

Minutes

Performance Management Scrutiny Committee 21st September 2022



Present

Councillors	Present	Councillors	Present
J Coleridge	Apologies	S Rehman	Yes
G Courtauld	Apologies	B Rose	Yes
Mrs C Dervish	Apologies	P Schwier (Vice-Chairman)	Yes
T Everard	Yes	N Unsworth	Apologies
M Radley (Chairman)	Yes		

10 **DECLARATIONS OF INTEREST**

INFORMATION: There was one Interest declared:

Councillor P Schwier declared a Non-Pecuniary Interest in respect of Agenda Item 6, 'Scrutiny Review into 'Section 106 – Open Spaces and NHS Expenditure' – Second Evidence Gathering Session' as he was an Elected Member at Essex County Council (ECC).

11 **MINUTES**

DECISION: There was one amendment to the Minutes of the meeting of the Performance Management Scrutiny Committee held on 27th July 2022. The Chairman requested that Councillor Everard's apologies be noted against his attendance record. Due to a family emergency, Councillor Everard was unable to attend the previous meeting or notify the Governance team of his absence in the required timeframe.

Subject to the amendment, the Minutes of the previous meeting were approved as a correct record and signed by the Chairman.

12 **PUBLIC QUESTION TIME**

INFORMATION: There were no questions asked, or statements made.

13 **FOURTH QUARTER AND ANNUAL PERFORMANCE REPORT 2021/22**

INFORMATION: The Chairman invited Tracey Headford, Business Solutions Manager, to present the fourth quarter and annual performance report for 2021/22, following its presentation to Cabinet on 11th July 2022.

It was reported that as at the end of March 2022, eight projects had been completed and 50 were on track and progressing well. Five projects had an amber status which was due either to supply chain issues that had caused delays or resources being redirected in line with organisational demand. One project had been closed and would be reconsidered as part of the budget preparations for a future year.

In terms of performance, eight performance indicators had met or exceeded target and five had missed their target. Two performance indicators had missed their target by less than 5%, and three had missed their target by more than 5%. By way of an update to the report, it was noted that the number of residents assisted in installing energy measures was 284, the data of which had been provided by the Council's providers.

A number of the Council's key achievements in the fourth quarter were then highlighted, which included the success of the high street improvement scheme, the return of the street markets and special markets; the launch of the new Digital Demand Responsive Transport Service (DigiGo); the installation of 57 new brightly coloured litter bins at various lay-bys located along the A12, A120 and A131; six new units of accommodation became available to support rough sleepers, with all units now occupied; the delivery of a further 116 affordable homes in the fourth quarter, taking the total for the year to 417, and the housing team had prevented 246 cases of homelessness. There had also been a decline in the percentage of people in the District who claimed out of work benefits to its lowest at 2.9%, and there were 1,011 new business start-ups across the District.

In respect of complaints, 128 were received in the fourth quarter; of these, 124 were at stage 1, three were escalated to stage 2 and one was progressed to stage 3 of the complaints process. Levels of sickness amongst staff had increased slightly in the fourth quarter but remained under target for the year overall.

Regarding the Council's financial performance, it was reported that there had been a positive variance of £480,000 after allowing for service carry forwards. The impact of the pandemic on the Council's financial position was estimated to be approximately £1.0million, which had been contained within Government funding streams, as well as others. Savings and additional income which totalled £401,000 as reflected in the outturn had already been included in the budget approved for 2022/23. The change in the General Fund unallocated balance was an increase of £58,000. Expenditure on capital projects for the year totalled £30.6million with the majority of the spend incurred on the Manor Street development, the Horizon 120 Enterprise Centre ('The Plaza'), Horizon 120 business park infrastructure, the I-Construct Innovation Centre and Braintree town centre improvement works.

Members then raised a number of questions in relation to the report. In response, Tracey agreed to the following actions:

- A progress update regarding the launch of the new DigiGo Service in rural areas would be provided for Councillor Everard.
- It was asked that further explanation for the length of time taken to administer the Disabled Facilities Grant (DFG) be provided for Councillor Schwier.
- Councillor Rehman asked a question in relation to the temporary accommodation in Braintree to support rough sleepers. Members were advised that other

accommodation was available within the District if rough sleepers presented themselves; however, the units were not intended specifically for those who were homeless. Tracey would contact the Council's Housing Team to confirm the exact arrangements.

