

<b>10 September 2024</b>		<b>ITEM: 6</b>
<b>Place Overview and Scrutiny Committee</b>		
<b>Section 106 Agreements and Financial Contributions – Proposed Governance</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> N/A	
<b>Report of:</b> Ashley Baldwin – Chief Planning Officer		
<b>Accountable Assistant Director:</b> Ashley Baldwin – Chief Planning Officer		
<b>Accountable Director:</b> Claire Demmel – Executive Director of Place		
<b>This report is public</b>		
<b>Version:</b> Final		

## **Executive Summary**

Since 2016, the Council’s internal governance arrangements regarding the use of Section 106 have not been effectively implemented. This was highlighted in the 2023 Planning Advisory Review as a risk to Thurrock Council. This review found that the potential for development contributions/ planning obligations through Section 106 agreements are being compromised, with the contributions received under-utilised, due to the lack of a strategic approach to investment via this route.

This paper seeks approval for the proposals of a new governance process, along with the Terms of Reference for the proposed officer led Strategic Infrastructure Board that will provide the Council with a secure footing to improve planning obligation governance and better transparency.

## **Commissioner Commentary**

N/A

### **1. Recommendation(s)**

- 1.1 That the Place Overview and Scrutiny Committee approve the proposed Thurrock Strategic Infrastructure Board arrangements.**
- 1.2 That the Place Overview and Scrutiny Committee approve the draft Terms of Reference (Appendix A).**

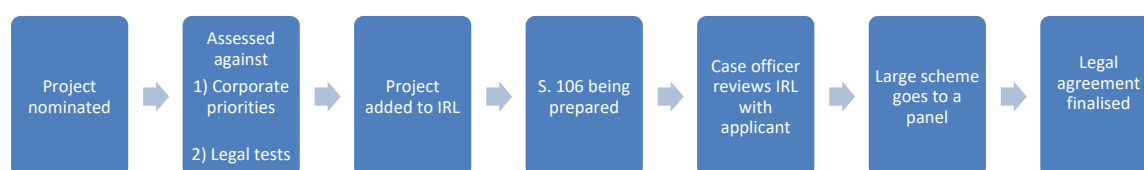
### **2. Introduction and Background**

- 2.1 The purpose of this report is to set out how a proposed board structure (for planning obligation governance) will operate for the next twelve months with a review to be undertaken after the twelve-month period.**

## ***Thurrock Council previous Section 106 agreement governance***

- 2.2 Planning obligations were (and continue to be) negotiated on a case-by-case basis using consultation responses to the relevant planning application and the Council's Infrastructure Requirement List (IRL) to inform the type of obligations required to make the development acceptable.
- 2.3 However, since the implementation of the IRL in 2016, there has been a distinct lack of governance processes in place, exposing the authority to risk. The process pre 2016 is illustrated in figure 1 below.

Figure 1 – pre 2016 planning obligations governance



- 2.4 The 2023 PAS Review of Thurrock's planning service identified a series of concerns relating to the Council's existing practices. This review found that the potential for development contributions/ planning obligations through Section 106 agreements are being compromised, with the contributions received under-utilised, and a lack of a proper investment programme. Concern was raised over the unclear and difficult to understand governance and decision making around section 106 spending.
- 2.5 Added to the above, there is an ever-growing concern being fed back via members and community forums that the Council has diverted Section 106 funding to reduce its debt, which is clearly not the case.

