

Scrutiny Standing Panel Agenda



Planning Services Scrutiny Standing Panel Tuesday, 12th June, 2012

Place: Committee Room 1, Civic Offices, High Street, Epping

Time: 7.30 pm

Democratic Services Officer: Mark Jenkins - Office of the Chief Executive
Email democraticservices@eppingforestdc.gov.uk Tel: 01992 564607

Members:

AS APPOINTED AT THE OVERVIEW AND SCRUTINY COMMITTEE ON 7 JUNE 2012

SUBSTITUTE NOMINATION DEADLINE:

18:30

1. ELECTION OF CHAIRMAN AND APPOINTMENT OF VICE-CHAIRMAN

To note the new Chairman and Vice Chairman of the Planning Services Scrutiny Standing Panel as appointed at the Overview and Scrutiny Committee on 7 June 2012.

2. APOLOGIES FOR ABSENCE

3. SUBSTITUTE MEMBERS

(Assistant to the Chief Executive). To report the appointment of any substitute members for the meeting.

4. DECLARATIONS OF INTEREST

(Assistant to the Chief Executive). To declare interests in any items of the agenda.

In considering whether to declare a personal or a prejudicial interest under the Code of Conduct, Overview and Scrutiny members are asked to pay particular attention to paragraph 11 of the Code in addition to the more familiar requirements.

This requires the declaration of a personal and prejudicial interest in any matter before an Overview and Scrutiny Committee which relates to a decision of or action by another Committee or Sub-Committee of the Council, a Joint Committee or Joint Sub-

Committee in which the Council is involved and of which the Councillor is also a member.

Paragraph 11 does not refer to Cabinet decisions or attendance at an Overview and Scrutiny meeting purely for the purpose of answering questions or providing information on such a matter.

5. NOTES FROM THE LAST MEETING (Pages 3 - 6)

To agree the notes of the last meeting held on 24 April 2012 (attached).

6. TERMS OF REFERENCE (Pages 7 - 8)

The Terms of Reference are attached.

7. WORK PROGRAMME (Pages 9 - 10)

The Work Programme is attached, it is currently a draft for this forthcoming Council year. It will be approved at the Overview and Scrutiny Committee on 17 July 2012.

8. PROBITY IN PLANNING OCTOBER 2011 - MARCH 2012 (Pages 11 - 18)

(Director of Planning and Economic Development) To consider the attached report.

9. SECTION 106 AGREEMENTS (Pages 19 - 24)

(Director of Planning and Economic Development) To consider the attached report.

10. ANY OTHER BUSINESS

11. DATES OF FUTURE MEETINGS

The schedule of Panel meetings will take place in Committee Room 1 and are on the following dates:

- (a) Tuesday 11 September 2012 at 730p.m.;
- (b) Tuesday 11 December 2012 at 7.30p.m.; and
- (c) Tuesday 16 April 2013 at 7.30p.m.

**EPHING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF PLANNING SERVICES SCRUTINY STANDING PANEL
HELD ON TUESDAY, 24 APRIL 2012
IN COMMITTEE ROOM 2, CIVIC OFFICES, HIGH STREET, EPPING
AT 7.30 - 8.10 PM**

Members Present: H Ulkun (Chairman), A Watts (Vice-Chairman), A Boyce, P Keska and B Sandler

Other members present: J Philip

Apologies for Absence: C Finn, A Lion, J Markham and Mrs J Sutcliffe

Officers Present J Preston (Director of Planning and Economic Development), P Millward (Business Manager) and M Jenkins (Democratic Services Assistant)

49. SUBSTITUTE MEMBERS

There were no substitute members present.

50. DECLARATIONS OF INTEREST

There were no declarations of interest made pursuant to the Member's Code of Conduct.

51. NOTES FROM THE LAST MEETING

RESOLVED:

That the notes of the last meeting of the Panel held on 7 February 2012 be agreed.

52. TERMS OF REFERENCE

The Director of Planning and Economic Development reported that progress had been made on the Local Plan. Officers were on schedule for completing the plan by August 2012.

53. WORK PROGRAMME

The Director of Planning and Economic Development reported that items 1 and 2 of the Work Programme were now completed, they were as follows:

(a) To consider and review measures taken to improve performance within the Directorate; and

(b) To consider and review Business Processes, Value for Money and Staffing arrangements for the Directorate.

