



# Uttlesford District Council

Chief Executive: Dawn French

## Scrutiny

**Date:** Tuesday, 15 March 2016  
**Time:** 19:30  
**Venue:** Committee Room  
**Address:** Council Offices, London Road, Saffron Walden, CB11 4ER

**Members:** Councillors H Asker, G Barker, P Davies, A Dean (Chairman), M Felton, T Goddard, S Harris, B Light, E Oliver, G Sell

### Public Speaking

At the start of the meeting there will be an opportunity of up to 15 minutes for members of the public to ask questions and make statements subject to having given notice by 12 noon two working days before the meeting.

## AGENDA PART 1

### Open to Public and Press

- 1 Apologies for absence and declarations of interest**  
To receive any apologies for absence and declarations of interest.
- 2 Minutes of previous meeting** 5 - 16  
To receive the minutes of the meeting on 9 February 2016
- 3 Matters Arising**  
To consider matters arising from the minutes
- 4 Consideration of any matter referred to the Committee in relation to call in of a decision**  
To consider any matter in relation to a call-in of a decision

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|-----------|---|---------|
| <b>5</b>  | <b>Responses of the Executive to reports of the Committee (standing item)</b><br>To consider any responses to the Executive                                   |         |
| <b>6</b>  | <b>Invited reports from the Executive</b><br>To consider any reports invited from the Executive   |         |
| <b>7</b>  | <b>Cabinet Forward Plan</b><br>To consider the Cabinet Forward Plan   | 17 - 20 |
| <b>8</b>  | <b>Scrutiny Work Programme March 2016</b><br>To consider the Scrutiny work Programme  | 21 - 22 |
| <b>9</b>  | <b>Enforcement review</b><br>Verbal update  |         |
| <b>10</b> | <b>Planning obligations</b><br>To explain the council's use of planning obligations to fund infrastructure for development                                    | 23 - 54 |
| <b>11</b> | <b>Local Council Tax Support (LCTS) 2017/18</b><br>To consider the scoping report for the committee review  | 55 - 56 |
| <b>12</b> | <b>Relationship between UDC and ECC scoping discussion</b><br>Opportunity for the committee to discuss this large topic and decide on what it wishes to focus |         |
| <b>13</b> | <b>Scrutiny 2015-16 review</b><br>To consider the 2015/16 work and a proposed work programme for 2016/17  | 57 - 62 |
| <b>14</b> | <b>Any other items which the Chairman considers to be urgent</b><br>To consider any items which the Chairman considers to be urgent.                          |         |

**PART 2**  
**Exclusion of the Public and Press**

Consideration of an item containing exempt information within the meaning of s100I and paras 1 - 5 of schedule 12A of the Local Government Act 1972

**15 Building Control Partnership**

- Information relating to any individual;
- Information which is likely to reveal the identify of an individual;
- Information relating to the financial or business affairs of any particular person (including the authority holding that information);
- Information relating to any consultations or negotiations, or contemplated consultations or negotiations in connection with any labour relations matters arising between the Authority or a Minister...
- Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;

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The agenda is split into two parts. Most of the business is dealt with in Part 1 which is open to the public. Part II includes items which may be discussed in the absence of the press or public, as they deal with information which is personal or sensitive for some other reason. You will be asked to leave the meeting before Part II items are discussed.

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**SCRUTINY COMMITTEE held at COUNCIL OFFICES LONDON ROAD  
SAFFRON WALDEN at 7.30pm on 9 FEBRUARY 2016**

Present: Councillor A Dean (Chairman), H Asker, G Barker, P Davies,  
M Felton, S Harris, B Light, E Oliver and G Sell.

Also present: Councillors Barker, Howell and Redfern.

Officers in attendance: R Auty (Assistant Director Corporate Services), R  
Dobson (Principal Democratic and Electoral Services Officer), A Knight  
(Assistant Director - Finance), K Vinton (Partnerships Officer) and A Webb  
(Director of Finance and Corporate Services).

**CHAIRMAN'S ANNOUNCEMENTS**

The Chairman welcomed those present and explained the meeting was being  
broadcast live and would be recorded.

**PUBLIC SPEAKING**

The Chairman said the agenda items about which statements were to be made  
by members of the public would be considered immediately after the minutes of  
the previous meeting had been received.

**SC20 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Apologies for absence were received from Councillor Goddard.

**SC21 MINUTES**

The minutes of the meeting held on 17 November 2015 were received and  
signed by the Chairman as a correct record.

**SC22 ENFORCEMENT REVIEW**

The Chairman invited the public speakers Mr Drinkwater and Mr Ellis to make  
their statements. (A summary of their joint statement is appended to these  
minutes.)

The Committee considered a verbal update by Councillor Sell on the work of  
the Task Group which had been set up at the last meeting to examine  
enforcement issues.

Councillor Sell said the scope of the enforcement review was set out in the  
terms of reference and that currently only a preliminary meeting had taken  
place, but that members wished to undertake a worthwhile piece of work.

In response to a question from the Chairman as to whether the task group would invite the trade to attend and make representations, Councillor Sell said he would raise with the other members of the group this suggestion.

SC23

## **PLANNING APPEALS**

*Councillor Asker declared a non-pecuniary interest in the item as a member of Saffron Walden Town Council.*

*Councillor G Barker and Councillor Oliver declared their respective non-pecuniary interests in that they had been members of the council during the time when certain planning appeal decisions had been taken.*

The Committee considered a report regarding a request which had been received to consider the “policy, processes and decision-making” by which the council decided whether or not to defend planning appeals. The report recommended the Committee should decide whether it wished to review this area of work, and if so, whether it would require a scoping report, a report from a relevant officer, or to establish a Task and Finish Group.

The Chairman invited Alan Storah to make his statement as a member of the public. (A summary of the statement is appended to these minutes.)

Councillor Light said she supported the requests made on behalf of Saffron Walden Town Council which had been set out in Mr Storah’s statement. She supported the principles of transparency.

The Chairman referred to the recommendations in the report. He suggested terms of reference and membership for a Task Group to be set up.

Councillor G Barker proposed discussion of whether or not to set up a Task Group should take place first. There were difficulties with the remit of the review, as the Committee could not look at past decisions of Full Council.

The Chairman said whilst decisions could not be challenged, it was possible to consider whether it was right to have made those decisions.

Councillor Asker said a review of past questions would inform future decision-making, and was a question of principle.

The Chairman invited members to vote on the proposal to set up a Planning Appeals Task Group.

The proposal was lost by four votes in favour, five votes against.

SC24

## **CABINET FORWARD PLAN**

Members considered the Cabinet Forward Plan and commented on the progress of various decisions to be taken at forthcoming meetings of the Cabinet.

In response to a question about a decision to be taken on the council's Pay Policy, members were informed an annual report on the pay policy was required.

In relation to the Building Control partnership item, members noted this would be heard in private, as it would involve consideration of commercially sensitive information.

## SC25 **SCRUTINY WORK PROGRAMME**

In reply to a question from the Chairman, the Assistant Director Corporate Services said a programme for 2016/17 would be available at the next meeting. In reply to a further member question, he said he was preparing the scoping report on the council's relationship with Essex County Council together with the Director of Finance and Corporate Services and other officers. It would be for the committee to decide how to proceed once it had considered the scoping report.

Regarding the proposed review of the Cabinet system, the Chairman said he had written to the chairman of the Constitution Working Group, and the response would be considered by the committee.

## SC26 **2016-17 BUDGET**

Members considered a series of reports on the budget for 2016/17.

The Director of Finance and Corporate Services gave a verbal update on figures provisionally debated by the Government the previous night.

