there public sector equality duty implications?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information (whether in appendices or not)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Applicable paragraph number/s for exemption from publication under Schedule 12A Local Government Act 1972	Choose an item.
Which Corporate Plan priority does the report most closely align with? Our priorities for the future North Northamptonshire Council (northnorthants.gov.uk)	Choose an item.

List of Appendices

Appendix A – Climate Change Impact Assessment tool

1. Purpose of Report

- 1.1. Following the decision of the Scrutiny Committee in 2023 to establish a Scrutiny Panel to review the Council's Developer Contributions function, this report provides an overview of the work of the Panel between December 2023 and April 2024, and sets out the recommendations made by the Panel to help guide the continued improvement of the service.

2. Executive Summary

- 2.1. Developer Contributions are a matter of local significance. It is therefore important that the Council has assurance through its scrutiny process that there are effective governance arrangements in place to ensure the service is fit for purpose, and delivering the best possible outcomes for North Northamptonshire and its residents
- 2.2. The Place & Environment Scrutiny Committee identified a need for a more detailed review of Developer Contributions (commonly referred to as Section 106 (S106) obligations) and a Developer Contributions Scrutiny Panel was

established, to review the operations of the Council's Developer Contributions service. This included work to address the findings of an audit report and peer review carried out between April 2021 and September 2022, which highlighted areas for improvement across different aspects of the service, including legacy arrangements.

2.3. A Scoping Report was presented to the Committee in October 2023 setting out the rationale, purpose and approach of the Panel. It was confirmed that a series of focused meetings be held during December 2023 – April 2024 to review and investigate the Council's approach to Developer Contributions, including the following areas:

- 2.3.1. Policy and legislative framework
- 2.3.2. Issues and opportunities in the current system
- 2.3.3. Addressing the audit and peer review outcomes
- 2.3.4. Monitoring, reporting and governance processes
- 2.3.5. Project delivery
- 2.3.6. Future areas of focus

2.4. Following this review the Panel would provide a series of recommendations for the service to support continued improvement and provide continued assurance with respect to the effective governance of developer contributions for the Council.

2.5. The purpose of this report is to advise Councillors of the key findings and recommendations of the Panel.

2.6. The recommendations of the Developer Contributions Scrutiny Panel for consideration for the scrutiny committee are:

- (a) That there is a mechanism for councillors, town and parish councils, to access (either directly or via the Developer Contributions team) details regarding S106 Agreements within their respective areas, including information on new and historic S106 Agreements.
- (b) That councillors are notified regarding the signing of any new S106 Agreements within their wards and the contributions that these will provide.
- (c) That councillors, town and parish councils are better informed of the process for putting forward comments in relation to S106 requirements within their wards during consultation stage on new planning applications, supported by easy-to-use guidance setting out the types of contributions that may be secured based on adopted policy, evidence and strategic priorities.
- (d) That details of all relevant policy documents relating to securing S106 obligations be easy to locate on the Council's website.
- (e) To explore (where appropriate) the use of bonds to provide added security to the Council in respect of S106 contributions payable.
- (f) That an annual report be presented to councillors detailing S106 funds requested, secured, collected, spent and returned, and confirming future priorities for project delivery.
- (g) That work continues to complete the restructure of the service to support the management of S106 Agreements and ensure sufficient resources and capacity are in place to enable improvements to be implemented.
- (h) That work to move legacy S106 records into a single new ICT system for Planning continue, supported by the Transformation team, enabling a more harmonised and streamlined monitoring and reporting process for Developer Contributions.

2.7. Reason for Recommendations

- To support continued improvement of a significant area of the Council's work.
- To align with the Council's transformation outcomes.
- To accord with legislation and adopted policies of the Council.

3. Report Background

- 3.1. North Northamptonshire has a strong history of delivering growth, in terms of housing and employment.
- 3.2. Between 2011 to 2021, the population grew at more than twice the national average and there remains significant potential to deliver new homes and jobs, in particular through Sustainable Urban Extensions, supported by adequate investment in infrastructure.
- 3.3. Developer contributions (secured in North Northamptonshire through Section 106 legal agreements) are an established mechanism through which developers contribute towards the provision of such additional services and infrastructure required as a result of development.
- 3.4. The focus of developer contributions is largely on site-specific mitigations. They will usually only be applied to secure delivery of additional infrastructure capacity over and above the existing level of provision. However, in some cases these contributions may also support the delivery of larger, strategic scale schemes.