- The possibility of including individual target end dates within future reports, along with further information as to the stages for project delivery, would be explored.

Further to Members' questions, the Chairman wished to express his gratitude on behalf of the Committee to the Council's officers for the continued high quality of their performance throughout the year.

DECISION: That the Performance Management Scrutiny Committee noted the report of the performance of the Council following its presentation and noting at Cabinet on 11th July 2022.

REASON FOR DECISION: The Council provides a report to demonstrate the performance of Braintree District Council (the Council) at the end of the fourth quarter (January 2022 to March 2022) and at the end of the financial year for 2021/22.

14 **SCRUTINY REVIEW INTO 'SECTION 106 – OPEN SPACES AND NHS EXPENDITURE' - SECOND EVIDENCE GATHERING SESSION**

INFORMATION: The Chairman reminded Members that the meeting marked the Committee's second and final evidence gathering session for the Scrutiny Review into Section 106. In support of the evidence gathering, the Chairman was pleased to welcome the following officers to the meeting: Mr D Collins, Corporate Director (Growth), Mrs E Goodings, Head of Planning and Economic Growth, Ms N Murphy, Senior Landscape Architect, Mrs S Burder, Legal Executive, and Mr N Jones, Lead Principal Planner. In their presentation, the officers would address some of the queries raised at the previous evidence gathering session (see Minutes), as well provide further information on the Section 106 process at the Council.

The full presentation slides may be viewed at:

<https://www.youtube.com/channel/UCwX0X9mAHKp42SA1QOB6qjQ>

Members were informed that Section 106 matters and the processes around this were managed collectively by Mr N Jones, Ms N Murphy and Mrs S Burder, although it was emphasised that their roles were not exclusively focused on Section 106 projects, but rather this aspect was alongside their other duties and responsibilities. The main points were as follows:

Officer roles

- Mrs Burder was the Council's Section 106 Monitoring Officer; this role included maintaining the Council's Section 106 database, managing the application process for Town and Parish Councils and Community Groups to apply to drawdown S106 contributions to deliver projects, and leading on the production of the Infrastructure Funding Statement.

- Mr Jones was the Council's Lead Section 106 Planning Officer. As part of this role, Mr Jones coordinated all aspects of the Development Management Service for the Section 106 and Infrastructure Team.
- Finally, Ms Murphy was the Council's Senior Landscape Architect. This position includes working as the Section 106 Delivery Officer. As part of this role, she was responsible for projects from the conception to the delivery stages, which included initial feasibility work, public consultation, stakeholder, and Member engagement, etc.

Section 106 process

- Developers were always encouraged to seek pre-application advice and to engage with Town and Parish Councils. Section 106 negotiations were reliant on planning policies and evidence-based documents, such as supplementary planning documents (e.g. Open Spaces). Council Officers and developers would examine the Open Spaces Action Plan (OSAP) to determine what projects had been identified by Town and Parish Councils and local communities within the Plan, the information of which could be used to populate Section 106 agreements. The Heads of Terms were always set out within Committee reports which also included additional information on the proposed Section 106 agreement. Regarding the drafting of agreements, particularly on large development sites, the agreements usually include both the District and County Council as there will be obligations in respect of matters that are the County Councils responsibilities (e.g. in relation to highways matters, education and libraries).
- It was noted that delivery of some infrastructure projects specified within Section 106 agreements were outside of the District Council's remit (e.g. education, highways, health, etc). As such, the delivery of these types of infrastructure were usually delivered by external bodies, like Essex County Council (ECC) for libraries and education and the NHS for new healthcare facilities. Where the S106 requires a developer to do something for ECC (e.g. carry out highway works; provide land for a new school; or pay a financial contribution for education) these obligations were given to ECC who were party to the agreement. ECC have a duty to ensure that the obligations given to them were met through the monitoring of agreements as well as the delivery of their own projects where they receive financial contributions. ECC also produced its own IFS.