It was advised that an event was being held in 6 months time regarding an exhibition of the directorate's work and responsibilities. Selected developers and amenity groups, including Town and Parish Councils, would be invited. The Planning Portfolio

Holder would outline the work carried out by the Directorate, the delegates would then break up into sessions, 3 in total covering Building Control, Development Control and Forward Planning. It was suggested that the event should start in the late afternoon and finish in the early evening at approximately 6p.m.

54. BUSINESS PLAN 2012-13

The Business Manager advised the Panel that significant progress had been made regarding the scanning of documents and files. He acknowledged that the task was enormous, with 120,000 microfiche jackets each containing between 30 and 60 pages constituting in total some 5 to 6 million images. It was advised that documents were being loaded onto iPlan including file correspondence. The District Council was currently putting more planning information on its website than many other councils.

The directorate had experienced difficulties in recruiting for the vacant post of Records and Scanning Officer. Two internal advertisements had yielded no responses. However the Cabinet had directed that another internal advertisement should be tried, and then if no candidates came forward, the post would then be advertised externally. The post would only be for a fixed 1 year term contract.

The Panel thanked the Business Manager for his work on records management and on the Business Plan.

RESOLVED:

That the Planning and Economic Development Business Plan 2012-13 be noted.

55. ANY OTHER BUSINESS

A Panel member expressed difficulty in accessing agenda points, documents and slides when viewing a webcast, of a planning meeting. It was requested that a webcast demonstration should be arranged for the first Panel meeting of the new Council year, in June 2012, and that the meeting be webcast and loaded onto U-Tube to allow for future viewing.

RESOLVED:

That M Jenkins advise S Hill of the following:

- (1) That a demonstration of webcasting for Area Plans Sub-Committees be made to the Planning Services Scrutiny Standing Panel on 12 June 2012; and
- (2) That the Panel meeting of 12 June 2012 be webcast.

56. DATES OF FUTURE MEETINGS

The schedule of Panel meetings for the forthcoming Council year was noted as follows:

- (a) Tuesday 12 June 2012 at 7.30p.m. in Committee Room 1;
- (b) Tuesday 11 September at 7.30p.m. in Committee Room 1;

- (c) Tuesday 11 December at 7.30p.m. in Committee Room 1; and
- (d) Tuesday 16 April 2013 at 7.30p.m. in Committee Room 1.

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TERMS OF REFERENCE - STANDING PANEL

Title: Planning Services
Status: Standing Panel
Terms of Reference: <ol style="list-style-type: none">1. To consider and review Measures taken to Improve Performance within the Directorate concerning;<ol style="list-style-type: none">a) Performance standards and monitoring,b) Benchmarking of Servicesc) Other Reviews2. To consider and review Business Processes, Value for Money and Staffing arrangements for the Directorate focusing on;<ol style="list-style-type: none">a) Development Control, Appeals and Enforcement.b) Forward Planning, Economic Development, Conservation and Trees and Landscapec) Building Control and the Planning Support Team3. To monitor and receive reports/updates on the delivery of the Local Plan4. To monitor and receive reports/updates on the Planning Electronic Document Management System. To provide information regarding the progress and availability of planning information held on i-Plan.5. To establish whether there are any resource implications arising out of the topics under review and advise Cabinet for inclusion in the Budget Process each year;6. To report to the Overview and Scrutiny Committee at appropriate intervals on the above. To report to the Overview and Scrutiny Committee, the Council and the Cabinet with recommendations on matters allocated to the Panel as appropriate.
Chairman: Councillor

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Planning Services Standing Panel (Chairman – Cllr ?)			
Item	Report Deadline / Priority	Progress / Comments	Programme of Future Meetings
1. To consider and Review Measures taken to Improve Performance within the Directorate			12 June 2012; 11 September; 11 December; and 16 April 2013
2. To consider and Review Business Processes, Value for Money and Staffing arrangements for the Directorate: a. To consider the Financial Review (Bus Plan Section 3b) b. To consider the Business and Environmental Review (Appendix Business Plan) c. To consider the Directorate Value for Money Statement (Business Plan Section 4 (f)) d. To consider the Business Plan	December 2012		
3. To monitor and receive reports/updates on the delivery of the Local Plan: a. To report on the progress of the Local Plan b. To provide further updates on the Local Plan	TBA		