There had been extra money allocated to the rural services development grant scheme, an extra £278,000. It had been confirmed this would continue for the next three years. The council would lose the revenue support grant, but the Government was now providing a provisional support grant of £61,000 in 2017/18. The council had expected to need to pay back the Rural Support Grant, but according to this announcement, such repayment would no longer be required. This left the council with a small amount of extra money, to the amount of £10,000.

The impact on the council's budget was therefore small. It was not possible to change the budget at this late stage to reflect this change, but the quarterly reports would treat these amounts as extra money received next year. Officers would confirm the position after the House of Commons debate, but no further changes were anticipated.

The Director of Finance and Corporate Services suggested members comment on each of the recommendations in the reports and officers would collate the responses in conjunction with listening to the recording, in order for the Committee's comments to be brought to Cabinet.

The Chairman agreed, and said the Committee was here to give guidance and not to vote.

Regarding the draft Corporate Plan, the Chairman said the document lacked any means of measuring outcomes and needed more clarity.

Councillor Sell said the document lacked "SMART" goals ("specific, measurable, attainable, realistic and timely").

The Director of Finance and Corporate Services replied there was a separate Cabinet report dealing with this item, and the document before the committee was intended as a high-level document intended to provide context, however the service and directorate plans set out the means of delivering these aims. He would ensure the comments were passed to the Leader.

Further comments on the draft Corporate Plan were made, to the effect that it was very common for a strategic paper of this kind to be brief, as it was supported by other documents.

SC27

## **ROBUSTNESS OF ESTIMATES AND ADEQUACY OF RESERVES**

The Chairman referred to the Reserves Strategy document, which set out three new reserves to be established in 2016/17, one of which was for a Special Purpose Vehicle, to enable the formation of this company. He said the risk area of the report did not refer to any risks relating to the company, but it would probably be one of the more significant risks. He had many questions about the Special Purpose Vehicle – what compelling reason was there for Uttlesford to pursue this initiative, how would the council ensure it was handled in a commercially viable way, in view of the likelihood of a recession which meant such a venture could lose money. The project needed to be set out and members needed to know more.

The Director of Finance and Corporate Services said the report only referenced the proposal to set up the special purpose vehicle, as the item had been included on the basis that it had been agreed in principle. A report on this item would be brought to the Scrutiny Committee and to Cabinet during the next couple of months.

In reply to a question from the Chairman regarding future possible underspends, the Director of Finance and Corporate Services agreed that whilst the report addressed underspends, there was scope to identify in more specific terms the reasons for such underspends.

In reply to a question regarding the rationale for estimating risk impact, in relation to car parks income, the Director of Finance and Corporate Services



said impact was dependent on monetary value. For car parks income the income was below £100,000, representing a low impact.

In reply to a question regarding the risk of costs of defending planning appeals and meeting of costs awarded against the planning authority, the Director of Finance and Corporate Services said items classified as low impact would be for values up to £100,000. The Chairman asked for further information regarding the issue of costs of defending appeals.

Regarding the risk of additional consultancy spend or resources required in order to take forward the Local Plan process, the Chairman commented on the additional resources now in place, and asked about the maximum variance for the risk. The Director of Finance and Corporate Services said the sums stated represented values identified at the present, that is, the salaries for the Assistant Director and for the Planning Policy Team Leader. There was scope to cover not only those costs, but the Planning Reserve would meet additional costs.

In reply to a question regarding potential opportunities for additional fees and charges income, similar to income derived from the inspection of green beans imports, the Director of Finance and Corporate Services said such opportunities were being explored.

Regarding the Special Purchase Vehicle, Councillor G Barker said there was currently limited knowledge about how it would work, but it was crucial that the company was operated correctly. Regarding total usable reserves in 2018/19, whilst taxpayers might hold the view that £10,052 million should not sit as a reserve, it was important to be aware this was being invested in the Council's infrastructure. The challenge for the council was to ensure it was used as wisely as possible.

Councillor Howell said he was keen to respond to all comments, at the appropriate point, when invited to do so by the Chairman.

Members asked for clarity regarding the transformation reserve, including the implication there could be redundancies, and the possibility of redeployment, and the implications for cessation of some services.

The Director of Finance and Corporate Services said this document formed part of the reserve strategy and wording could be revised as it was kept under review. The Assistant Director Corporate Services said the council had redeployment procedures.

Questions were put regarding a reference to the new waste depot site in Great Dunmow. Officers confirmed the aim was to move the depot from its current location in New Street to outside the centre of Great Dunmow, and negotiations were taking place for certain options. It was hoped significant progress would soon be made, and the reserve figure was a best estimate from an initial view of the market.

Regarding economic development, the Chairman said this area lacked visibility. The Director of Finance and Corporate Services said updates from Councillor Ryles as the Lead Member for Economic Development regarding all actions on risks would be reported annually to Cabinet.

In response to questions from Councillor Light regarding Homelessness risks and what measures were in place to deal with homelessness, officers explained there was a budget for homelessness which was sufficient and therefore had not been used this year. If not used during the coming year, it would be classed as a not fit for purpose reserve.

Councillor Oliver suggested any member wishing to find out more about homelessness could refer to the regular homelessness report submitted to the Performance and Audit Committee.

Councillor Redfern spoke with the consent of the Chairman, to explain that the reserve under consideration was in the General Fund budget, but that there was a homelessness budget in the Housing Revenue Account. The General Fund reserve was a safety net, and members could be assured there were many strategies in place to deal with homelessness.

## SC28 **MEDIUM TERM FINANCIAL STRATEGY**

The Chairman referred to the Strategic Solutions Workstreams, saying many services seemed to have been transferred to Saffron Walden Town Council. The Director of Finance and Corporate Services tabled a shared services work programme.

Councillor G Barker asked that the tables of figures in financial reports should have line numbers for ease of reference, and clear indications of which figures were positive or negative.

## SC29 **TREASURY MANAGEMENT STRATEGY**

The Director of Finance and Corporate Services said there would be a revised Treasury Management strategy submitted to Cabinet.

Members asked whether significant events potentially affecting for the global economy would result in revised advice from the council's advisors, Arlingclose.

The Director of Finance and Corporate Services said officers worked very closely with Arlingclose to ensure any changed advice was brought back to Cabinet.

He highlighted changes being recommended to the treasury management strategy as set out in the report. In reply to members' questions, the Assistant Director Finance said there was a bailing risk which local authorities took, so if a bank failed there was some risk. She would supply information about the risk to members. Regarding the credit rating of banks listed in the report, these were different from banks such as Landsbanki, as they were investment companies

and the council could get its money back within a day. Regarding ethical investment, the council never invested without assurances of its advisors that the investments were ethical, and also had regard to what type of investments other local authorities were selecting.

### SC30 **CAPITAL PROGRAMME**

Members considered the Capital Programme and associated financing of the programme set out in the report.

The Chairman said as a local member he was pleased that the report included a proposed extension to the car park in Lower Street in Stansted Mountfitchet.

Councillor Sell said he was glad there was a grant of £30,000 for Stansted public conveniences at the new library.

### SC31 **HOUSING REVENUE ACCOUNT 2016/17 BUDGET AND FIVE YEAR BUSINESS PLAN STRATEGY**

The Committee considered the report on the proposed Housing Revenue Account (HRA) budget and reserves position for 2016/17 and a proposed five year financial forecast, together with a number of recommendations. The Chairman asked about the criteria for borrowing against housing stock.

The Director of Finance and Corporate Services said officers were working with Arlingclose to monitor the loans market. The Council had to start repaying its debt next year, and there could be opportunities in view of the current low interest rates to renegotiate the repayment period, and to continue the excellent work done so far.

### SC32 **GENERAL FUND AND COUNCIL TAX**

The Committee considered a report on the 2016/17 General Fund budget and Council Tax requirement.