Monitoring

- Every Section 106 agreement was bespoke, and there were variations across agreements in terms of their complexity. The obligation was on the developer to notify the District Council of the commencement of the agreement, and the development needed to be monitored against trigger points in the Section 106 agreement for the life of the development. Trigger points are usually linked to either the commencement of development or linked to the occupation of a specified number of dwellings. As such the earliest trigger point in an agreement can be prior to commencement of development, whilst others might not be reached on large developments for several years. Some obligations continue in perpetuity so the obligation to retain Public Open Space within a development or the retention of Affordable Housing will continue indefinitely. To help ensure compliance, a dialogue was maintained with the developers throughout the process. The financial contributions owed to the District Council were calculated, collected, and recorded, and quarterly Section 106

monitoring groups were held with Council Officers which helped to ensure awareness of the contributions received, and provided the opportunity for cross-section working on different areas.

- It was highlighted that a large amount of officer time was spent on monitoring compliance in terms of on-site obligations (e.g. affordable housing, landscaping, play areas, footpaths links and the transfer of land). In order to ensure that this was achieved, the Monitoring Officer worked closely with a number of internal services such as the Housing and Community team, Landscape Services and Operations.
- The Operations team was a key consultee and delivery partner for planning schemes on Council land (e.g. in terms of ongoing maintenance and the associated costs of this). The Council's Operations team also delivered some small projects directly on Council land using S106 contributions.

Identifying Projects for Delivery

- Once the funds had been received, contributions were added to the work programme according to the agreement description and/or the appropriateness of officer delivery skills. In terms of funding, there were two methods of project identification and delivery; these were: agreement led (the S106 agreement included a specific purpose (e.g. improvements to Witham Town Park)) and OSAP led (where the agreement specifies that the contribution can be used on any Open Space project within the OSAP).

Delivery Management

- The delivery of a project using Section 106 monies could be managed by the District Council project team, Town and Parish Councils or community groups using the approved guidance for expenditure. It was added that the guidance differed slightly for projects that were over and under £10,000 of Section 106 money and contributions. Whether the project is delivered by the Council or partner agencies like Parish Councils, the procedure had to follow the District Council's procurement and audit requirements.
- There were three basic requirements that enabled Town and Parish Councils or community groups to have access to Section 106 monies for the delivery of a project these were: that the project being delivered was either consistent with the purpose specified in the S106 agreement, or was listed in the OSAP; a total of three comparable quotes had been obtained for work over £1500; in line with the District Councils procurement rules and, that the decision was formally considered and recorded at an appropriate Committee/Council meeting or that a decision has been taken under an appropriate delegated authority.

Variations to Section 106 Agreements

- Although they are legal documents, Section 106 agreements can be varied, including the expenditure purposes. However, there were several considerations before variations could proceed. All parties (landowner/developer, District Council, County Council) to the Section 106 were required to agree with the variation, and all will have legal representation, which could be costly. Straightforward variations could cost the

Council more than £1,500 in legal fees, and more complex variations would likely have much higher costs attached.

- If the District Council were to request an amendment to a Section 106 agreement (e.g. to the spend purpose), it was likely that the landowner/developer would want the District Council to pay their legal fees.
- Although helpful on occasion, it was the opinion of officers that varying Section 106 agreements would not unlock further Section 106 projects.

At this point, the officers paused their presentation to address any questions that Members had thus far. In response to the questions raised, the following information was provided:

- In respect of current applications, developers were required to include design specifications for Open Space facilities in new developments, such as play areas. Factors such as the size of a play area was usually dependent on the size of the development itself, and its proximity to houses would often depend on the intended age bracket for children using the facility (play areas designed for older children generally need to be set further away from houses than toddler play areas). Although the District Council had control over the design of the play facilities within the original application, it did not have the opportunity to make changes to equipment after it had been built, as the Open Space in new developments is transferred on completion to a management company appointed by the developer and funded by future occupants of the development.
- When considering what provisions should be included within developments, developers would consider what type of provision was being made (e.g. skate park, play area, etc), and its proximity to homes and other facilities.
- In terms of securing Section 106 monies for open spaces, applications for this would always need to be evidence based in order to provide justification for the facilities being requested. It was highlighted that the Council's Open Space Supplementary Planning Document (SPD) included clear standards for developers as to the District Council's requirements for new developments.
- On the possibility of combining Section 106 agreements to support specific projects (e.g. new community facilities), Members were advised that this can be considered through a feasibility process in terms of what agreements the Council had available, and the likely benefits of combining these.
- In respect of the lead time for delivering projects, Members were advised that this was very specific to individual projects, due to the variety of projects that the Council delivered and a number of variable factors. For example, the timescales and lead times for projects often varied due to the length of consultation, the amount of stakeholder engagement required, the delivery process and scale of the project. It was added that resource implications were also a factor which could impact on the lead time for projects.
- Members were informed that over the last few years, approximately 60 applications from Town and Parish Councils for access to Section 106 monies had been received