4. To monitor and receive reports/updates on the Planning Electronic Document Management System	December 2012		
5. To establish whether there are any resource implications arising out of the topics under review and advise Cabinet for inclusion in the Budget Process each year. To provide reports/updates as and when required.	TBA		
6. To report to the Overview and Scrutiny Committee at appropriate intervals on the above. Any recent meeting of the Chairman and Vice Chairman of the Area and District Committees Invitation Panel	TBA	Any recent meeting of the Chairman and Vice Chairman of the Area and District Committees Invitation Panel.	
7. To receive a demonstration on the webcasting of Area Plans Sub-Committees.	September 2012		
8. Probity in Planning 2011/12	June 2012		
9. Planning Obligations, where monies raised and spent.	June 2012		



Report to Planning Services Scrutiny Standing Panel

Date of meeting: 12 June 2012

**Subject: Probity in Planning – Appeal Decisions,
October 2011 to March 2012**

**Officer contact for further information: Nigel Richardson
(01992 564110)**

Committee Secretary: Mark Jenkins (01992 564607)

SCRUTINY



Epping Forest District Council

Recommendations/Decisions Required:

That the Planning Appeal Decisions be noted.

Report:

1. (Director of Planning & Economic Development) In compliance with the recommendation of the District Auditor, this report advises the decision-making committees of the results of all successful appeals, particularly those refused by committee contrary to officer recommendation. The purpose is to inform the committee of the consequences of their decisions in this respect and, in cases where the refusal is found to be unsupportable on planning grounds, an award of costs may be made against the Council.

2. To set the context, a previous Best Value Performance Indicator (BVPI) for district councils was to aim to have less than 40% of their decisions overturned on appeal. There is no longer a national indicator but the Council instead created a Local Performance Indicator (LPI 45). In recent years the Council performance has been 18% in 2003/04, 29% in 2004/05, 22% in 2005/06, 30% in 2006/07, 29% in 2007/08, 40.3% for 2008/09, 30.9% in 2009/10 and 36.6% in 2010/11.

3. Since 2011/12, there has been two local indicators, one of which measures all planning application type appeals as a result of committee reversals of officer recommendations (KPI 55) and the other which measures the performance of officer recommendations and delegated decisions (KPI 54).

Performance

4. Over the six-month period between October 2011 and March 2012, the Council received 51 decisions on appeals (44 of which were planning related appeals, the other 7 were enforcement related). Out of this 44, 11 were allowed (25%).

5. For the year end, both targets for KPI 54 and KPI 55 have been achieved. However, between October 2011 and March 2012, for KPI 54, 6 out of 35 were allowed (17%) and for KPI 55, 5 out of 9 were allowed (55%).

Planning Appeals

6. Out of the 9 planning appeals that arose from decisions of the committees to refuse contrary to the recommendation put to them by officers during the 6-month period, the Council was not successful in sustaining the committee's objection in the following 5 cases:

Area Cttee South (2 Allowed):

EPF/2151/10	Provision of artificial playing surface and surround fencing to existing playing field. (Revised application)	Loyola Preparatory School 103 Palmerston Road
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EPF/2664/10	Use of 'Motel' building (Use Class C1) for residential purposes as 26 apartments (Use Class C3).	Woolston Manor Abridge Road
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Area Cttee East (2 Allowed):

EPF/0167/11	Construction of 10 no 2 bed and 2 no 3 bed flats with associated car parking..	Wintry Park Service Station 37 Thornwood Road
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EPF/1456/11	Construction of 10 no 2 bed and 2 no 3 bed flats with associated car parking. (Revised application)	Wintry Park Service Station 37 Thornwood Road
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Area Cttee West (1 Allowed):

EPF/0054/11	Proposed 2 no. three bedroom detached two storey houses with integral garages and parking fronting Wheelers Close.	Land Rear of 66 -70 Western Road
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7. Therefore, the committees are urged to continue to heed the advice that if they are considering setting aside the officer's recommendation it should only be in cases where members are certain they are acting in the wider public interest and where the committee officer can give a good indication of some success at defending the decision. As this is now highlighted as a separate performance target (KPI 55) it therefore potentially comes under more scrutiny.

