

From: **Derek Murphy, Cabinet Member for Economic Development**  
**Simon Jones, Corporate Director Growth, Environment and Transport**

To: **Scrutiny Committee – 18 September 2024**

Subject: Short Focused Inquiry – Section 106 Contributions – formal response to recommendations

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Classification: **Unrestricted**

### **Recommendation:**

Scrutiny Committee is asked to;

**NOTE** the further and updated responses to recommendations made in the Short Focused Inquiry Report into Section 106 contributions (October 2022) and make any recommendations to the Cabinet Member for Economic Development.

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### **Introduction**

- 1) In the light of growing concerns regarding the current system of securing development contributions through Section 106 agreements / the Community Infrastructure Levy (CIL) and at-the-time proposed changes to national policy, a specific Short Focused Inquiry (SFI) was conducted by KCC Members in October 2022. A full copy of [the final report](#) containing details and final recommendations can be found using the link.
- 2) The SFI made six recommendations, a number of which have already been acted upon. This report seeks to provide an updated response to those six recommendations, inclusive of information following the change in national Government.

## **Proposed Response to Recommendations**

- 3) *Recommendation 1. The Committee applauds the initiative to organise, as soon as possible, an All Member Briefing that provides KCC Members with information and advice about developer contributions. The Committee recommends that this All Member Briefing should:*
- 1. Provide comprehensive information and financial data on developer contributions that cover the different forms of infrastructure that KCC is responsible for and outline the key challenges it faces.*
  - 2. Clearly explain how KCC Members can be briefed and can be actively involved in the early stages of the planning process.*
  - 3. Be updated and provided at regular intervals.*

Two All Member Briefings (AMBs) were held on 31<sup>st</sup> October 2022 and 6<sup>th</sup> June 2024. These briefings are understood to have been well received and addressed the three points listed above.

Moving forwards, it is now proposed to hold an AMB each year and with the opportunity for Members to shape the agenda for each briefing in consultation with the Cabinet Member for Economic Development.

With regards to financial data, Kent County Council (KCC) publishes an annual '[Infrastructure Funding Statement](#)' at the end of every calendar year which provides detailed information for the previous financial year. A [report](#) on the 2022/23 financial year was presented at the January 2024 GED&CCC, where Members resolved to note the report.

Detail on when/how Members may be engaged and appropriately involved in the planning process can be found in the slides distributed following the AMB in 2024. The slides can be requested again by emailing [Developer.Contributions@kent.gov.uk](mailto:Developer.Contributions@kent.gov.uk).

- 4) Recommendation 2. *The Committee believes that KCC Members should be advised early enough on planning applications to be able to have an input into Section 106 agreements. The relevant KCC services should inform KCC Members at the earliest possible time of proposals for new housing development in their own divisions.*

The AMB contains detail and information as to how Members are informed at the earliest possible time of proposals for new development in their own divisions. The most effective and influential opportunity for Member engagement and representation is made during Local Plan or Neighbourhood planning processes.

KCC infrastructure and service requirements are determined by the relevant services in accordance with their delivery strategies, as agreed by the relevant Members and following an appropriate formal governance process. Officers prepare planning application responses and negotiate on Section 106 agreements to provide an overall corporate position, in accordance with adopted KCC policy.

Members are invited to comment via email by KCC's Strategic Planning and Infrastructure Service on Local Plan consultations at the outset of the process and a reminder is issued towards the close of the consultation. It is at this consultation stage that influence is of the greatest magnitude because responses can inform Local Plan preparation and it is the policies within those Plans which planning applications are determined against.

It is recognised that Members may also have their individual opinion which may not be in alignment with KCC policy. Members can provide independent planning responses to the relevant local planning authority citing their opinion. Officers provide technical responses, without prejudice and strictly in accordance with legislation and policy to ensure both integrity and consistency are maintained.

The contents within Section 106 agreements must meet the necessary legal tests as set out in paragraph 57 of the NPPF. Obligations must only be sought where they are directly related and specific to an individual planning application. In many cases, Section 106 agreements are prepared and sealed by the local planning authorities (LPAs) without KCC being a party to them. This significantly reduces the levels of influence that KCC has in their drafting. Officers are working to secure protocol arrangements with our LPA partners that would allow for the Development Investment Team and KCC legal officers additional levels of scrutiny of their preparation.

Any particular queries regarding the outcome of the planning process in terms of the associated Section 106 agreements specifically may be directed to [Developer.Contributions@kent.gov.uk](mailto:Developer.Contributions@kent.gov.uk)

- 5) Recommendation 3. *KCC's Cabinet Member for Economic Development should write to the Secretary of State for Levelling Up, Housing and Communities and urge him to:*

1. *Introduce a legal requirement for LPAs in 2-tier areas to pass a proportion of CIL funds to the County Councils for their areas.*
2. *Enable County Councils in 2-tier areas to adopt their own CIL charging schedule in order to self-determine the funds required to provide the infrastructure that needs to accompany new development, and to collect and allocate the funding for that infrastructure.*

The County Council continues to proactively make appropriate representations in response to Government planning reforms on all matters relating to growth and infrastructure. Last year, Officers provided a [response](#) on the proposed changes to the NPPF introduced by the Levelling Up and Regeneration Act, the National Planning Policy Prospectus and also the consultation on the Infrastructure Levy. A consultation briefing was provided to the Planning Applications Committee and GED&CCC.