### **3. Issues, Options and Analysis of Options**

3.1 The critical considerations for the Council are to:

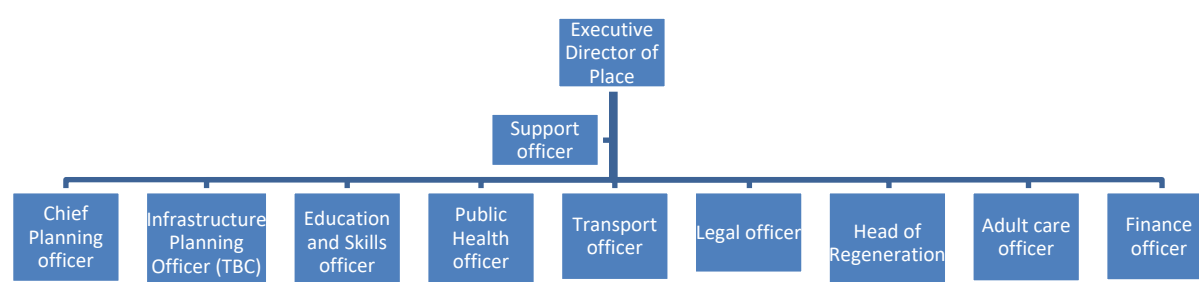
- ensure that the use of developer contributions is given more support and given a higher priority by the Council's senior leaders.
- ensure the Council complies with planning obligation legislation.
- ensure the Council spends planning obligations in time and avoids the need to repay monies due to the expiry of agreements.
- ensure improved transparency and better political/ public engagement.
- ensure the use of developer contributions align with corporate priorities; and
- ensure that there are sufficient resources available to manage the evidence, systems, governance and allocation processes required to enable effective spending decisions.

3.2 The recommendations of the 2023 Planning Peer Review included the appointment of an Infrastructure Planning Officer to oversee the management, monitoring and collection of Section 106 funding. To ensure the Council do not duplicate work across services, this role is being considered as part of a wider restructuring but in the meantime, this will be covered by an internal programme manager.

## ***Establishment of the Strategic Thurrock Strategic Infrastructure Delivery Group***

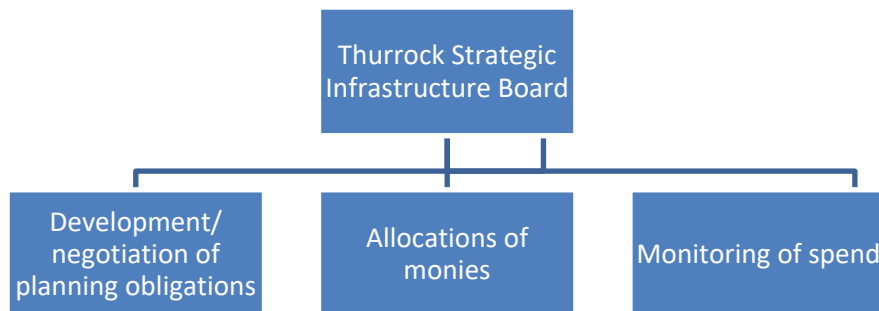
- 3.3 It is proposed that a comprehensive governance arrangement be established to better oversee infrastructure planning and delivery. Overall governance will be provided by the Interim Executive Director of Place with monthly updates provided to the relevant Portfolio Holder (s) and quarterly reports provided to Place O & S.
- 3.4 Critically the proposal of this paper is for a Thurrock Strategic Infrastructure Board (TSIB) to be established. The TSIB will be focused on three themes which relate to the **negotiation/ development of Section 106 agreements, the allocation of monies and the monitoring of spend.**
- 3.5 The proposed arrangement is set out in the figure 2 below. To redress poor transparency the TSIB will also be tasked with ensuring engagement is undertaken with relevant community stakeholders, which will include ward members.
- 3.6 The TSIB will provide oversight and challenge to all aspects of the authority's planning obligations. As is considered good practice this will be chaired by the Executive Director of Place.
- 3.7 The TSIB will consider all aspects of governance, with a focus on establishing how the Council most effectively spend planning obligations and ensuring legal compliance of their spend. In future the Board can consider wider elements of planning obligations such as Community Infrastructure Levy.
- 3.8 The TSIB would own and manage the production of documents such as the Infrastructure Funding Statement and have oversight of the evidence relating to infrastructure provision such as the Infrastructure Delivery Plan.
- 3.9 It is proposed that the TSIB meet monthly, but frequency will be increased if deemed necessary by the chair.
- 3.10 Proposed service representation is set out in figure 2 below.

Figure 2 – Thurrock Strategic Infrastructure Board



- 3.11 There may be a need for the TSIB to be supported by operational workstreams (possibly subgroups) which will be directed by the TSIB chair.
- 3.12 The three roles of the TSIB are set in Figure 3 below.