8. Out of 7 enforcement notice appeals decided, 1 was allowed and one part allowed/part dismissed, although in the latter case the greater part of the appeal was dismissed. These are as follows:

Allowed:

ENF/0497/10	The building erected on the land was granted a Certificate of Lawfulness as a games room incidental to the main dwelling under CLD/EPF/1352/08. After a period of five months the building was converted for residential use as a separate residence and is therefore unlawful and without planning permission	Oaklands (Hatchmans Lodge) School Lane Abess Beauchamp And Berners Roding
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Part Allowed/ Part Dismissed:

ENF/0241/09	French windows (Allowed) All other parts of development not built in accordance with EPF/2151/08 (Dismissed)	20 Tomswood Road Chigwell
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Costs

9. During this period, there was 1 successful finalised award of costs made against the council. Circular 03/2009 *Costs Awarded in Appeals and Other Planning Proceedings* advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

10. The Planning Inspectorate's quashing of an enforcement appeal resulted in an award of costs of £2,200.00 against the Council in respect of Plots 40-41 Roydon Lodge Chalet Estate, Roydon after failing to follow the appeal procedure. The enforcement notice was withdrawn after receipt and grant of an application for a certificate of lawful development because the alleged use was proven to be time immune. The Planning Inspector considered the appeal could have been avoided by more diligent investigation by the Council and awarded costs because the appellant had already incurred costs in preparing for the appeal.

Conclusions

11. Whilst performance in defending appeals has improved, particularly in respect of committee reversals, Members are reminded that in refusing planning permission there needs to be justified reasons that in each case, must be relevant, necessary, but also sound and defensible.

12. Future reporting of appeal decisions to the Area Plans Sub-Committees will take place annually, rather than 6 monthly. Planning Services Scrutiny Standing Panel at its meeting on 20 December 2011 agreed that the report come to them every 6 months before recommending to the Area Plans Sub-Committees every year.

13. A full list of decisions over this six month period appears below.

Appeal Decisions October 2011 to March 2012

Allowed With Conditions

Buckhurst Hill

1 EPF/2151/10	Provision of artificial playing surface and surround fencing to existing playing field. (Revised application)	Loyola Preparatory School 103 Palmerston Road
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Chigwell

2 EPF/2664/10	Use of 'Motel' building (Use Class C1) for residential purposes as 26 apartments (Use Class C3).	Woolston Manor Abridge Road
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Epping

3 EPF/0167/11	Construction of 10 no 2 bed and 2 no 3 bed flats with associated car parking..	Wintry Park Service Station 37 Thornwood Road
4 EPF/1456/11	Construction of 10 no 2 bed and 2 no 3 bed flats with associated car parking. (Revised application)	Wintry Park Service Station 37 Thornwood Road

Loughton

5 EPF/2003/11	Front/side conservatory and replacement bay window to rear.	Pump House 27 Pump Hill
6 EPF/1935/11	Two storey rear extension with extended raised patio, internal alterations and loft conversion with two front dormer windows and rear roof lights and part pitched roof to existing garage. (Amended application)	67 York Hill