Policy & Legislative Framework

- 3.5. Developer contributions may only be sought where they meet the three legislative tests, as set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and paragraph 57 of the National Planning Policy Framework 2023. This demands that planning obligations must only be sought where they meet all of the following criteria:
 - Necessary to make the development acceptable in planning terms
 - Directly related to the development; and
 - Fairly and reasonably related in scale and in kind to the development
- 3.6. Failure of a local planning authority to demonstrate compliance with these three tests may result in contributions being removed from S106 agreements and may also result in legal challenge.
- 3.7. The adopted North Northamptonshire Joint Core Strategy (Local Plan Part 1) sets out the strategic need for delivery of and investment in infrastructure through developer contributions, and this is further supported by the Part 2 Local Plans (including Site Specific Plans), the adopted Minerals and Waste

Plan, and a range of Supplementary Planning Documents, guidance and other adopted policy frameworks.

- 3.8. These documents together form the basis of any request for Developer Contributions made in response to proposed new development and are the starting point for identifying the types of project that may be delivered as a result. It was reported to the Panel that all of these documents are available to view on the Council's website in its 'Growth, plans and policies' section¹
- 3.9. Other statutory bodies and infrastructure providers (such as NHS England, the Police and Fire Service, Natural England or National Highways) will also be able to secure Developer Contributions where necessary and where impacts on their services and facilities are identified. In the majority of circumstances, those parties will be responsible for evidencing their own requirements and identifying the specific measures necessary to support growth. The Council plays an important role in supporting this work however, through collaboration at plan setting stage, consultation on planning policy and new applications, and working in partnership on schemes where there is mutual benefit to joint working.
- 3.10. The Panel considered it important for councillors, and local town and parish councils, to have a greater understanding of the types of infrastructure that could be secured through Developer Contributions, and to have clearer guidance available to them to support any potential future requests. It was also viewed important that these same parties are notified when new S106 Agreements were signed, and to make it easy to request or to directly access information regarding developer contributions secured from sites and S106 funded projects in their areas.

Issues and Opportunities in the current system

- 3.11. A key area of concern highlighted by the Panel was that of viability and the ability of the Council to respond to these challenges effectively.
- 3.12. Viability considerations need to be taken into account in accordance with National Planning Practice Guidance, which sets out that the total cumulative cost of all relevant policies should not be of a scale that will make development unviable.
- 3.13. Where viability concerns are highlighted by an applicant, the Council will undertake an assessment and where necessary instruct an external viability expert to provide expertise. In the event that this results in confirmation that a scheme is unviable when considering the full cost of developer contributions, then an appropriate level of reduction may be agreed, informed by service areas, strategic priorities and adopted policies. Any such circumstances will also be reported to the relevant planning committee for consideration before a decision is reached.
- 3.14. The Panel considered that it was critical for councillors to understand viability concerns if this had potential to impact on delivery of infrastructure, and highlighted the importance of these being considered by the relevant

¹ <https://www.northnorthants.gov.uk/growth-plans-and-policies>

planning committee. It was also suggested that where deeds of variation to existing S106 agreements were sought on viability grounds (which could potentially lead to a reduction in future S106 contributions), that there be closer engagement with councillors to explore the impacts of this and that local communities are better informed of any resulting changes.

- 3.15. The Panel explored the different options available to the Council regarding enforcement of S106 obligations, for example in the event of a financial obligation not being paid when due, non-delivery of a specific obligation, or in the event of a developer going into administration before discharging its obligations. This includes a range of measures, including planning enforcement, debt recovery or potential legal action being instigated. Where necessary, any action will be assessed on a case-by-case basis with the relevant services and with input from legal services as to the most appropriate course of action.
- 3.16. Recognising the mechanisms already in place to enforce obligations, Panel members asked whether there might be a way to further mitigate or manage any potential risk to the Council of late or non-delivery, by exploring the use of bonds in respect of developer contributions. Such an approach would grant the Council a considerable degree of certainty that funds could be claimed in the event of a default occurring, to ensure the necessary infrastructure works could be completed. The Panel recommended that this proposal be considered in more detail.

Addressing the audit and peer review outcomes

- 3.17. Prior to the establishment of North Northamptonshire Council on 1st April 2021, each of the legacy authorities had different arrangements in place for managing developer contributions, with each authority also using its own database or system for monitoring compliance.
- 3.18. Early in 2021/22 it became apparent that the level of detail, accuracy and completeness of some of the monitoring records that had transferred into the Council via the legacy authorities varied considerably, and an internal audit identified number of areas for improvement to improve consistency and increase the level of assurance provided through harmonised governance and reporting arrangements.
- 3.19. In addition to the audit, the Planning Advisory Service peer review of the Council's planning service in 2022 reported a perception amongst some of those consulted that the Council was "not getting the most" out of Developer Contributions, and that there was a perceived lack of visibility over what had been accomplished – noting however that works was already underway to address these concerns.
- 3.20. As a result of the audit and peer review findings a number of actions were implemented by the developer contributions service, including:

- 3.20.1. Constructing an accurate and up to date record of all S106 Agreements currently in place

- 3.20.2. For each S106 Agreement confirm the raising of invoices and receipt of income in accordance with trigger points and verify that spend has occurred in accordance with requirements
 - 3.20.3. Introduce a consistent process and systems for administering, recording and monitoring S106 Agreements including standardised policies and procedures, and establishment of multi-disciplinary meetings where appropriate
 - 3.20.4. Formally define the role of officers with responsibility for administering S106 Agreements and identify sufficient resources to perform this role across North Northamptonshire
 - 3.20.5. Introduce regular reconciliation of planning and finance records in respect of S106 income and expenditure
 - 3.20.6. Implement a formal reporting process to senior management and at committee level that is consistently applied across the Council
- 3.21. The progress of the Developer Contributions service in responding to the recommendations of the 2021 audit report has been reported at regular intervals to the Council's Audit and Governance Committee, culminating in the re-audit of the service in early 2023. This concluded that significant improvements had been made since the original audit and resulted in an improved rating of 'Satisfactory' for the service, which was reported back to the Committee in June 2023.
- 3.22. It is however recognised that some areas of activity are ongoing – for example with resources and capacity being linked to the wider restructure of Place & Economy which has not yet completed, and the Council's move to a new ICT system for its planning services which will incorporate a platform to assist with monitoring S106 Agreements, reducing reliance on manual reconciliation and helping the service to be more effective and efficient as a result.
- 3.23. The Panel recommended that work on these areas continue to be a priority for the Council, to support the continued improvement of the developer contributions service.

Monitoring, reporting and governance processes

- 3.24. As highlighted above, a key area of focus for the developer contributions service, working with the Assistant Director of Growth & Regeneration, has been to provide a clear way forward to resolve legacy issues and improve the effectiveness of the service. This has included a review of processes and governance arrangements, culminating in the development of a new internal protocol for the management of developer contributions.
- 3.25. The protocol establishes clear internal processes for delivering a fully integrated end-to-end S106 developer contributions function for the Council, operating in a consistent, structured and managed way that provides high levels of assurance across all areas within its scope. This includes:
- 3.25.1. Clear procedures and responsibilities for collecting and allocating S106 contributions

- 3.25.2. Clear procedures and responsibilities for discharging S106 obligations
 - 3.25.3. Regular monitoring and reporting requirements
 - 3.25.4. Proposals for the production of clear and publicly accessible information relating to S106 matters
- 3.26. The protocol also sets out the establishment of a new Developer Contributions Board, to oversee the effective implementation of the protocol and to support the effective planning, prioritisation and governance of S106 developer contributions across all directorates.
- 3.27. A draft of the protocol was presented to the Planning Transformation Board in August 2023 and subsequently to the Developer Contributions Board for review and comment prior to its implementation in October 2023.
- 3.28. The Developer Contributions Board will oversee the production of the Council's infrastructure funding statement – an annual report detailing the amounts of S106 funding secured, received, spent, and (where applicable) returned by the Council in the previous reporting year, and outlining future priorities for project delivery. These reports will be published annually on the Council's website, improving transparency and access to information on S106 developer contributions for local communities.
- 3.29. The Panel recommended that the annual report be provided to councillors for information.

Project Delivery

- 3.30. Ensuring delivery of the infrastructure required as a result of new development is critical in supporting growth, creating sustainable communities and mitigating the impact of development on existing services and facilities.
- 3.31. In order to account for inflationary costs between the date of a S106 Agreement being signed and a payment being received by the Council, all financial contributions secured through S106 Agreements are required to be 'index linked'. This provides certainty for the Council that the funding it will receive in future will be able to cover the actual future cost of delivering the infrastructure.
- 3.32. The Panel highlighted a number of specific sites and projects from across North Northamptonshire where there had previously been perceived delivery issues, and the reasons behind this.
- 3.33. In some cases, it was considered that the wording of a particular obligation in a S106 Agreement could provide greater flexibility for the Council and/or Developer to respond to changing patterns in demand for infrastructure – for example to address cumulative impacts across a wider area or to respond to changes in take up of specific services e.g., school provision. This would also help the Council to respond to new priorities for infrastructure delivery as they arise.