Figure 3 – Illustrated view of the TSIB roles



3.13 TSIB will need to engage externally to improve the transparency of planning obligation spend. Community engagement will be undertaken and defined via the TSIB and ensure it is aligned with Corporate new ways of working as they become more defined. Once in place this will act as the identified means of engaging externally with communities. There will also be engagement through ward members and/ the ‘Good Growth’ portfolio holder.

3.14 TSIB will be furnished with the latest position with respect to Section 106 receipts regularly. At present this stands at:

- Total in pot £12,688,683
- Committed £11,042,919
- Uncommitted £1,625,765

#### **4. Reasons for Recommendation**

4.1 There are several reasons for the implementation of TSIB:

- To ensure that decisions relating to the expenditure of Section 106 (S106) funding are the subject of appropriate oversight.
- To ensure that relevant decisions are appropriately transparent.
- To ensure that the delivery of infrastructure in borough accords with the Council’s Improvement & Recovery Plan.
- To ensure compliance with the law.
- To ensure that the allocation of funding is undertaken on an objective basis and that decisions are as best informed as possible.
- To improve the Council’s transparency regarding planning obligations, in particular with respect to community engagement. As set out above this will be undertaken via community engagement (to be defined), ward members and ‘Good Growth’ portfolio holder as appropriate.

#### **5. Consultation (including Overview and Scrutiny, if applicable)**

5.1 N/A

#### **6. Impact on corporate policies, priorities, performance and community impact**

6.1 The use of planning obligations, including section 106, to fund infrastructure within the Borough has a direct impact on all of Thurrock’s corporate priorities.

## 7. Implications

### 7.1 Financial

Implications verified by: **Laura Last**  
**Finance Manager**

The additional post to resource these new governance arrangements was suggested as part of the Planning Advisory Service (PAS) review and will be included in the forthcoming Planning restructure.

There is currently £12.7m S106 monies available (£1.6m currently uncommitted). Improved governance regarding planning obligations is intended to ensure better oversight of monitoring and implementation of Section 106 funding.

### 7.2 Legal

Implications verified by: **Caroline Robins**  
**Principal Planning and Highways Solicitor**

The purpose of section 106s is to secure mitigation of the impact of a development, with affordable housing a notable exception.

Using Section 106 of the Town and Country Planning Act 1990 (as amended), an agreement or unilateral undertaking (UU) may:

- (a) restrict the development or use of the land in any specified way.
- (b) require specified operations or activities to be carried out in, on, under or over the land.
- (c) require the land to be used in any specified way; or
- (d) require a sum or sums to be paid to the authority. These can be pooled.

These are known as 'planning obligations'. Not all planning obligations require the payment of sums of money. Examples include provision of affordable housing or highways requirements where the developer is required to carry out specified works.

No planning application is necessary, but most section 106s are linked to a planning permission.

A section 106 is a contract which binds the land identified in the S106 document and the planning obligations are covenants which run with the land, so are enforceable against future owners. For a S106 to be effective all persons with a legal interest in the identified land, including lenders and leaseholders (other than very short-term leases) must sign the S106 deed. Once completed, the documents are required to be registered as a local land charge.

Section 106 sets out the scope of this statutory device. However, to be lawful, planning obligations are subject to the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 and must be:

- (a) necessary to make the Development acceptable in planning terms.
- (b) directly related to the Development; and
- (c) fairly and reasonably related in scale and kind to the Development.

The terms of the planning obligations contained in a S106 will therefore be specified in a resolution which will have been passed either under delegated powers or by the Planning Committee or specified by a Planning Inspector following a planning appeal or Development Consent Order. The S106 must comply with the resolution or requirements of the Planning Inspector. It follows that monies collected in a s106 can only be used as specified in the agreement or UU.

Once completed, S106s need to be monitored to ensure proper compliance at the requisite time. Most parties to S106s require a clawback provision where unspent monies are returned to them. Usually, the spend period is 10 years from the date of payment, after which the relevant party will be required to request a refund of unspent monies.