7	EPF/0400/11	Prior approval determination for a telecommunications installation comprising the	Grass Verge at rear of pavement next to Boundary
		erection of a 11.8m high street works monopole with antenna shroud, to be used by both O2 and Vodafone, together with ground level equipment cabinets	Oaklands School Opposite Junction with Spring Grove High Road
8	EPF/0493/11	Illuminated fascia sign.	2 Centric Parade 200 High Road
Nazeing			
9	EPF/0054/11	Proposed 2 no. three bedroom detached two storey houses with integral garages and parking fronting Wheelers Close.	Land Rear of 66 -70 Western Road
Theydon Bois			
10	EPF/1387/11	Two storey side and single storey rear extensions and loft conversion and rear dormer window.	29 Theydon Park Road Theydon Bois
The Rodings - Abbess, Beauchamp and Berne			
11	EPF/2328/10	Certificate of lawful development for existing use of games room as an annexe.	Oaklands School Lane
<u>Dismissed</u>			
Buckhurst Hill			
12	EPF/0732/11	Demolish existing house and build new single family house. (Revised application)	206 Queens Road
13	EPF/0959/11	Proposed two storey side extension, single storey rear and front extensions and loft conversion	112 Forest Edge
14	EPF/2652/10	Demolition of existing sub station and facilities building and erection of 3/4 storey block of 11 no. two bed flats with associated car parking.	Former Electrical Substation Station Way
Chigwell			
15	EPF/0017/11	Redevelopment of land into a two storey building with 1 x 2 bedroom duplex flat and car port for 2 no. car parking spaces. (Revised application)	Land to rear Burney Court 113 Manor Road
16	EPF/2130/11	Retention of single storey rear extension.	20 Lechmere Avenue
Epping			
17	CAC/EPF/1071/11	Conservation area consent for the demolition of buildings and redevelopment of site to provide a mixed use development comprising A3 restaurants and 8 residential units.	208 - 212 High Street
18	EPF/1020/11	Demolition of buildings and redevelopment of site to provide a mixed use development comprising A3 restaurants and 8 residential units.	208 - 212 High Street
19	EPF/0966/11	Erection of bungalow in rear garden.	93 Sunnyside Road

Epping Upland

20 EPF/0811/11	Construction of single detached dwelling. (Revised application)	Richmond Farm Parsloe Road
21 EPF/2543/10	Variation of condition 4 'ancillary accommodation' of planning permission EPF/0431/10 to permit independent occupation.	Yew Tree Cottage High Road

High Ongar

22 EPF/2156/09	Change of use from agricultural use to B1 and B8 use. (Revised application)	Nine Ashes Farm Rookery Road
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Lambourne

23 EPF/0545/11	Retention of unlawful fence for a temporary period of 18 months.	New Farm Cottage New Farm Drive
24 EPF/0807/11	Demolition of existing dwelling and erection of replacement dwelling.	54 Hoe Lane
25 EPF/1520/11	Demolition of existing dwelling and replacement dwelling. Revised application.	42 Hoe Lane

Loughton

26 EPF/0538/11	New dwelling.	Land adjacent to 16 Grasmere Close
27 EPF/2133/11	Retention of first floor and single storey rear extensions and dormer window.	26 Kenilworth Gardens
28 EPF/0221/11	Refurbishment and enlargement of existing building by way of a basement storage area, construction of one additional storey and erection of a four storey rear extension incorporating 5 parking spaces, extension to ground floor commercial units (12 additional flats) comprising 6 studio flats, 8 one bedroom flats and 2 three bedroom flats.	165 & 165a High Road
29 EPF/1711/11	Retention of 3x externally illuminated hanging sign and 1 non illuminated hoarding sign.	165 High Road

Moreton, Bobbingworth and the Lavers

30 EPF/0995/10	Outline application for redevelopment of the site to provide five detached houses.	Prestopets Ltd Kents Lane
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Nazeing

31 EPF/1088/11	Reconstruction of fire damaged holiday chalet.	Auburnville Meadgate Road
32 EPF/1634/11	Demolition of existing dwelling and erection of new four bed dwelling	6 The Mead
33 EPF/0397/11	Grade II listed building application for retention of 2 no. roof lights.	Ravens Back Lane

North Weald Bassett

34 EPF/1209/11	Grade II listed building application for the erection of new two storey link attached bedroom wing, internal alterations and demolition of existing outbuildings.	Saint Clements Vicarage Lane
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Sheering

35 EPF/1757/11	Front/side ground floor infill extension.	Allbrook House Sheering Lower Road
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Stapleford Abbots

36 EPF/2228/11 Outline application to demolish shop/office and glasshouses and erect six detached chalet bungalows with garages, lay out access drive and turning head, amenity and parking areas, alter vehicular access onto Stapleford Road and plant woodland/meadow, hedgerows and trees (Amended Proposal). Esperanza Nurseries
Stapleford Road

37 EPF/0820/11 Conversion and extension of garage into 1 bed annexe. The Cott
Tysea Hill

Stapleford Tawney

38 EPF/1429/11 Conversion of existing two bay garage and store building into residential dwelling. Cutlers Forge
Tawney Lane