The Chairman said the report recommended a 1% increase in Council Tax, but there had been a projection of 2% by officers in light of risks to the level of the Council's income. He wished to gain an understanding of the uncertainties and how these were perceived by the administration.

Councillor Howell said he would address these questions at the end of the committee's comments on the budget reports, as had been agreed.

Councillor Sell asked why the projected figure for Council Tax had changed between the members' workshop and the budget recommendation, from no increase to 1%.

The Chairman referred to the list of non-statutory services of which the first priority was stated to be the Lifeline service. He said the withdrawal of funding by Essex County Council was short-sighted, although they faced huge financial

pressures. He also queried the reduction in funding for Saffron Walden Museum.

The Director of Finance and Corporate Services said in the view of officers involved in the Museum Management Working Group the Museum's budget was now at the minimum viable level. There were plans for the School Room, and for an extension to the Museum.

The Chairman said he was alarmed at the reference in the report to NHS trusts attempting to exempt themselves from business rates. Officers confirmed any developments would be monitored, as this news had only come out in the last two weeks and could have a significant impact. The council was part of the Essex pool, so although only some areas had large hospitals there would be a shared impact.

In response to a question regarding the green waste service, the Director of Finance and Corporate Services confirmed the green waste service would pay for itself. The council had invested in a second crew, which had had an impact on the figures, but the service did make a profit.

The Chairman asked about a 12-month enforcement post. The Director of Finance and Corporate Services said this was not an enforcement officer post, but an officer who would support the enforcement's back office IT in becoming more efficient and productive.

Regarding the removal of the Access to Services budget, officers explained that because the communities and partnerships service within the council no longer existed, that budget had transferred to Health and Wellbeing, under the remit of the Assistant Director Housing and Environmental Services.

Regarding a reference to Planning fees, officers confirmed there was no anticipated reduction in planning fees.

Regarding withdrawal of funding for Highways Rangers, the Chairman asked whether the council could in those circumstances continue to provide this service.

Officers explained that the probability of the council providing such funding was low. Councillor S Barker spoke with the consent of the Chairman to inform members that ECC funding for the Highways Rangers had been reduced by 50%, and therefore it would be a question for this Council to try to find the shortfall. The Chairman said it would be disappointing for this service to be downgraded.

The Chairman asked for more details to be supplied about the PFI unitary charge referred to in the report.

The Assistant Director Finance said this item was the Private Finance Initiative which the council had entered into with the Lord Butler Leisure Centre for a period of 25 years. This year the council had received income from the

arrangement which it had not been expecting, and therefore it was necessary to review the model to ascertain reasons for variances.

The Chairman asked a question about a reference to “EIR” in the Local Land Charges income description of key assumptions. Officers explained this referred to the Environment Information Regulations which permitted requests for information to be made, similar to those under the Freedom of Information provisions, but specific to environmental matters.

The Chairman thanked officers and invited Councillor Howell as Portfolio Holder for Finance and Administration to respond to the Committee’s comments on the budget reports.

Councillor Howell thanked the Chairman for inviting him to the meeting and said he had listened carefully to the views expressed. He said the reports had been prepared in the context of unprecedented challenges for local authorities. It was important to keep all members informed as the budget had emerged, and he welcomed feedback and the comments of all members not just the Scrutiny Committee.

This budget aimed to put in place building blocks to provide a long-term budget. Councillor Howell wished to thank officers for their excellent preparation in the face of a high degree of uncertainty. The budget was in some respects interim in view of the NHB consultation due to take place in the summer, but it aimed to set out how to make the council’s services more effective, how to increase income and how to share the burden. The challenge was how to serve residents at the same time as doing things differently. He echoed concerns about the new Special Purchase Vehicle, but it was early days and it was not possible to provide detailed information yet, however members would be kept informed. It was clear the council needed to generate income from assets, and this represented a change in how the Council treated its reserves. There was much commercial experience to draw on, and given what the council faced, it would be wrong to rely on reserves. The Council had a very good financial culture and sometimes found it had surpluses. This was preferable to having overspends.

Councillor Howell said he would take away members’ comments on the Highways Rangers funding, and on costs of defending planning appeals and officers would come back on those points.

Regarding the transformation agenda, Councillor Howell said he felt sure this programme would take longer than four years, but the strategy was an important toolkit to manage the process. Regarding possible redundancies, this was a concept he did not like, and the council always preferred to redeploy where it could.

Regarding the Treasury Management Strategy, the committee made an important point. Landsbanki was a traumatic experience, and subsequently the council had adopted a treasury management approach which was very cautious. It was recognised that the proposals in the proposed Treasury Management strategy were a change from the past four years, but they did not

represent a fundamental change. Advice from Arlingclose was clear, this council was more cautious than other local authorities, and its income was at the lower end of the scale so there was scope to improve.

Councillor Howell said he did not believe there to be a material risk. Members had a responsibility to residents to maximise the income from money collected; he was very aware of the risks and he took advice from Arlingclose.

Regarding the Capital Programme, Councillor Howell said he took great pride in the fact that the Council continued to make significant improvements in council houses and in assets which the community wanted.

Regarding Council Tax, at the presentation in January, no increase had been suggested, but now a 1% increase was recommended. Thereafter there had been the suggestion of an increase of 2%. There was no mystery, this was a paper prepared for the workshop and at that time a zero rate of increase had been assumed, prior to the discussion taking place to apply a 1% increase. At the stage of the presentation a £4.7million surplus was expected, but the release of business rates reserves over two years not over one year was a factor in deciding that some of the share needed to be borne by residents. This recommendation would not be binding on the council with regard to future increases, but the indications for preparing a budget would be an increase in Council Tax of 2% going forward.

Councillor Howell said he would take on board comments about the Museum and Lifeline funding.

The Chairman thanked Councillor Howell for his comments.

### SC33 **PLANNING APPEALS**

The Chairman said this item had already been considered, but he wished to comment that it was regrettable that the Committee had divided on party political lines.

### SC34 **CAR PARK REVIEW**

The Committee considered a report updating members on how recommendations made following a Task Group review of car parking in the district had been assimilated into the recently –concluded review into car parking by consultants commissioned by the council.

The Assistant Director Corporate Services highlighted the recommendations of the Task Group which had been met, or which were partially met, and those which were ongoing. He said questions could be directed to the Portfolio Holder for Environmental Services, Councillor S Barker, who was present at the meeting.

The Chairman said the report was satisfactory although there was more work to do.

Councillor G Barker asked whether questions could be asked during the meeting. The Chairman replied that they could not.

SC35

## **ITEMS OF URGENT BUSINESS**

The Chairman said a report would be brought to the Committee on the Building Control Partnership, about which Cabinet would be asked to make a decision in March. If the Scrutiny Committee were to consider the matter, there would not be much time to influence the report, and there were some staff concerns. It would be necessary to consider the report properly.

The Director of Finance and Corporate Services said one of the other authorities could not take the matter to their Cabinet until April, so this authority would also consider the report at its April meeting of Cabinet, therefore the Committee could pre-scrutinise the item at its meeting on 15 March.

The Chairman invited any members who would be interested in carrying out some preliminary work on this matter to form a task and finish group.

AGREED that Councillors Harris and Dean would undertake preliminary investigation of the Building Control Partnership proposals and would report to the Committee.

The meeting ended at 9.50pm.

## **PUBLIC STATEMENTS**

**Mr Drinkwater/Mr Ellis** explained the role of the Uttlesford Licensed Operators and Drivers Association, and described their involvement in various stages of the development of the council's licensing policy. There was a long history of co-operation between the trade and the licensing authority in such matters. Mr Drinkwater referred to the setting up at the last meeting of a task group for looking at enforcement matters. He said he hoped the terms of reference for the Task Group would include the resourcing of the service. The authority and the trade were working towards principles set out in the Licensing code, and it was hoped sanctions would always be proportionate. The trade was committed to a constructive and open dialogue with the Licensing Committee.