There are no direct legal implications arising from the report, other than those mentioned in the report which confirms the distribution of monies must be done in compliance with the law and the contents of the S106 documents.

### 7.3 **Diversity and Equality**

Implications verified by: **Roxanne Scanlon**

**Community Engagement and Project Monitoring Officer**

There are no direct diversity implications contained within this report. The proposal to introduce improved governance aims to improve oversight and monitoring of Section 106. This in turn should result in mitigating any negative impact on the community due to development.

### 7.4 **Other implications** (where significant) – i.e., Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children

None identified.

### 8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- [Improving the Governance of Developer Contributions, Guidance Handbook. 2021 Planning Advisory Service.](#)
- [Planning Peer Review, Thurrock Borough Council, Feedback Report, 13<sup>th</sup> December 2023, Planning Advisory Service.](#)

### 9. **Appendices to the report**

- Appendix A – Thurrock Infrastructure Delivery Working Group – DRAFT Terms of Reference

### **Report Author:**

Ashley Baldwin

Chief Planning Officer, Place

## **Appendix A: Thurrock Strategic Infrastructure Group**

### **DRAFT Terms of Reference**

**July 2024**

#### **Aim:**

To promote and drive forward an infrastructure first approach to planning and development and ensure that developer contributions are used in an effective and integrated way.

#### **Objectives:**

- To comply with relevant statutory reporting requirements.
- To strengthen the relationship between infrastructure providers and the planning system.
- To co-ordinate and align the contribution of infrastructure providers to development planning and delivery.
- To establish a clearer picture of funding and financing options for infrastructure to support planning delivery.
- To create opportunities for infrastructure providers and the development industry to work together more openly on brokering solutions to potential barriers/blockers to delivering the right infrastructure improvements in the right place at the right time.
- To improve and maintain engagement with the public, and in so doing ensure transparency.

#### **Scope of Responsibilities**

- To comply with relevant statutory reporting requirements
- If necessary, to recommend the following decisions, as and when required, to the Governance and Recovery Board:
  - The proposed approach to reporting S106 income, allocation and expenditure information.
  - The delegation of powers to the Group to approve the allocation of S106 funding in defined circumstances.
  - The approval of the adoption of capital budgets where the project in question is funded at least in part by S106 funding.
  - The approval of allocation of any amount of S106 to a project. S106 funding must be allocated in accordance with the related S106 agreement.
- For reporting purposes, refer S106 income, allocation and expenditure information to the Governance and Recovery Board.
- To consider new infrastructure projects that may involve the future allocation of S106 for inclusion on the Infrastructure Requirement List.
- To monitor the delivery of funded infrastructure projects and report on them to the Governance and Recovery Board.
- To be responsible for determining the most effective mechanism for capturing and monitoring the activity / output across any Planning Obligation Negotiation workstreams and/or sub-groups.

- To own and manage the Infrastructure Funding Statement and have oversight of the evidence relating to infrastructure provision such as the Infrastructure Delivery Plan.
- To ensure the negotiation of planning obligations is effective and consistent, ensuring maximum value for the Borough.
- To ensure the allocation of planning obligations complies with the law and meets the strategic needs of the Authority.
- To ensure procedures are in place to monitor planning obligation spend and better practice is established to alert and act upon triggers such as expiry dates.

## **Membership and General Governance**

- The chair of the Group shall be the Executive Director of Place, who has delegated authority to deputise chairing to the Chief Planning Officer.
- Group members shall include officers from across several directorates including:
  - Executive Director of Place (Chair)
  - Chief Planning officer (Deputy Chair)
  - Support officer
  - Infrastructure Planning officer (TBC)
  - Education and Skills officer
  - Public Health officer
  - Transport officer
  - Legal officer
  - Communities officer
  - Finance officer
  - Adult care officer
- The Group shall meet monthly, although more frequent meetings could be arranged if necessary depending on demand.
- Relevant officers of the Council and external organisations may attend the Group to present:
  - Matters relating to the collection or expenditure of S106 funding.
  - Proposals relating to infrastructure projects.
  - Any other matters considered appropriate by the chair of this group.
- The Group is to be held in private.