and authorised. In the last year, the Council had processed six applications that had been authorised. A further four applications were currently being considered.

- In respect of the barriers to applying for use of Section 106 monies, this was sometimes a result of Town and Parish Councils lacking the experience and confidence in managing such projects, especially ones of a larger scale. The Council has actively worked to support Town and Parish Councils to encourage them to feel more comfortable with the process of delivering more of their own projects.
- Planning permissions were typically valid for three years from the date of the decision notice. Whilst a developer had to commence a development within a specified timeframe, there was no requirement to complete a development by a specified time. The timescale for the commencement of a project by a developer after a decision varies considerably and in part will be dependent on the complexity of the development and the site and the amount of work the developer is required to do before commencement of development.
- Members were advised that developers will transfer Open Space to management companies to look after new developments once they are completed. These companies are funded by residents of the development.

Officers then commenced with the remainder of their presentation.

Overview of Section 106 Balances

- Prior to 2016, the District's housing delivery was at a relatively low level; however, this had notably increased over the last five-year period.
- In terms of the Section 106 balances held as of 31st March 2022, it was noted that £1,904,965.86 was held in respect of Community Facilities, and £1,213,183.48 was held for use by the NHS. For the purposes of clarity, it was explained that the District Council did not usually have responsibility for the delivery of Highways or Healthcare projects. It was added that the balances in relation to previous years were available in the Council's IFS, which was produced on a yearly basis.

Money that is 'allocated'

- Several significant contributions continued to be held by the Council which were outside of the remit of Open Space; the main projects were the Maltings Lane Community Building, Halstead Community Building and an Outdoor Sport Scheme.
- It was stressed that the delivery of healthcare projects was within the hands of the NHS, not the District Council. 16.8% of total reported balances held by the Council were allocated for Health and Highways.

Open Spaces – Section 106 Committed to Projects

- Projects that had been approved included town centre improvements, land off Rose Hill and the Town Hall Gardens.

- A number of projects were awaiting approval (e.g. due to feasibility studies, consultation processes, tenders, etc). These projects included the Witham Town Park Phase 2, Ramsey Road Recreation Ground and Courtauld Sports Ground.

Constraints and Resources

- In terms of Council staffing, action had been taken to appoint a Graduate Landscape Architect who supports Mrs Murphy. Further steps had also been taken to review the work going forward and ascertain whether additional resource was required.
- It was recognised that Local Authority steps towards delivery (e.g. stakeholder/public consultation, procurement and governance processes, etc) may have an impact on the timescales for delivery. Private sectors organisations delivering developments may not need to follow the same steps.

At this point, the officers once again paused their presentation to address any questions that Members had. In response, the following information was provided:

- Members questioned whether S106 should be used more to deliver improvements within rural Parishes where development occurred was located next to one of the towns but within the Parish. Officers explained that s106 contributions and improvements needed to be linked to the development to be compliant with the regulations. Where development occurred on the edge of a town that is generally where the contribution needs to be spent, so that it is providing facilities for the residents of the new development. There were a few options that the Council could explore if it wanted to use money from developers to assist with the provision of rural facilities. One such option was to use the next Local Plan Review to develop a different spatial strategy which would ensure that new developments were distributed across wider areas of the District. By distributing development more widely more communities would have developments that would include Section 106 monies that could be spent in their local community. Another option may arise from the potential changes that the Government was exploring through their review of the Planning system and the suggestion of a new Infrastructure Levy, which might enable Section 106 monies to be spent according to the Council's priorities; however, a caveat was that links could be broken with communities which already had developments in place.
- Members were advised that there were approximately 15 Neighbourhood Plans across the District. Neighbourhood Plans can include their own policies in relation to land use and development (e.g. in terms of Section 106 delivery).
- In respect of the lead time for Section 106 delivery, there was little scope for changes to be made due to the requirement for legal and corporate processes to be adhered to (e.g. procurement, governance and public consultation).
- Further to a query raised in regard to the Outdoor Sport scheme, Members were informed that this was a scheme currently under consideration with various stakeholders which had not yet come into fruition. The scheme, which would require Member approval, would make use of a large amount of Section 106 monies (£839,000) which would draw in significant additional funding from national bodies as well. If the scheme progresses further information would come forward to Members in future.