- 3.34. It was however recognised that in all instances, there is a continued need for the Council to demonstrate that developer contributions meet the legislative tests (as set out above).
- 3.35. The Panel recommended that the developer contributions service continue to work with the Council's legal services to review standard template S106 clauses to improve their effectiveness and strengthen the Council's position.
- 3.36. The Panel also recommended improved communication between services and local communities regarding delivery of projects in their areas supported through S106 developer contributions.

Future areas of focus

- 3.37. Whilst a substantial amount of work has been carried out to date by the developer contributions team to respond to the historic challenges inherited by the Council and address the findings of the audit report and peer review, there are a number of further areas of work that have been identified for future development, both as a result of continued review and improvement of the service but also as a result of the input of the Panel.
- 3.38. A key recommendation of the Panel was to support local town and parish councils gain an improved understanding of the range and type of S106 developer contributions that they could potentially seek to secure in future, and the types of projects that these could be used to deliver mindful of the three legislative tests set out in above. The developer contributions service will also work with the Transformation team leading on the ICT planning service project to identify where there might be opportunities to deliver improved public access via the website to S106 data.
- 3.39. As outlined above, there is already a range of policy and guidance documentation available on the Council's website setting out the adopted approach to securing developer contributions, however much of this was developed and adopted by the legacy authorities prior to local government reorganisation and whilst there is an overlap across specific services there remain some historic differences.
- 3.40. The Panel recommended that clear and consistent guidance be provided to town and parish councils, to support the identification and prioritisation of local schemes.
- 3.41. Coupled with this, it was recommended that the developer contributions service work closely with the planning policy team and with service areas to ensure a consistent approach to S106 as part of the emerging work on the update to the Local Plan.

4. Issues and Choices

- 4.1. Recognising the progress that has been made since 2021 by the developer contributions service in addressing historic weaknesses identified in the 2021 audit report and 2022 peer review, it is now a good opportunity for the

Council to assess the current position and make recommendations for further improvement – both in the short and long term.

- 4.2. The Scrutiny Committee is requested to review the progress made in responding to the audit and peer review recommendation, note the actions still underway and support the recommendations for further improvement set out herein.

5. Next Steps

- 5.1. As outlined above, the Council's developer contributions function will work to implement the recommendations as set out, working with colleagues across different service areas as well as external partners to support delivery of a consistent, streamlined and efficient service. This will also involve identifying best practice and shared learning opportunities with other authorities, building on existing regional partnership networks – both formal and informal.
- 5.2. A report on the recommendations set out in this paper will be presented to the Council's Executive.

6. Implications (including financial implications)

6.1. Resources, Financial and Transformation

- 6.1.1. There are no direct financial implications arising directly from this report. However the effective governance of S106 developer contributions is an area of significance for the Council, being a key mechanism for ensuring that financial and non-financial obligations relating to the delivery of infrastructure projects are complied with to meet the needs of planned for growth and to effectively mitigate the impact of development.
- 6.1.2. It is also important that the synergies and interdependencies between some of the recommendations set out and wider transformation initiatives (such as the restructure of the Growth and Regeneration service and the ICT planning transformation project) are acknowledged. Effective implementation of these wider transformation schemes will help to support delivery of the recommendations set out in this report, by providing the resources, capacity and systems that have been identified as necessary to the continued improvement of the service..

6.2. Legal and Governance

- 6.2.1. There are no direct legal implications resulting from this report, as it sets out actions for service delivery improvements. It should however be noted that developer contributions secured through S106 obligations are legally binding on both the owner/developer of the relevant site and the Council.
- 6.2.2. Ensuring an effective governance process is in place to oversee management of S106 agreements is therefore a key component of providing the necessary assurance to the Council that these obligations are being complied with, minimising risk and supporting infrastructure delivery.

6.2.3. The recommendations set out in this report will support this process, in addition to which the continued operation of the Council's Developer Contributions Board will provide effective internal governance and oversight of decisions relating to the allocation and expenditure of S106 contributions.

6.3. Relevant Policies and Plans

6.3.1. The adopted North Northamptonshire Joint Core Strategy (Local Plan Part 1) and associated Part 2 Local Plans, Supplementary Planning Documents, Infrastructure Delivery Plan, adopted Minerals and Waste Plan, and Planning Obligations Framework: Creating Sustainable Communities (2015, as amended) set out the overarching policy basis which underpins the Council's approach to S106 developer contributions.

6.3.2. All relevant policy documents can be found on the Council's website: <https://www.northnorthants.gov.uk/growth-plans-and-policies>

6.3.3. The recommendations set out in this report are in line with the Council's Corporate Plan, particularly the commitments to create safe and thriving places, provide a green, sustainable environment, support connected communities and provide modern public services.