**Mr Storah** said his comments reflected the view of Saffron Walden Town Council in respect of the District Council's handling of appeals generally, and in respect of the Kier appeal in particular. He said the council was obliged to follow legal process, primarily the development plan and any emerging local plan, and not to allow other council strategies to influence its decision-making

with regard to planning. Mr Storah referred to a meeting of the council on 17 December 2015, at which comments were made from which it appeared the Council had been influenced by considerations which were outside the planning process.

Further, the council had an ongoing obligation to take into account changing circumstances. Mr Storah said the council had not done so in relation to the 5-year housing land supply. At the time the application was considered in April 2014 there was not a 5-year housing land supply, which officers had indicated should strongly influence the decision. However in June 2014 a report had indicated that in fact there was a 5-year housing land supply, which would have strengthened the Council's ability to defend planning appeals. This change was a material factor which could have been relied upon.

A further change in circumstances was the rejection of the draft Local Plan by the Inspector.

In light of any material change such as those mentioned, the council should reconsider its position on defending appeals. The Committee was asked to investigate whether or not this was so. With regard to the Kier appeal, there was no indication that any changes in circumstances were considered or that the the initial decision was revisited.

Mr Storah urged the Committee to look at the following: the process for obtaining legal advice in relation to appeals, and whether political considerations had had any influence on which legal advice was sought; the process for approving statements made in connection with appeals; the grounds on which applications were rejected, and whether those hampered the Council in its subsequent conduct of appeals, and also whether the grounds given in refusal notices reflected those given by the Planning Committee and the extent to which political considerations rather than planning considerations affected planning decisions and what safeguards against such influence were in place.



**UTTLESFORD DISTRICT COUNCIL  
FORWARD PLAN**

**KEY DECISIONS**

Decision	Decision maker	Date of decision	Brief information about the item and details of documents submitted for consideration	Portfolio Holder	Contact officer from where the documents can be obtained
New settlement option for the local plan	Cabinet	17 March 2016	To consider a report setting out the option of including a new settlement(s) as part of the Local Plan. Report available in agenda papers for Planning Policy Working Group on 23 February	Cllr Barker	Roger Harborough – Director of Public Services and Head of Paid Service <a href="mailto:rharborough@uttlesford.gov.uk">rharborough@uttlesford.gov.uk</a>

## DECISIONS TO BE TAKEN IN PRIVATE

Private Decision	Brief details - for information	Decision maker	Date	Reason for decision to be taken in private	Portfolio Holder	Contact officer from where the documents can be obtained
Building Control Partnership (key decision)	The report considers establishing a joint service with other Essex authorities	Cabinet	7 April	The information contained in the report is exempt from publication (as it falls within the category of information relating to the financial or business affairs of any particular person including the authority holding that information – Local Government Act 1972 Sch 12A s.100I para 3). The public interest in maintaining the exemption outweighs the public interest in disclosing the information because the report relates to matters that are commercially sensitive and if discussed in public the council's interests in establishing a viable building control partnership to provide a joint service with other Essex local authorities would be likely to be prejudiced.	Cllr Barker	Roger Harborough – Director of Public Services and Head of Paid Service <a href="mailto:rharborough@uttlesford.gov.uk">rharborough@uttlesford.gov.uk</a>

## OTHER DECISIONS

Non-Key Decision	To be taken in private?	Decision maker	Date	Brief information about the item and details of any documents submitted for consideration	Portfolio Holder	Contact officer from where the documents can be obtained
Economic Development Strategy	No	Cabinet	7 April 2016	The Council's current strategy is coming to an end and a new strategy for the next few years is required to drive forward the Economic Development agenda for the Council.	Cllr Rolfe	Roger Harborough – Director of Public Services and Head of Paid Service <a href="mailto:rharborough@uttlesford.gov.uk">rharborough@uttlesford.gov.uk</a>
Street naming and numbering policy	No	Cabinet	7 April 2016	The council has reviewed and updated its current policy to bring it into line with best practice and working practices.	Cllr Barker	Roger Harborough – Director of Public Services and Head of Paid Service <a href="mailto:rharborough@uttlesford.gov.uk">rharborough@uttlesford.gov.uk</a>
Transfer of Land at Newton Grove Great Dunmow	No	Cabinet	7 April 2016	The land was no longer required for a domestic abuse refuge and would now be used to deliver new affordable housing for the district	Cllr Redfern	Roz Millership – Assistant Director Housing and Environmental Services <a href="mailto:rmillership@uttlesford.gov.uk">rmillership@uttlesford.gov.uk</a>



## Work Programme 2015/16

Date	15 March 2016	03 May 2016	05 July 2016	06 September 2016
Standard agenda items	Consideration of any decisions called in	Consideration of any decisions called in	Consideration of any decisions called in	Consideration of any decisions called in
	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee
	Invited Reports from the Executive	Invited Reports from the Executive	Invited Reports from the Executive	Invited Reports from the Executive
	Cabinet Forward Plan	Cabinet Forward Plan	Cabinet Forward Plan	Cabinet Forward Plan
	Scrutiny Work Programme	Scrutiny Work Programme	Scrutiny Work Programme	Scrutiny Work Programme
Agenda items	<u>Enforcement Review:</u> Update from Task and Finish Group	<u>Enforcement Review:</u> Update from Task and Finish Group	<u>Review of Cabinet system</u> Report from CWG Chairman	<u>Review of Cabinet system</u> - update
	<u>S106 &amp; CILs:</u> Report from officer	<u>LCTS 2017/18</u> Report from officer	<u>Enforcement Review:</u> Final report	
	<u>LCTS 2017/18 Scheme:</u> Scoping report	<u>Quiet Lanes</u> Scoping report	<u>Quiet Lanes</u> Update	
	<u>Relationship between UDC &amp; ECC:</u> Scoping discussion	<u>Relationship between UDC &amp; ECC:</u> Scoping report	<u>LCTS 2017/18 Scheme</u> Report	
	<u>Review of 2015/16</u>	<u>Building Control Partnership</u> Report from officer		
	<u>Building Control Partnership</u> Report from officer			



**Committee: Scrutiny**

**Agenda Item**

**Date: 15 March 2016**

**10**

**Title: Planning Obligations**

**Author: Roger Harborough, Director of Public Services, 01799 510457**

Item for information

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## Summary

1. The report seeks to explain the alternative ways of funding the infrastructure needed to support development and the council's systems for monitoring and enforcing planning obligations, which are the current mechanism it uses.

## Recommendations

2. The report is for information

## Financial Implications

3. None

## Background Papers

4. .None

## Impact

- 5.

Communication/Consultation	
Community Safety	
Equalities	
Health and Safety	
Human Rights/Legal Implications	
Sustainability	
Ward-specific impacts	
Workforce/Workplace	Revenue budgets include the resources for monitoring obligations

## General overview of ways of funding the infrastructure necessary to support development

6. Planning Policy Guidance published on line by the Government includes advice on planning obligations (reproduced at Appendix A):

<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/>

- The principle of entering into an obligation is to mitigate the impact of unacceptable development to make it acceptable in planning terms. Obligations must meet the following tests:
- They are necessary to make the development acceptable in planning terms
- They must be directly related to the development
- They must be fairly and reasonably related in scale and kind.