The Rodings - Abbess, Beauchamp and Berne

39 EPF/0572/11 Two storey rear and side extension and single storey front extension, and single storey side extension with balcony above. Cross Diamond Cottage
Hurdle Lane

Theydon Bois

40 EPF/0810/11 Removal of section of hedge at front, replacement with brick wall as continuation of existing, in order to provide electric sliding gate to secure property. 1 Ivy Cottage Mews
Theydon Park Road

41 EPF/1535/11 Rear dormer window. Greenview
Blackacre Road

Waltham Abbey

42 EPF/0632/11 Rd Demolition of single storey rear garage structure and construct a new 2.5 storey addition to accommodate 3 flats and covered parking area to rear of property access from Quaker Lane. (Revised application) Rear of 15-16 Sewardstone

43 EPF/0984/11 Single storey rear orangery extension. The Cottage
Long Street

44 EPF/0411/11 Side infill extension with raising of part of roof and dormer windows to front and rear. Greenview
Marsh Hill
Holyfield

Enforcement Appeals Allowed

ENF/0497/10 The building erected on the land was granted a Certificate of Lawfulness as a games room incidental to the main dwelling under CLD/EPF/1352/08. After a period of five months the building was converted for residential use as a separate residence and is therefore unlawful and without planning permission Oaklands (Hatchmans Lodge)
School Lane
Abbess Beauchamp And
Berners Roding

Enforcement Appeals Part Allowed/ Part Dismissed:

ENF/0241/09 French windows (Allowed) All other parts of development not built in accordance with EPF/2151/08 (Dismissed) 20 Tomswood Road
Chigwell

Enforcement Appeals Dismissed

ENF/0062/11	Without planning permission the material change of use of part of the dairy building from B1 office use to residential use as a dwelling.	Barkers Farm Mount End Road Theydon Mount
ENF/0085/08	Without planning permission the raising of land levels by way of importing, depositing and spreading of fill material including demolition waste, clay and soil.	E7 Site and land SE of T11 Site Langston Road Loughton Essex
ENF/0136/10	Unauthorised work to Listed Building	Ravens Back Lane Nazeing
ENF/0302/06	Field used for motorcross	Land South of Canes Lane, and North of Weald Hall Lane, North Weald
ENF/0714/10	Unauthorised development, hard standing etc	Plot 32 Roydon Lodge Chalet Estate High Street Roydon

Reason for decision:

Options considered and rejected:

Consultation undertaken:

Resource implications:

Budget provision:

Personnel:

Land:

Community Plan/BVPP reference:

Relevant statutory powers:

Background papers:

Environmental/Human Rights Act/Crime and Disorder Act Implications:

Key Decision reference: (if required)

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Report to Planning Services Scrutiny Panel

Date of meeting: 12 June 2012

Subject: Annual Planning Obligation/Section 106

Agreements Report - April 2011 to March 2012

Officer contact for further information: Nigel Richardson – 01992 564110)

Committee Secretary: Mark Jenkins (01992 56 4607)

Recommendations/Decisions Required:

1. That the Panel note the Report which sets out the monies raised through Planning Obligations and where they have been spent

Report:

1. At the meeting on 20 December 2011, the Panel requested an annual report on planning obligations showing where the money has been raised and spent. The Panel did in fact have such a report for 2010-11 in June last year. Section 106 of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a land owner/developer over a related issue. The obligation is often termed simply as a 'Section 106 Agreement'.

2. Section 106 agreements can act as a main instrument for placing restrictions on developers, often requiring them to minimise the impact of their development on the local community and to carry out tasks providing community benefits.

3. Such agreements may be sought when planning conditions are inappropriate to ensure and enhance the quality of development and to enable proposals that might otherwise have been refused to go ahead in a sustainable manner. They are not to be used simply to take a share of the developers' profits into the public purse for that can result in the accusation that the Council is 'selling' planning permissions, nor are they to be used to gain a benefit that is unrelated to the development.

4. The Government Circular – Circular 05/05 – states that section 106 agreements need to meet the following tests:

- (a) Be necessary to make it acceptable in planning terms;
- (b) Be relevant to planning;
- (c) Be directly related to the proposed development;
- (d) Be fairly and reasonably related in scale and kind to the proposed development; and
- (e) Be reasonable in all other respects.

