

MAIDSTONE BOROUGH COUNCIL

**MINUTES OF THE REGENERATION AND SUSTAINABLE
COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE MEETING
HELD ON TUESDAY 15 JANUARY 2008**

PRESENT: Councillors Moriarty (Chairman), Mrs Batt, Beerling, Chittenden, Greer, Horne, Mrs Marshall, Nelson-Gracie and Yates.

APOLOGIES: Councillor Thick.

88. Web-Casting

Resolved: That all items on the agenda be web-cast.

89. Notification of Substitute Members

It was noted that Councillor Horne was substituting for Councillor Thick.

90. Notification of Visiting Members

It was noted that Councillors English and FitzGerald were visiting Members who wished to keep a listening brief on Agenda Item 8 – Best Value Review of Concessionary Fares. Councillor Garland was a visiting Member with an interest in all items.

91. Disclosures by Members and Officers

Councillors Horne and Mrs Marshall declared a personal interest in Agenda Item 8 – Best Value Review of Concessionary Fares by virtue of their holding concessionary fare passes.

92. Exempt Items

Resolved: That all items on the agenda be taken in public as proposed.

93. Minutes

Resolved: That the minutes of the meeting held on 4 December 2007 be agreed as a correct record and signed by the Chairman.

94. Best Value Review of Concessionary Fares – Implementation Plan

The Chairman welcomed the Director of Change and Support Services, David Edwards, the Policy and Performance Manager, Alex Sharman, and the Best Value Support Officer, Anna Collier, to the meeting. Mr Edwards explained that since his last update to the Committee, the Government had announced that Maidstone would receive a grant of £444,000 towards the new concessionary fares scheme. The Cabinet had taken the decision on 19 December 2007 that the Council would follow the national concessionary fares scheme with no discretionary extras, such as the voucher scheme. The Local Government Association was challenging the Government on behalf of Councils with regard to funding for the scheme, and the Council had joined several other Kent local authorities in visiting the Department for Transport to lobby for more funding.

The Implementation Plan for the new scheme showed that the time lapse between the announcement of the funding and the implementation of the scheme was limited. Approximately 20,000 residents needed to be provided with Smart Cards, which consisted of existing users, new applicants and residents transferring from the voucher scheme. Work was also taking place to inform bus companies and other districts of the Maidstone position on the scheme. The Committee noted that a significant amount of work had already taken place to update the Council's database in preparation for the new scheme. The Implementation Plan provided the names of lead and accountable officers for each item to ensure delivery.

Mr Edwards explained that MCL was the company responsible for the collection of data on usage of the scheme across Kent and this would be closely monitored. It was noted that more accurate information would be provided by installing technology on buses to read the information on Smart Cards, but this was not likely to be available for several years.

A Councillor asked how long the Council would be able to sustain the additional expenditure for the scheme. Mr Edwards stated that this was difficult to answer because there were significant variables, for example the levels of future Government funding, the ageing population and the potential increased uptake of the scheme. In response to a suggestion, Mr Edwards agreed that a Kent-wide concessionary fares scheme would help to even out the current inequalities in costs to different local authorities but the likelihood of this depended on both central and local government.

In response to questions on the possible repercussions of continuing with the discretionary extras for the scheme, such as the voucher scheme, Mr Edwards stated that in the exempt appendix of the Findings and Options Report, a letter from the Department for

Transport to another authority stated that if such extras were offered, the authority would be unlikely to receive additional funding to meet any shortfalls. The Council was therefore left with little option financially but to fully comply with the national scheme. A Councillor stated that this lack of choice needed to be highlighted more clearly to residents who were concerned about the removal of the voucher scheme and companion passes and it was suggested that actions 1.1, 1.2, 1.3, 1.5, 4.2, 4.3, 6.2 and 6.3 within the implementation plan should be amended to reflect this.