Planning obligations are one of several ways in which contributions can be sought from developers. They can, for example, be asked to enter into agreements under S278 of the Highways Acts. Such agreements will be made between the developers and the highways authority. Planning authorities can also propose to put in place a Community Infrastructure Levy. Planning Policy Guidance on CIL is set out here (reproduced at Appendix B):

<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/>

7. Regulations came into force in 2010 relating to CIL. They also cover planning obligations. Besides setting out the tests in para 7 above, they prevent the pooling of funding for a particular infrastructure scheme or type of scheme secured from six or more planning obligations.
8. Where a local authority has adopted a CIL, a levy will be payable on development which creates net additional floor space, where the gross internal area of new build exceeds 100 square metres. That limit does not apply to new houses or flats, and a charge can be levied on a single house or flat of any size, unless it is built by a 'self builder'. There are several categories of development which are exempt. These are prescribed in national regulations. One of these categories, though, is specified types of development which local authorities have decided should be subject to a 'zero' rate and specified as such in their charging schedules.
9. The purposes on which CIL can be spent are defined in national regulations. The definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. This flexibility gives local areas the opportunity to choose what infrastructure they need to deliver their development plan. Charging authorities may not use the levy to fund affordable housing.



Local authorities must spend the levy on infrastructure which they determine is necessary to support the development of their area. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development.

Local authorities must allocate at least 15% of levy receipts to spend on priorities that should be agreed with the local community in areas where development is taking place. This can increase to a minimum of 25% where levy receipts arise from development in an area with an adopted neighbourhood plan. The neighbourhood portion of the levy can be spent on a wider range of things than the rest of the levy, provided that it meets the requirement to 'support the development of the area'.

Regulations prevent section 106 planning obligations being used in relation to those things that are intended to be funded through the Levy by the charging authority. While Parish, Town and Community Councils are not required to spend their neighbourhood funding in accordance with the charging authority's priorities, the government expects Parish and Town Councils to work closely with the charging authority to agree priorities for spending the neighbourhood funding element.

Section 106 agreements, Section 278 agreements and CIL can be used in combination to deliver the infrastructure necessary to support development. However, the NPPF requires that the combined total impact of such requests does not threaten the viability of the sites and scale of development identified in the development plan.

Whereas S106 obligations and S278 agreements can be sought on the basis of non site specific policies in up to date local plans or the NPPF to secure infrastructure necessary to support the development of a particular scheme, or site specific policies, the adoption of CIL requires an assessment of infrastructure needs across the proposed charging area and the preparation of charging schedules allocating the total costs by types of liable development and rates per square metre of additional floorspace. The charging authority is required to draw on the infrastructure planning evidence that underpins the development strategy for their area. Charging authorities then need to use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential impact upon the economic viability of development across their area.

10. Part of the process in preparing a local plan is to carry out an assessment of the supporting infrastructure needed to deliver the local plan proposals. Once this infrastructure delivery plan has been determined an assessment can then be made as to whether or not a CIL is appropriate to local circumstances and, if so, charging schedules devised. The principle of adopting a CIL and the proposed charging schedules are subject to a public examination process.

## **UDC systems for monitoring and enforcing obligations**

11. S106 agreements to which the council is a party are monitored through a specific module within the Uniform software supplied by Idox plc which council uses to support various regulatory services including planning. When agreement is sealed its obligations are separately entered into the monitoring module. Where a financial contribution is required, the entry will include any index linking agreed to maintain the value of the funding. Trigger points for contributions will also be entered which will be used to generate reminders to the monitoring officer at future dates.
12. Most contributions will not be triggered by dates but by particular stages in a development being reached, such as a start on site or occupation of the n<sup>th</sup> house. The system generated reminder will prompt a check on other modules monitoring development progress. There is an annual audit survey on site of development progress, which can be supplemented by checks with the building inspectors, submission of details following outline planning applications, the council tax team or if necessary a check on site by the monitoring officer. Obligations place the onus on the developer to serve notices on the council that a trigger point will be reached. The monitoring officer, however, does not rely on such notices being provided.
13. Where an obligation has not been delivered, an enforcement process begins. This will start with a reminder, but could ultimately involve court action. Where the obligation involves a financial contribution, the monitoring officer will ensure that a capital receipt is correctly linked to the relevant obligation, and checks will be made to ensure that the appropriate indexation has been applied.
14. Obligations will include a time frame within which any financial contribution must be used. Such clauses are also actively monitored to avoid money having to be paid back to the developer.
15. To save on drafting time, Essex County Council (ECC) is not now a co-signatory to agreements that involve only the payment of contributions towards education and highways. As a result, UDC collects these contributions on ECC's behalf and forwards the money when received. Similarly, UDC collects and forwards money due to other organisations, such as the NHS. In older agreements (pre-2011) ECC was a co-signatory in all cases and remains responsible for collecting its own contributions.

The monitoring procedure received a "substantial" outcome in a recent internal audit inspection.

16. A monitoring update is given to Planning Committee each year, usually in June or July. The 2015 report was tabled at the meeting held on 29 July 2015. The report item 5 and its appendix are attached at Appendix C.

## Planning Obligations Appendix A

Department for Communities and Local Government - Planning Practice Guidance

### When can planning obligations be sought by the local planning authority?

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. These tests are set out as statutory tests in the [Community Infrastructure Levy Regulations 2010](#) and as policy tests in the National Planning Policy Framework.

Revision date: 26 03 2015 [See revisions](#)

#### Related policy

National Planning Policy Framework

- [Paragraph 204](#)

Paragraph: 002 Reference ID: 23b-002-20140306

### How do planning obligations relate to other contributions?

Developers may be asked to provide contributions for infrastructure in several ways. This may be by way of the Community Infrastructure Levy and planning obligations in the form of section 106 agreements and [section 278 highway agreements](#). Developers will also have to comply with any [conditions](#) attached to their planning permission. Local authorities should ensure that the combined total impact of such requests does not threaten the viability of the sites and scale of development identified in the development plan.

Where the levy is in place for an area, charging authorities should work proactively with developers to ensure they are clear about the authorities' infrastructure needs and what developers will be expected to pay for through which route. There should be not actual or perceived 'double dipping' with developers paying twice for the same item of infrastructure.

Revision date: 06 03 2014

## Related policy

National Planning Policy Framework

- [Paragraph 173](#)

Paragraph: 003 Reference ID: 23b-003-20150326

## Should policy on seeking planning obligations be set out in the development plan?

Policies for seeking planning obligations should be set out in a [Local Plan](#); [neighbourhood plan](#) and where applicable in the London Plan to enable fair and open testing of the policy at examination. Supplementary planning documents should not be used to add unnecessarily to the financial burdens on development and should not be used to set rates or charges which have not been established through development plan policy.

Planning obligations assist in mitigating the impact of development which benefits local communities and supports the provision of local infrastructure. Local communities should be involved in the setting of planning obligations policies in a [Local Plan](#); [neighbourhood plan](#) and where applicable in the London Plan.

Revision date: 26 03 2015 [See revisions](#)

## Related policy

National Planning Policy Framework

- [Paragraph 153](#)

Paragraph: 004 Reference ID: 23b-004-20150326

## Does the local planning authority have to justify its requirements for planning obligations?

In all cases, including where tariff style charges are sought, the local planning authority must ensure that the obligation meets the relevant tests for planning obligations in that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.

Planning obligations should not be sought where they are clearly not necessary to make the development acceptable in planning terms.

Planning obligations must be fully justified and evidenced. Where affordable housing contributions are being sought, planning obligations should not prevent development from going forward.

Revision date: 26 03 2015 [See revisions](#)

## Related policy

National Planning Policy Framework

- [Paragraph 204](#)

Paragraph: 005 Reference ID: 23b-005-20140306

## Can planning obligations be required for permitted development?

By its nature permitted development should already be generally acceptable in planning terms and therefore planning obligations would ordinarily not be necessary. Any planning obligations entered into should be limited only to matters requiring [prior approval](#) and should not, for instance, seek contributions for affordable housing.