The new Government has, however, removed much of the former's proposed planning reforms and announced that it will not implement the Infrastructure Levy introduced in the Levelling-up and Regeneration Act 2023. Officers are in the process of responding to the new Government's [proposed changes to the NPPF](#).

- 6) Recommendation 4. *When responding to the Government's consultation on the Levelling-Up and Regeneration Bill, KCC's Cabinet Member for Economic Development, and the relevant KCC services, should make it clear that the levels of developer contributions received by KCC through the new Infrastructure Levy must be appropriate and sufficient to meet the costs of providing the infrastructure that needs to accompany new development.*

KCC's Cabinet Member for Economic Development has written directly to the previous Secretary of State for Levelling Up, Housing and Communities (Michael Gove) and will do so to both the new the new Secretary of State for the Ministry of Housing, Communities and Local Government (Angela Rayner), as well as the Minister for Housing, (Matthew Pennycook) to set out the challenges KCC is currently encountering, particularly under the CIL regime, and urging the Government to strengthen upper-tier authority powers through its proposals for planning reform. The County Council did not receive a response to its original letter to Michael Gove and therefore the latest letter is intended to reiterate the County Council's concerns regarding the access to funding, and ability to plan for strategic infrastructure.

KCC's initial response to the previous Government's NPPF proposals and pending response to the new Government's, have been made in line with recommendation 4. KCC provided details on the difference between what it would have asked for through Section 106 and the amount of CIL received. KCC receive only 6% of the entire CIL income generated across the County. This was also reported in a [paper](#) to the January 2024 GED&CCC and Members resolved to note the report.

- 7) Recommendation 5. *KCC should work with all of Kent's Local Planning Authorities to secure, unless there are exceptional circumstances, a minimum of 20% Biodiversity Net Gain from new developments.*

In 2022, an assessment was commissioned to determine the impact a 15% and 20% Biodiversity Net Gain (BNG) target would have on development viability in Kent. The findings were presented to, and discussed with, Kent's LPAs, as well as with developer groups. A number of LPAs in Kent have included a policy for 20% BNG within their draft local plans, the earliest of which was recently adopted in Maidstone earlier this year. There are, however, a number of LPAs undertaking local plan reviews who have been clear that they do not feel that they are in a position to adopt an enhanced BNG target.

Through the Kent BNG Officer role (a role that is jointly funded by the Local Planning Authorities and hosted by KCC), KCC is taking forward work to explore and understand barriers so that it can support all LPAs to pursue the adoption of 20% BNG in future local plan reviews and to assess the supply and demand of BNG units across Kent's LPAs.

- 8) Recommendation 6. *KCC's Cabinet Member for Economic Development should lobby the Secretary of State for Levelling Up, Housing and Communities and ask him that, when a financial contribution is made by a developer but is not used by the relevant local authority in the agreed timeframe, it must be given directly to the local community that it was intended for, rather than returned to the developer.*

The basic premise of the existing system is that Section 106 legal agreements have contractually 'mutual obligations' imposed on each of the parties to the legal agreement to perform. This means that KCC has to spend contributions secured under the current system (and clearly within the current legislation) on the services and projects specifically identified in order to meet the stated legal tests. This requires any mitigation secured to meet the three tests of the NPPF mentioned earlier in this report. It is general practice to set a repayment date at 10 years of completion of a development and this is endorsed for Education contributions by the Department for Education [guidance](#) on developer contributions.

Applications for Deeds of Variations can be made to the Local Planning Authority if projects have changed, or a different need is identified. The Development Investment Team has a continual review of older agreements to ensure funding is not returned to developers.

A more flexible approach to the use of developer contribution definitions is promoted in the adopted Developer Contributions Guide.

### **Conclusion:**

- 9) Action has been taken in direct response to the original six SFI recommendations and they continue to inform the Authority in both the preparation of County Council policy and responding to national government consultations on planning reform.
- 10) The recommendations of the Short Focused Inquiry have provided a lasting legacy of transparency, Member engagement and improved understanding of developer contributions. There is an ongoing commitment to the provision of annual AMBs on the topic, along with the reporting of annual papers to the GED&CCC on the latest Infrastructure Funding Statement and the CIL position.

## **Recommendation:**

Scrutiny Committee is asked to;

**NOTE** the further and updated responses to recommendations made in the Short Focused Inquiry Report into Section 106 contributions (October 2022) and make any recommendations to the Cabinet Member for Economic Development.

## **Background Documents**

- [Original Scrutiny Report](#)

## **Contact details**

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