The courts have, however, stated that to be lawful, agreements only have to show that they are relevant to planning and that in all respects are reasonable.

What are Planning Obligations?

5. Section 106 Agreements contain obligations relating to a person's land which bind the land and whoever owns it. They may:

- restrict the development or use of the land in a specified way,
- require specified operations or activities to be carried out,
- require the land to be used in any specified way, or
- require a sum or sums to be paid to the authority on a specified date or dates or periodically.

6. They provide a means for ensuring that developers offset directly any disadvantage from a development and contribute towards the infrastructure and services that this Council and Essex County Council believe to be necessary to accommodate the proposed development. Policy I1A of the Local Plan Alterations 2006 sets out the policy in relation to Planning Obligations.

7. They are used to deliver, for example, the following:

- affordable housing,
- requiring highway works to be carried out
- requiring land to be dedicated and equipped as public open space
- the restoring of a listed building
- sums of money to be paid for the provision of off-site infrastructure or for the long-term maintenance of open space.

8. Section 106 Agreements are deeds drawn up by legal professionals and have traditionally taken some months to bring to a conclusion. There is no substitute for such a legal document when the benefit being sought is of a complex nature such as affordable housing, or when it is anticipated that the enforcing of the provisions need might be especially robust. However, since applications are not finally dealt with until the associated agreement is completed, this approach meant that many major applications were exceeding the Government's targets for determination.

9. Therefore, in common with other planning authorities, the Council is encouraging the submission of Unilateral Undertakings with the application. These are still obligations under section 106 but do not require the Council to sign and seal the document. The wording of these undertakings are still checked to ensure that they are enforceable if it proved necessary.

Affordable Housing

10. Affordable Housing is required where a certain threshold (15 dwellings or more or where the site is 0.5 of a hectare or above) is reached in a single development proposal where the population of the settlement is greater than 3,000 people. The requirement in this case would be 40% of all houses would be affordable and the only way to secure this is through a legal agreement. In smaller settlements outside the Green Belt, up to 50% would be sought. There are policies in the Council's Local Plan that state this (H5A - H8A) and therefore make it clear to developers what is the Council's requirement.

11. There are circumstances where an affordable housing contribution is more appropriate. If dealing with a proposal for a residential development at a scale where affordable housing is a policy requirement, but where the applicant claims that it would not be appropriate to provide that housing on site (usually due to the site location being poorly sustainable, or the housing being unattractive to a Housing Association for another reason).

12. Basically, on the basis that it is agreed that the development is not suitable for the delivery of on-site affordable housing, a financial contribution that is commensurate to the subsidy that the developer would incur if the affordable housing were provided on-site should be sought.

Performance for the Year 2010/11

13. The appendix to this commentary is divided into two parts: Part 1 lists all those agreements (or obligations) entered during the past year. There are 9 in total.

Part 2 provides a list of benefits actually realised through the year, including monies received where work has commenced on site.

14. Benefits negotiated through the year (from Parts 1 will provide:

- a total of £1,296,650 to be received into the public purse
- highway improvements at the developers' expense.

15. Benefits actually realised through the year (from Part 2) have provided:

- a total of £411,574 received into the public purse
- 35 affordable housing units

The Future

16. The use of Section 106 agreements is being overshadowed by the emergence of the Community Infrastructure Levy (CIL), which is in effect a tax on developers' profit and this will replace much of the traditional section 106 benefits (though on-site requirements and provision of affordable housing might still be able to be negotiated under Section 106). As part of the current Local Plan process, much work will be required to resource and gather evidence data to set the Levy.

17. The adoption of the Community Infrastructure Levy (CIL) requires an up-to-date development plan and adoption after consultation and examination, before such a levy can be adopted and payment received. Monies raised under CIL can only be spent on infrastructure and therefore includes roads and other transport facilities, flood defences, schools and other education facilities, medical facilities and sporting and recreational facilities. From 6 April 2014, it will not be possible to use s.106 agreements for delivery of such infrastructure items.