Further issues raised included:

- The later start time of 9:30 a.m. for the concessionary fares scheme was prescribed by the Department for Transport – bus operators had been written to highlighting the importance of rescheduling bus services to take account of this;
- It was hoped that robust audit mechanisms would be put in place to monitor usage of the scheme and accurately attribute costs to difference authorities. It would be easier to monitor the number of journeys starting in Maidstone than to monitor how Maidstone residents used their passes;
- The benefits for residents of the new scheme had not been explored but Smart Card technology, when implemented, would provide information on usage behaviour;
- There was no national policy on carers and companions, and disabled residents would still receive a concessionary fare pass. However, there were various voluntary arrangements available, such as through MVB and Age Concern, and the Council would be looking at how these could be supported through the grants scheme following the removal of the companion pass and voucher scheme;
- The Kent Freedom Pass was a Kent County Council (KCC) scheme for 11-16 year olds. This was currently being piloted in 3 local authority areas and would be rolled out to Maidstone by the end of 2009. KCC would meet the cost of this.

The Chairman thanked the officers for their attendance and requested that an update be provided in September 2008, when an update report was scheduled to be submitted to Cabinet, with regard to the implementation of the new scheme.

Resolved: That

- a) Actions 1.1, 1.2, 1.3, 1.5, 4.2, 4.3, 6.2 and 6.3 be amended to emphasise that the Council had no choice but to change the concessionary fares scheme and to highlight alternative services; and
- b) An update be provided to the Committee in September 2008.

95. Section 106 Agreements – Internal Communications

The Environmental Enforcement Manager, Sian Murphy, informed the Committee that a temporary Section 106 Compliance Officer had been in post for six months to look at how the Council monitored Section 106 (S106) agreements. The officer had also undertaken work to improve communication, both internally and externally, with regard to S106s. This would help the Council to ensure that S106 monies were spent in the correct way. A web-based application was being developed to track the progress of S106s which all relevant departments would have access to. It was noted that no collections of S106 monies or trigger points had been missed. An example of a trigger point was affordable housing; it was explained that the requirement for affordable housing to be provided was when the 15th property on a development was constructed. A Section 106 agreement could contain a large number of trigger points. In the financial year 2006-07, £2,048,585.85 in S106 monies was collected. In the three quarters to December 2007, £907,741.95 had been collected, which could be broken down as follows:

Education: £576,704.66
Healthcare: £83,527.50
Parks and Open Spaces: £225,867.87
Highways: £21,641.92

£52,288.93 was still being awaited.

The Assistant Director of Regulatory and Environmental Services, Steve Goulette, added that there was close liaison between all departments within the Council to ensure that S106 agreements were fulfilled. It was also confirmed that the Council collected S106 monies on behalf of KCC.

A Councillor asked whether the Council could withhold S106 monies due to other bodies, such as KCC, until that body was ready to spend them to ensure that the money was spent in a timely and appropriate manner. Mrs Murphy explained that the collection and payment arrangements could be reviewed.

A Member asked whether other agencies informed the Council of how S106 monies allocated to them were spent. Mrs Murphy stated that communication with the Primary Care Trust (PCT) was not as good as it could be, however the Section 106 Compliance Officer had made good progress in establishing links with the KCC Education and Highways Departments. With regard to the records currently held to track the progress of S106s, a Councillor asked whether these could be made available to Members. Mr Goulette confirmed that this could be arranged. Mr Goulette added that the Council carried out checks to ensure that money awarded to other agencies was justified. If an agency tried to claim S106 monies

without justification, they would be challenged. Councillors requested that specific information on how the PCT had spent its S106 monies be provided.

In response to a question, Mrs Murphy confirmed that reporting how S106 monies were spent on a ward-by-ward basis was being considered. The web-based application that was being developed would make this easier. The application was in the testing stages and would be in place imminently, though an exact date was not available. The application would monitor both the financial and non-financial aspects of S106 agreements.

A Councillor asked why the Section 106 Compliance Officer was on a temporary contract as monitoring S106s was vital. Mr Goulette explained that a permanent post already existed to monitor S106s and so monitoring had been taking place for several years. The temporary officer was in place while a review of planning enforcement as a whole was carried out.

In response to a question, Mr Goulette confirmed that interest was charged to developers on late payments. If payments were not made, this was a breach of contract and the Council's legal team would take action. There were no significant issues with this currently. Developers were also responsible for paying the costs of drawing up S106 legal agreements.

A Councillor asked how developers could be prevented from buying a large plot of land and then selling it off in smaller plots to avoid S106s. Mr Goulette informed Members that planning policies should prevent this.

The Chairman thanked the officers for attending and requested that an update be provided at a future meeting of the Committee.