Revision date: 06 03 2014

Paragraph: 006 Reference ID: 23b-006-20140306

## Are planning obligations negotiable?

Obligations should only be sought where they are necessary to make the development acceptable in planning terms. Where they provide essential site specific items to mitigate the impact of the development, such as a necessary road improvement, there may only be limited opportunity to negotiate. Where local planning authorities are requiring affordable housing obligations or tariff style contributions to infrastructure, they should be flexible in their requirements. Their policy should be clear that such planning obligations will take into account specific site circumstances.

Revision date: 06 03 2014

Paragraph: 007 Reference ID: 23b-007-20150326

## What evidence is required to support negotiations on planning obligations?

Policy for seeking planning obligations should be grounded in an understanding of development [viability](#) through the plan making process.

On individual schemes, applicants should submit evidence on scheme [viability](#) where obligations are under consideration. Wherever possible, applicants should provide viability evidence through an open book approach to improve the review of evidence submitted and for transparency.

Revision date: 26 03 2015 [See revisions](#)

Paragraph: 024 Reference ID: 23b-024-20150326

## Are planning obligation contributions required by local planning authorities publically available?

Local planning authorities are required to keep a copy of any planning obligation together with details of any modification or discharge of the planning obligation and make these publically available on their [planning register](#).

Local planning authorities are expected to use all of the funding they receive through planning obligations in accordance with the terms of the individual planning obligation agreement. This will ensure that new developments are acceptable in planning terms; benefit local communities and support the provision of local infrastructure. To ensure transparency local planning authorities are encouraged to make publically available information as to what planning obligation contributions are received and how these contributions are used. This information could be published in the [authority's monitoring report](#) or through separate periodic reports published on the local planning authority's website.

Revision date: 26 03 2015

Paragraph: 025 Reference ID: 23b-025-20150326

## When should discussions on planning obligations take place?

Discussions about planning obligations should take place as early as possible in the planning process, including at the [pre-application](#) stage. This will prevent delays in finalising those planning applications which are granted subject to the completion of planning obligation agreements.

### [Can planning obligations or heads of terms be on a local list?](#)

Local planning authorities are encouraged to inform and involve all parties with an interest in the land and relevant infrastructure providers, including county councils where appropriate, at an early stage to prevent delays to the process.

Revision date: 26 03 2015

Paragraph: 026 Reference ID: 23b-026-20150326

## How can relevant infrastructure issues be taken into account during discussions on planning obligations?

Local planning authorities are encouraged to work with relevant infrastructure providers at an early stage of the planning process when planning obligations are being discussed in order to prevent delays to the agreement of planning obligations. For two tier council areas this should include county councils who provide services such as education. County councils can also be statutory consultees in the planning application process as set out in [Table 2 of the Planning Guidance](#) .

Revision date: 26 03 2015

Paragraph: 027 Reference ID: 23b-027-20150326

## Are there standard templates for the agreement of planning obligations?

Local planning authorities are encouraged to use and publish standard forms and templates to assist with the process of agreeing planning obligations. These could include model agreements and clauses (including those already published by other bodies), that could be made publically available to help with the planning application process. Any further information required by the local planning authority, or issues raised by the applicant regarding planning obligations, should

be addressed at an early stage of the planning application process. Use of model agreements does not remove the requirement for local planning authorities to consider on a case by case basis whether a planning obligation is necessary to make the development acceptable in planning terms.

Revision date: 26 03 2015

Paragraph: 028 Reference ID: 23b-028-20150326

## Is there a timeframe for negotiating planning obligations?

Planning obligations should be negotiated to enable decisions on planning applications to be made within the [statutory time limits](#) or a longer period where agreed in writing between the local planning authority and the applicant.

Revision date: 26 03 2015

Paragraph: 008 Reference ID: 23b-008-20140306

## Do applicants have to agree to a planning obligation?

Applicants do not have to agree to a proposed planning obligation. However, this may lead to a refusal of planning permission or non-determination of the application. An appeal may be made against the non-determination or refusal of planning permission.

Revision date: 06 03 2014

Paragraph: 029 Reference ID: 23b-029-20150326

## Can local planning authorities draw on other resources and expertise in considering planning obligations?

It may be appropriate in some cases to consider collaborative agreements to make use of the skills of officers from other local planning authorities or contractual arrangements to make use of external third party experts so that planning obligations can be agreed quickly and effectively. Local planning authorities and developers may want to discuss the provision of extra resources to enable the speedy determination of planning obligations, for example when handling large and possibly detailed planning applications.



Revision date: 26 03 2015

Paragraph: 009 Reference ID: 23b-009-20140306

## Can an agreed planning obligation be changed?

Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way (see [Section 106A of the Town and Country Planning Act 1990](#)).

In addition, [Section 106BA of the 1990 Act](#) (inserted by the Growth and Infrastructure Act 2013) allows applications to be made to modify the affordable housing requirements of any Section 106 agreement regardless of when it was signed. This review must be based on economic viability and cannot take into account other aspects of the planning consent. It addresses affordable housing requirements only. Further guidance can be found [here](#).

Revision date: 06 03 2014

Paragraph: 010 Reference ID: 23b-010-20140306

## Do local planning authorities have to pay back unspent planning obligations?

Local planning authorities are expected to use all of the funding received by way of planning obligations, as set out in individual agreements, in order to make development acceptable in planning terms. Agreements should normally include clauses stating when and how the funds will be used by and allow for their return, after an agreed period of time, where they are not.

Revision date: 06 03 2014

Paragraph: 011 Reference ID: 23b-011-20140306

## Can there be an appeal against a refusal to change a planning obligation (Section 106 agreement)?

Applications made to local planning authorities to modify a planning obligation, which pre dates April 2010 or is over 5 years old, may result in refusal or non-determination. If so, an appeal may be made. An appeal to the Planning Inspectorate under [section 106B of the Town and Country Planning Act \(1990\)](#) must be made within 6 months of a decision by the local authority not to amend the obligation, or within 6 months starting at the 8 weeks from the date of request to amend if no decision is issued.

An appeal to the Planning Inspectorate on affordable housing viability under [section 106BC of the 1990 Act](#) must be made within 6 months of a decision by the local authority not to amend the obligation, or within 6 months commencing with the date which is 28 days (35 days if the Mayor of London is involved) from date of request to amend if no decision is issued. Further guidance can be found on Gov.uk titled “[Section 106 affordable housing requirements: review and appeal.](#)”

Revision date: 06 03 2014

Paragraph: 031 Reference ID: 23b-031-20150814

## Are there any circumstances where infrastructure contributions through planning obligations should not be sought from developers?

As set out in the [Starter Homes Written Ministerial Statement](#) of 2 March 2015, starter homes exception sites should not be required to make affordable housing or tariff-style section 106 contributions.

Revision date: 14 08 2015

## Planning Obligations Appendix B

Department for Communities and Local Government – Community Infrastructure Levy  
Guidance

### Introduction

Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. [Read more about the changes to the guidance.](#)

Paragraph: 001 Reference ID: 25-001-20140612

### What is the Community Infrastructure Levy, and who has to pay it

The Community Infrastructure Levy (the levy) is a tool for local authorities in England and Wales to help deliver infrastructure to support the development of the area.

Revision date: 12 06 2014

Paragraph: 002 Reference ID: 25-002-20140612

### What kind of development is liable for the levy?

The levy may be payable on development which creates net additional floor space, where the gross internal area of new build exceeds 100 square metres (the [‘Rates’ section](#) explains how this is calculated). That limit does not apply to new houses or flats, and a charge can be levied on a single house or flat of any size, unless it is built by a ‘self builder’ (see [‘Self Build Exemption’](#) and [Regulation 54A and 54B](#)).