18. As part of the Local Plan when setting out growth for the next 20 years, the Council must consider the infrastructure necessary to accompany the developments. In the Local Plan this assessment of infrastructure will form the Infrastructure Delivery Plan (IDP). Once all infrastructure needed is identified, all of the existing revenue streams must then be reviewed. Existing revenue streams will include existing utility and facility enhancement plans (such as those commitments made for highways, schools etc) in terms of capital expenditure, it also includes grants available and any other sources of funding. Once the assessment of infrastructure expenditure is carried out, the gap between the cost of future development infrastructure needs and what is already being provided can be identified. CIL will be one mechanism to try to bridge this gap in funding between what will be needed and what will be provided.

PART 1

Section 106 Agreements concluded between April 2011 and March 2012

1. **EPF/0454/11** agreement concluded 01/07/2011

The Globe PH, 18 Lindsey Street, Epping

Benefit – £2,000 towards the provision and enhancement of community facilities at

the Lindsey Street Community Association.

2. **EPF/2439/10** agreement concluded 16/08/2011
Loughton Sport Centre, Rectory Lane, Loughton
Benefit – Primary Care Trust contribution of £64,442 index linked.
3. **EPF/1153/09** agreement concluded 23/09/2011
R/O 103 High Street, Ongar
Benefit – £10,000 community contribution.
4. **EPF/0409/11** agreement concluded 14/10/2011
Bald Hind PH Hainault Road Chigwell
Benefits - Secondary School Education Contribution - £20,671, bus stop improvements, Affordable Housing contribution - £100,000
5. **EPF/1008/11** agreement concluded 15/11/2011
Millrite Engineering 151 -153 London Road, Stanford Rivers.
Benefit - £74,000 Affordable Housing Contribution
6. **EPF/1423/11** agreement concluded 24/11/2011
Darlingtons, Coppice Row, Theydon Bois
Benefit – £70,000 towards enhanced community facility in Theydon Bois
7. **EPF/0167/11 & EPF/1456/11** agreement concluded 31/10/11 and 09/02/12
Wintry Park Service Station, 37 Thornwood Rd, Epping
Benefit – Primary Education Contribution - £17,537 and off-site highway works.
8. **EPF/2664/10** agreement concluded 06/12/2011
Woolston Manor Golf Club, Abridge Road, Chigwell
Benefit - £813,000 off-site affordable housing contribution
9. **EPF/1732/11** agreement concluded 17/01/2012
Lingmere, Vicarage Lane, Chigwell
Benefit - £25,000 community benefit sum, £25,000 highway contribution
10. **EPF/0739/10** agreement concluded 29/09/2011
Threshers, Hastingwood Road, Hastingwood, North Weald
Benefit - £100,000 affordable housing contribution

PART 2

Benefits Secured between April 2011 and March 2012

1. **EPF/1740/05** agreement dated 05/03/2007
Land at Station Approach, Ongar Station, High Street, Ongar
Benefit Secured – 6 affordable housing units
2. **EPF/1680/09** agreement dated 18/10/2007
White Lodge/ The Limes, Sewardstone Road, Waltham Abbey
Benefit Secured – 29 affordable housing units
3. **EPF/900/08** agreement dated 14/07/2008
12-30 Church Hill, Loughton
Education Contribution of £36,574 received
4. **EPF/1370/10** agreement dated 21/10/2010
Brent House Farm, Harlow Common, North Weald
£50,000 received towards community benefit and transferred to Parish Council.

5. **EPF/0446/10 & 0006/11** agreement dated 01/10/2010
BPI POLY Site, Brook Rd, Buckhurst Hill
£100,000 Affordable Housing and £95,924 Education Contribution monies received

6. **EPF/0457/10** agreement dated 28/02/2011
Land at Ongar Station, High Rd, Ongar
Affordable Housing Contribution of £225,000 received

Reason for decision:

The Panel are requested to note this performance. The list of section 106 agreements are regularly monitored and updated.

Options considered and rejected:

Nil

Consultation undertaken:

Nil

Resource implications:

Budget provision: Nil, other than provide revenue for the Council and Essex County Council.

Personnel: Nil

Land: Nil

Council Plan reference: KCO 2 & 5, Med Term Aims 4, and action requirement of Planning and Economic Development Business Plan (Development Control).

Relevant statutory powers: Town and Country Planning Act 1990 (as amended)

Background papers: None

Environmental/Human Rights Act/Crime and Disorder Act Implications: Nil

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