Resolved: That

- a) the collection and payment arrangements for Section 106 monies for external agencies, including Kent County Council and the Primary Care Trust, be reviewed;
- b) the spreadsheet currently tracking Section 106 agreements be made available to the Committee;
- c) information be requested on how the Primary Care Trust had spent Section 106 monies awarded to it by the Council; and
- d) an update be provided at a future meeting of the Committee.

The meeting was adjourned at 7:50 p.m. and reconvened at 8:00 p.m.

96. Section 106 Discussion Paper

The Assistant Director of Development and Community Services, Brian Morgan, introduced the Section 106 Discussion Paper, explaining that it had been produced to stimulate debate on how the Council should enter into S106 agreements in the future. The paper had been written in the context of the government guidance contained in the Planning Obligations Circular 05/2005. The report identified 8 issues for discussion and comments on these were being sought from the Committee along with the Planning Committee and the Local Development Document Advisory Group. These comments would inform a Supplementary Planning Document (SPD) on S106s.

Prior to discussing the paper, Councillors asked for clarification on the requirements for affordable housing. Negotiations with the developers would establish what type of accommodation was provided so that there was a variety of affordable housing in the Borough. This requirement was separate to other planning obligations. If a development generated other requirements, these would be covered by a Section 106 agreement. Mr Morgan also informed Members that one option being considered was the tariff system. This would require a tariff to be paid on each property, rather than on a development, and would be in addition to the affordable housing requirement. It was noted that the tariff system was an alternative method of collection S106 monies, rather than a separate system.

The Committee then discussed the issues raised in the discussion paper.

Issue 1: The question arises as to whether the priorities identified at Appendix 2 remain the Council's priorities.

Mr Morgan clarified that the listed priorities for the allocation of S106 monies would only be used if a development could not afford all of them. In that case, contributions would be sought for each issue in priority order and in relation to identified need.

Councillor Garland stated that the previous Cabinet had altered the list of priorities to give "provision of open space and recreational land" the same status as "affordable housing". Members agreed that this would be a positive amendment to the list of priorities.

Issue 2: The issue therefore arises as to how these external bodies should benefit from Planning Obligations and how the Council should integrate their priorities with its priorities.

Mr Morgan highlighted that the PCT only sought financial contributions to medical provision such as doctors' surgeries, rather than hospitals, and the money therefore was for the benefit of Maidstone residents. While the Council was the collecting authority,

external bodies had to be specific in their requests for money so that the Council could monitor the use of that money.

Members agreed that the recommendation made within the report at paragraph 1.14.2, was appropriate.

Issue 3: The issue therefore arises, should the Council require the full range of obligations even if the Developer argues that the development, for financial reasons, cannot meet the need for the obligation.

Mr Morgan stated that more work needed to be done with regard to this. Councillor Garland raised concerns that if the Council insisted on all 6 contributions, even where the developer stated this was not affordable, this could affect the quality of the contributions.

The Committee agreed to refer this issue back to Mr Morgan for more research to be undertaken.

Issue 4: There is the issue as to whether the money for the obligation should be divided equally between the priorities or on the basis of need.

A Councillor stated that this issue depended on the circumstances and the issue of need could take precedence over the requirement for affordable housing. However, another Councillor pointed out that this could result in the Borough not meeting its affordable housing needs. Mr Morgan explained that this issue would only arise where a developer could not afford all 6 obligations.

Members agreed that the recommendation in the report at paragraph 1.16.2 should be approved, with the following amendment to the first section: "affordable housing *and the provision of open space and recreational land* should always be given the highest priority".

Issue 5: Therefore in order to prevent the 'pot' being top sliced, the Borough will advise Developers that the Borough will not discount any payments to other Authorities when negotiating planning obligations. This approach would ensure that the Council would obtain maximum obligations to meet its priorities, some of which will include those of other bodies.

The Committee agreed with this way forward.

Issue 6: It is, however, an issue whether to levy contributions on developments of less than five additional dwellings would be counterproductive and whether contributions should be sought on all schemes over five dwellings.

Mr Morgan explained that one route would be to use the tariff scheme, which would require planning contributions from each new

dwelling. The planning policy was in place to allow this. If the tariff system was used, S106 contributions would be received from each new dwelling for infrastructure, and S106 contributions for affordable housing and open space would still be triggered by the size of developments.

Members agreed to recommend that the tariff system be pursued as a way of obtaining S106 contributions.