6.3.4. Activity undertaken as a result of the recommendations in this report will help to promote a harmonised, streamlined and efficient service, support delivery of infrastructure priorities and improve transparency for local communities regarding developer contributions in their area

6.4. Risk

6.4.1. There are no significant risks arising from the recommendations of this report. However, delivery of an effective S106 developer contributions service is a priority for the Council. The recommendations set out above have been designed to build on the response already underway in relation to responding to the 2021 audit and peer review, helping to further minimise potential risk and improve service delivery. Those actions still ongoing at this time are included on the Council's risk register for continued monitoring and review. These actions include delivery of additional capacity and resources through the restructure of the Growth and Regeneration service and delivery of the ICT Planning service transformation project.

6.5. Consultation

6.5.1. No consultation is required in relation to this report.

6.6. Consideration by the Executive

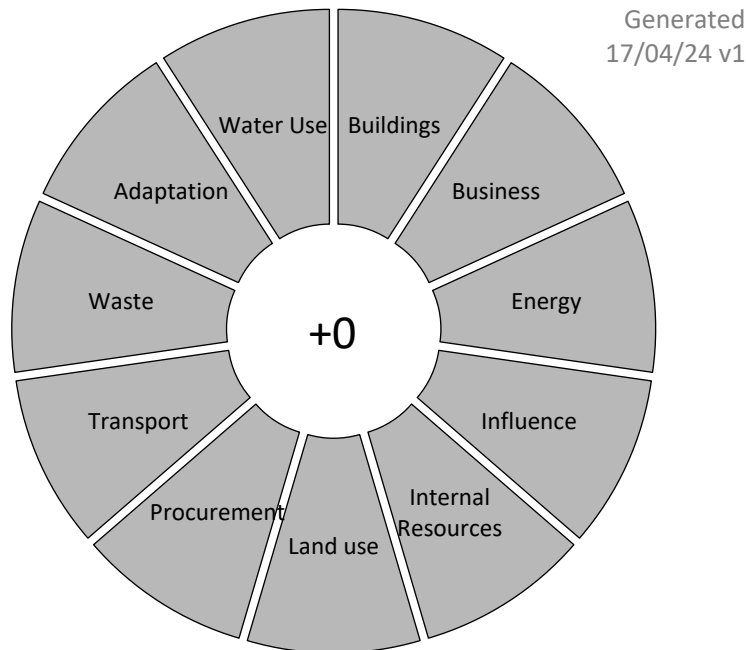
6.6.1. No prior consideration or decisions have been made by the Executive in respect of the recommendations set out in this report.

6.7. Equality Implications

6.7.1. There are no equality implications arising from the recommendations of this report.

6.8. Climate Impact

- 6.8.1. The climate change impact assessment has been completed, showing zero impact directly as a result of the recommendations of this report.
- 6.8.2. The infographic shows the relative costs and benefits of the decision on 11 different categories with respect to the climate: Buildings, no effect. Business, no effect. Energy, no effect. Influence, no effect. Internal Resources, no effect. Land use, no effect. Procurement, no effect. Transport, no effect. Waste, no effect. Adaptation, no effect. Water Use, no effect:



North Northamptonshire Council has committed to being a carbon neutral organisation by 2030, 5 yrs & 8 mos away.

- 6.8.3. A Climate Change Impact Assessment will need to be carried out in relation to individual projects supported through S106 developer contributions in order to ensure appropriate impacts are identified and considered..

6.9. Community Impact

- 6.9.1. The recommendations set out in this report will support the continued improvement of the Council's S106 developer contributions function which will in turn have a positive impact on local communities by reducing complexity, improving communication and transparency of S106 related matters and supporting delivery of infrastructure projects across North Northamptonshire to help mitigate the impact of development.

6.10. Crime and Disorder Impact

- 6.10.1. There are no direct Crime and Disorder impacts relating to the recommendations set out in this report.

7. Background Papers

- 7.1. Town and Country Planning Act 1990 (as amended): [Town and Country Planning Act 1990 \(legislation.gov.uk\)](#).
- 7.2. Community Infrastructure Levy Regulations (2010) as amended: [The Community Infrastructure Levy Regulations 2010 \(legislation.gov.uk\)](#).
- 7.3. Report to Scrutiny Committee (31 October 2023) - Proposed Scoping for Developer Contributions Scrutiny Panel and Appendix:
 - 7.3.1. [Scrutiny Report - Developer Contributions Scrutiny Panel Scoping Oct 23.pdf \(modern.gov.co.uk\)](#)
 - 7.3.2. [Appendix - Draft Scrutiny Review Panel Scoping - Developer Contributions 20 Oct 23.pdf \(modern.gov.co.uk\)](#).