Revision date: 12 06 2014

Paragraph: 003 Reference ID: 25-003-20140612

### What kind of development does not pay the levy?

The following do not pay the levy:

- development of less than 100 square metres (see [Regulation 42 on Minor Development Exemptions](#)) – unless this is a whole house, in which case the levy is payable

- houses, flats, residential annexes and residential extensions which are built by ‘self builders’ (see [Regulations 42A, 42B, 54A and 54B, inserted by the 2014 Regulations](#))
- social housing that meets the relief criteria set out in [Regulation 49](#) or [49A](#) (as amended by the 2014 Regulations)
- charitable development that meets the relief criteria set out in [Regulations 43 to 48](#)
- buildings into which people do not normally go (see [Regulation 6\(2\)](#))
- buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery (see [Regulation 6\(2\)](#))
- structures which are not buildings, such as pylons and wind turbines
- specified types of development which local authorities have decided should be subject to a ‘zero’ rate and specified as such in their charging schedules
- vacant buildings brought back into the same use (see [Regulation 40 as amended by the 2014 Regulations](#))

Where the levy liability is calculated to be less than £50, the chargeable amount is deemed to be zero so no levy is due.

Mezzanine floors of less than 200 square metres, inserted into an existing building, are not liable for the levy unless they form part of a wider planning permission that seeks to provide other works as well.

Revision date: 12 06 2014 [See revisions](#)

Paragraph: 004 Reference ID: 25-004-20140612

## Who can charge and collect the levy?

In England, levy charging authorities are district and metropolitan district councils, London borough councils, unitary authorities, national park authorities, The Broads Authority, Mayoral Development Corporations and the Mayor of London. In Wales, the county and county borough councils and the national park authorities have the power to charge the levy. These bodies all prepare relevant Plans (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London) for their areas, which include assessments of the infrastructure needs for which the levy may be collected.

The levy is collected by the ‘collecting authority’ (as defined by [Regulation 10](#)). In most cases this is the charging authority but, in London, the boroughs collect the

levy on behalf of the Mayor. County councils collect the levy charged by district councils on developments for which the county gives consent. The Homes and Communities Agency, urban development corporations and enterprise zone authorities can also be collecting authorities for development, with the agreement of the relevant charging authority, where they grant permission.

Revision date: 12 06 2014

Paragraph: 005 Reference ID: 25-005-20140612

## Who is liable to pay?

Landowners are ultimately liable for the levy, but anyone involved in a development may take on the liability to pay. In order to benefit from payment windows and instalments, someone must assume liability in this way. Where no one has assumed liability to pay the levy, the liability will automatically default to the landowners and payment becomes due as soon as development commences (see [Regulation 7](#), and [section 56\(4\) of the Town and Country Planning Act 1990](#), for the definition of ‘commencement of development’). Liability to pay the levy can also default to the landowners where the collecting authority has been unable to recover the levy from the party that assumed liability for the levy, despite making all reasonable efforts.

For further information see [‘How does someone assume liability for the levy?’](#).

Revision date: 12 06 2014

Paragraph: 006 Reference ID: 25-006-20140612

## How does the levy relate to planning permission?

The levy is charged on new development. Normally, this requires planning permission from the local planning authority, the Planning Inspectorate, or the Secretary of State on appeal.

Planning permission can also be granted through local planning orders. Examples are simplified planning zones and local development orders ([see related National Planning Policy Guidance on Local Development Orders](#)). Development can also be granted consent by Neighbourhood Development Orders ([see related guidance here](#)), including Community Right to Build Orders. Some Acts of Parliament, such as the Crossrail Act 2008, also grant planning permission for new buildings.

The levy applies to all these types of planning consent.

The levy may also be payable on permitted development ([see related guidance on the General Permitted Development Order here](#)).

Development which is the subject of a Lawful Development Certificate may be liable for the levy, depending on the circumstances. A lawful development certificate (granted under section 191 or 192 of the Town and Country Planning Act 1990) is often sought to confirm permitted development rights. It does not by itself trigger a levy payment because it is not a planning permission as defined in [Regulation 5](#). It simply confirms that no further application for planning permission is needed for the development described in the certificate. So where a certificate is sought to confirm permitted development rights, the normal levy provisions in respect of permitted development rights apply, and the grant of such a certificate is not relevant to whether or not, or when, the levy may be payable.

Where a planning permission is phased, each phase of the development is treated as if it were a separate chargeable development for levy purposes (see [Regulation 8\(3A\) as amended by 2014 Regulations](#)). This may apply to schemes which have full planning permission as well as to outline permissions. For further details, see ‘[When does a charging schedule come into effect?](#)’ and ‘[Is there another way to allow phased payments](#)’.

Revision date: 12 06 2014

Paragraph: 007 Reference ID: 25-007-20140612

## What is the impact of a section 73 application to amend a planning condition?

Developers can amend a condition attached to a planning consent, [under section 73 of the Town and Country Planning Act 1990](#).

If the section 73 permission does not change the liability to the levy, only the original consent will be liable.

If the section 73 permission does change the levy liability, the most recently commenced scheme is liable for the levy. In these circumstances, levy payments made in relation to the previous planning permission are offset against the new liability, and a refund is payable if the previous payment was greater than the new liability.

There may be transitional cases, where the original planning permission was granted before a levy charge came into force in the area, and a section 73 permission is granted after the charge comes into force. In these circumstances, [regulation 128A \(as amended by the 2014 Regulations\)](#) provides for the section 73 consent to only trigger levy liability for any additional liability it introduces to the development. The Government's intention is that the provisions set out in regulation 128A should apply to all subsequent section 73 permissions granted in respect of such a development where these transitional circumstances have arisen.

Revision date: 12 06 2014





**Committee: Planning**

**Agenda Item**

**Date: 29th July 2015**

**5**

**Title: Section 106 obligations: financial contributions held by the District Council**

**Author: Jeremy Pine, Planning Policy / Development Management Liaison Officer (01799 510460)**

Item for information

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### Summary

1. This report, which is for the Committee's information, sets out the current position regarding financial contributions paid by developers to the Council under planning obligations. A table is appended to this report. The last report to the Committee on this subject was 25<sup>th</sup> June 2014.

### Recommendations

2. That the Committee notes this report

### Financial Implications

3. None associated with this report. Contributions will have to be repaid if they are either not spent or are not allocated for spending by any pay back deadline written into an obligation. There are no impending pay back deadlines.

### Background Papers

4. None

### Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None

Ward-specific impacts	See table
Workforce/Workplace	Officer time in monitoring Section 106 obligations and preparing this report

## Situation

6. Planning obligations are monitored by officers to ensure compliance by developers. A major part of the monitoring process is ensuring that financial contributions are paid when they are due and (where a “pay back clause” exists) that they are spent before they have to be repaid.
7. The appendix to this report contains a table which sets out the amounts of money that the District Council currently holds under each obligation. Mostly, financial contributions are due on implementation and have to be paid back ten years later. The table also includes pay back deadlines where relevant.
8. As the County Council is not always a signatory, the District Council can be responsible for collecting education and transport contributions on the County’s behalf. This money is then passed on to the County Council following confirmation of the general area of spending. This confirmation is required because the District Council as signatory retains responsibility for ensuring that the money is spent as per the obligation.
9. Since the last report, the Council has collected about £2.731million in contributions from developers. The following table summarises these contributions (all numbers are rounded)

<i>Contribution type</i>	<i>Amount</i>	<i>% of total</i>
Education / school transport	£1.849m	67.70
Affordable housing	£0.615m	22.52
Community / sport	£0.158m	5.79
Transport / highways	£0.059m	2.16
Landscaping / maintenance	£0.050m	1.83
<b>Total</b>	<b>£2.731m</b>	<b>100.00</b>

10. In March of this year, the previous Government issued new online Planning Practice Guidance which states that contributions for affordable housing should not be sought from developments of 10 units or less. There are over 20 existing obligations relating to small scale developments (<10units) where affordable housing contributions are required, but where the development has not yet been implemented. The effect of the guidance is that the Council will not now be able to collect these contributions, which would have totalled about £1.57million assuming all the developments were implemented. As a rough guide, this money would have funded the construction of about 12 affordable houses.