Issue 7: Should the prescribed period for spending monies received be amended to 10 years, given the time it takes to put infrastructure in place? The issue also arises as to whether, in addition, contributions should be sought to finance a S106 Delivery Officer to be located in Planning Policy.

Members agreed that the prescribed period should be amended to 10 years. Due to the increasing complexity of S106 arrangements, Members also agreed that a S106 Delivery Officer post should be created and funded by S106 monies.

Issue 8: However, this does raise a number of issues:-

- a) Should part of the development be allowed to be commenced before the infrastructure is provided?*
- b) If one developer provides the infrastructure, what is the legal mechanism for obtaining contributions from other developers, particularly if they are not known at the time of the permission?*
- c) The same issues as (b) but where the Council or another Agency is carrying out the infrastructure provision.*

Councillors raised concerns that if part of a development was commenced before the infrastructure was put in place, the infrastructure may not be built. It was suggested that a bond or other type of guarantee be used to ensure the delivery of infrastructure obligations.

A Councillor asked whether a change in developer could mean that a S106 obligation would not be met. Mr Morgan explained that S106s went with the land, rather than the developer, so this would not be the case.

Councillors agreed that, with regard to (a) no development should be commenced without a bond or other guarantee being in place, and (b) and (c) should be referred back to the officers for further research.

Councillors also requested an update on the issues at a later date.

Resolved: That

- a) "provision of open space and recreational land" be given the same status as "affordable housing" in the Council's list of priorities for the negotiation of Section 106 obligations;
- b) the recommendation made within the report, at paragraph 1.14.2, be agreed;
- c) Issue 3 be referred back to Mr Morgan for more research to be undertaken;
- d) the recommendation in the report at paragraph 1.16.2 should be approved, with the first section being altered to say "affordable housing *and the provision of open space and recreational land* should always be given the highest priority";
- e) the statement at paragraph 1.17.1 be agreed as an appropriate way forward;
- f) the tariff system be pursued as a way of obtaining S106 contributions;
- g) the prescribed period for spending Section 106 monies should be amended to 10 years;
- h) a Section 106 Delivery Officer post should be created and funded by S106 monies;
- i) no development should be commenced without a bond or other guarantee being in place to ensure the delivery of necessary infrastructure;
- j) Issue 8 (b) and (c) be referred back to officers for further research; and
- k) An update be provided to the Committee at a later date.

97. Lockmeadow Market Report

A Councillor pointed out that the recommendation within the report, "that...particular consideration be given to advertising on the back of buses and on local radio" was not reflected in the proposed marketing budget. The Senior Overview and Scrutiny Officer agreed to contact the Marketing Officer to amend this prior to the submission of the report.

It was also suggested, and agreed, that the wording within the proposed marketing budget be amended to reflect the potential alternative uses for a DVD promoting the Market, rather than just Kent TV.

Councillors asked whether the Bizarre Bazaars held at Christmas had been a success and the Senior Overview and Scrutiny Officer agreed to look into this and e-mail the Committee.

The Committee agreed that, subject to the change to the proposed marketing budget being agreed by the Chairman, the report should be submitted to the appropriate Cabinet Members.

Resolved: That

- a) The proposed marketing budget be amended to include advertising on local radio and on the back of buses;
- b) The suggested uses of a DVD promoting the Market be expanded;
- c) The success of the Bizarre Bazaars held at Christmas be reported to the Committee; and
- d) The Lockmeadow Market Report be submitted to the appropriate Cabinet Members.

98. Future Work Programme

The Senior Overview and Scrutiny Officer, Miss Smith informed the Committee that Direct Access Homeless Provision was scheduled to be the next item on the work programme. The Officer stated, however, that an article in *The Guardian* recently had highlighted Maidstone as one of the easiest places in the country to get a parking ticket overturned and this may be a suitable item for review. Members agreed that it was important to look into this to establish whether there were problems with the issuing of tickets or the contesting of appeals. The Chairman also highlighted the new parking regulations that would come into force on 31 March 2008 and suggested that Members should be briefed on these.

Members agreed that parking enforcement issues should be considered before direct access homeless provision, but this should be kept in mind for future consideration.

Resolved: That Parking Enforcement issues be considered at the February meeting of the Committee.

99. Duration of the Meeting

6:30 p.m. to 9:15 p.m.