In response to the questions raised, the following actions were agreed:

- In respect of slide 20 of the presentation (Overview of Section 106 balances), officers agreed to provide information in relation to the receipts and expenditure for 2021/22.
- In respect of slide 21, the Chairman requested that data relating to the two previous years was also included on the chart, as well as subtotals which showed the value that the District Council were responsible for and those it was not.
- The Chairman was also keen to gain an understanding of the average timeframe that Section 106 funds were held by the Council, particularly regarding Open Spaces but excluding community buildings. Any information in relation to contribution 'line items' (individual contributions from developers) would also be welcomed. Officers agreed to consider this request outside of the meeting.
- In terms of resources at the Council that were currently engaged in Section 106 delivery, officers agreed that an estimate of Full Time Equivalent (FTE) employees could be provided, but it was stressed that this information would be high level only and restricted to those officers in attendance at the meeting due to the wide scope of resources utilised within the Council.

Analysis of Data

- A table was provided to Members to show a comparison between Braintree and a number of neighbouring Local Authorities of the amount of Section 106 monies secured in agreements, as well as contributions received, and spent in 2020/21.
- The only universal fact from the information available was that no Authority had spent more in 2021 than it had received in terms of Section 106 funding, although Braintree District Council was the closest at less than £100,000 difference.
- It was stressed that the figures in the table were not directly comparable as other Authorities had different definitions regarding Open Spaces and different planning policies on which they rely to obtain s106 funding.

Key Performance Information

- To support the Committee's evidence, officers asked six other Essex Local Authorities (which included ECC) whether they recorded Key Performance Indicators (KPIs) against Section 106 monies received. It was confirmed that no Authority had any KPIs in relation to spend targets after their receipt.
- It was reported that one Authority forecasted the money coming in and then reported on the actual money received against this.
- All Authorities sought to spend money prior to deadlines in obligations.
- Year-end figures would be available for the financial year ending March 2023 in the following December to allow time for information to be co-ordinated and ensure it was in line with the IFS reporting timetable.

Possible Next Steps

- Future actions could include reminders sent to Town and Parish Councils regarding available Section 106 monies in order to encourage delivery on their own sites.
- Training to encourage Town and Parish Councils to take a more active role in the delivery of projects.
- Rename the Open Spaces Action Plan in order to improve the understanding of the purpose of the document for Town and Parish Councils and to help manage expectations.

Following the conclusion of the presentation, Members were given the opportunity to ask any final questions of officers. The information below was provided in response:

- Further to a query raised about the level of NHS contributions, Members were reminded that the NHS utilised a regional formula for calculating Section 106 contributions.
- Members were informed that following a request from the Planning Committee, the issue of low expenditure by the NHS had been raised previously with Kerry Harding. Ms Harding was able to confirm that the regional formula for Section 106 delivery used by the NHS either met or exceeded the national guidance. Furthermore, although Braintree District Council was successful in securing contributions that it requested, a number of other Local Authorities were not, which was largely due to viability issues..
- A potential recommendation to Cabinet that Members may wish to consider was to contact Ms Harding once again in order to reflect the issues raised by the Committee throughout its discussions. However, it was highlighted that the response was unlikely to differ from that given previously.

Before closing the meeting, the Chairman thanked officers for their detailed presentation and for the responses provided. Members were also requested to submit any potential recommendations for inclusion within the draft scrutiny report to Governance Officers at governance@braintree.gov.uk.

The meeting closed at 9.38pm.

Councillor M Radley
(Chairman)