11. The Council has taken part in a survey by the Local Government Association on the impact of the new guidance thresholds. The LGA is currently analysing the responses that it received, and will shortly be publishing a report alongside a press release.

## Risk Analysis

12.

Risk	Likelihood	Impact	Mitigating actions
That contributions are not collected when they are due, or have to be paid back because they have not been spent by the deadline	1. There is a little risk due to active monitoring of planning obligations	3. Some contributions can be sizeable. If they are not paid in the first place (or have to be repaid), there will be a missed opportunity to provide necessary infrastructure	Continue to monitor planning agreements, including meetings with colleagues (District and County Council) when necessary

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

**S106 OBLIGATIONS: CONTRIBUTIONS HELD BY UDC**

<b><u>Obligation ref(s) Agreement(s) date</u></b>	<b><u>Applicant</u></b>	<b><u>Site</u></b>	<b><u>Amount currently held (Money forwarded or spent since the last report is shown in brackets)</u></b>	<b><u>For</u></b>	<b><u>Date when to be paid back if unspent or uncommitted</u></b>	<b><u>Comments</u></b>
<b>STANSTED AREA HOUSING PARTNERSHIP</b>						
UTT/1000/01/OP (16.05.03)	Stansted Airport Ltd	Stansted Airport (expansion to 25mppa)	(£1,631,340.03) <i>All money now spent</i>	Provision of affordable housing in Uttlesford, Braintree, East Herts and Harlow areas		
<b>LOCAL PLAN – MAJOR SITE ALLOCATIONS</b>						
<b>FORESTHALL PARK, STANSTED MOUNTFITCHET</b>						
UTT/0443/98/OP (26.02.04) UTT/0432/11/FUL (16.01.12) UTT/1032/11/FUL (09.02.12) UTT/1960/11/FUL (27.07.12)  UTT/1123/01/OP (26.02.04) UTT/0076/10/FUL (24.05.11)	Taylor Wimpey/ Persimmon      Croudace		£691,915.48 <i>(Approx £711k has so far been spent on local schemes approved by the Cabinet. £200k of the remaining money is yet to be allocated)</i>	Leisure, recreational and / or community facilities	14.02.23 (earliest date)	Includes initial payments and pro-rata payments for the extra houses built on the additional school land and on other land not originally within the developer's control

			£18,675	15-year maintenance sum for POS	N/A	Initial payment relating only to the LEAP and 1 <sup>st</sup> LAP on the Taylor Wimpey land
			£186,647 (£102k spent so far)	Off-site health facilities TO BE FORWARDED TO NHS	04.12.23	NHS is using the funding for the Lower Street mixed-use development
<b>OAKWOOD PARK, FLITCH GREEN</b>						
UTT/0058/08/DFO (20.03.08)	Enodis		£10,368.97	Maintenance payment for community hall	N/A	Ex-gratia payment for the maintenance of an additional area of open space
			£5,000			
UTT/14/0005/OP (12.09.14)	Enodis		£3,000	Community facilities inspection fee	N/A	Covers the Council's inspection costs of the community facilities and nature reserves
			£50,156	Highways contribution TO BE FORWARDED TO ECC	11.12.29	To fund highway works in the vicinity of the development

<b>PRIORS GREEN, TAKELEY / LT CANFIELD</b>						
UTT/0518/02/OP (29.09.06)	Countryside		£88,173	Community facilities enhancement and equipment sums	01.04.18	Relates to 40 houses built as part of the Takeley / Lt Canfield Local Policy 3 area
UTT/0555/06/DFO	David Wilson Homes		£7,925 (£700 has so far been spent)	Buffer strip adoption sum	N/A	
<b>(Island sites)</b>						
UTT/0775/03/OP (30.04.08)	Pretious	West View Cottage, Takeley	£2,107.75	Community facilities enhancement and equipment sums	20.12.21	Pro-rata payment for extra houses on land not within the major developer's control
UTT/0338/08/FUL (07.11.08)	Thomas Construction	8 Hamilton Rd, Lt Canfield	£5,911.87 (Approx £7.3k has so far been spent)	Community facilities enhancement and equipment sums	01.04.18	Pro-rata payment as above
UTT/1736/09/FUL (12.04.11)	Cambrils Ltd	Morgan House, Takeley	£8,475	Community facilities enhancement and equipment sums	14.05.25	Pro-rata payment as above
UTT/1443/10/OP (13.04.11)	Goody	South of Willow Cottage, Lt Canfield	£2,109.61	Community facilities enhancement and equipment sums	23.06.24	Pro-rata payment as above

UTT/1398/11/FUL (03.05.12)	Go Homes	Land at Penarth, Warwick Road, Lt Canfield	£14,179	Community facilities enhancement and equipment sums	02.10.24	Pro-rata payment as above
UTT/0240/12/OP (11.06.12) UTT/14/1819/FUL (29.10.14)	Dales Development Ltd	Land at Stansted Motel & 2 Hamilton Road, Lt Canfield	(£32,820)  (£6,995)	Primary education contribution FORWARDED TO ECC  School transport contribution FORWARDED TO ECC	10.02.25  10.02.25	
UTT/12/5305/FUL (10.01.13)	Stephens	R/O 4 Hamilton Road, Lt Canfield	£5,162	Community facilities enhancement and equipment sums	01.02.23	Pro-rata payment as above
UTT/13/0692/FUL (27.08.13)	Shire Hall Homes	Land north of 4 Hamilton Road	£18,718  £42,906  £2,893	Community facilities enhancement and equipment sums  Education contribution TO BE FORWARDED TO ECC  Transportation contribution TO BE	06.06.24  10 <sup>th</sup> anniversary of first occupation  06.06.24	Pro-rata payment as above  To fund additional local primary and secondary school places  To fund local highway improvements

				FORWARDED TO ECC		
UTT/13/1953/FUL (11.09.13)	P G Bones Ltd	Between 3 & 5 Hamilton Road	£13,354  (£34,101.17)  (£2,486)	Community facilities enhancement and equipment sums  Education contribution FORWARDED TO ECC  Transportation contribution FORWARDED TO ECC	22.04.25  10 <sup>th</sup> anniversary of first occupation	Pro-rata payment as above  To fund additional local primary and secondary school places  To fund local highway improvements
UTT/13/3105/FUL (24.06.14)	Stock and Hitchcock	Land west of Warwick Road	£18,740  (£46,388.63)  £3,493	Community facilities enhancement and equipment sums  Education contribution FORWARDED TO ECC  Transportation contribution TO BE FORWARDED TO ECC	24.11.24  10 <sup>TH</sup> anniversary of first occupation  24.11.24	Pro-rata payment as above  To fund additional local primary and secondary school places  tbc



<b>WOODLANDS PARK, GREAT DUNMOW</b>						
UTT/0449/02/OP and UTT/0450/02/OP  (10.06.03)	Wickford		£91,262.94 <i>(Approx £12.7k has so far been spent)</i>	20-year maintenance sums for POS	N/A	Payment is taking place in tranches. This money is tranches 3, 4 and 5
UTT/2507/11/OP and UTT/13/3439/FUL (02.08.12 and 14.05.14)	Wickford	Sector 4	£165,000 <i>(£60k has so far been spent)</i>	Helena Romanes School contribution	23.01.23	To fund land purchase / playing field improvements and bus turning / parking improvements
			£10,000	Youth services contribution	21.05.24	Payment in lieu of providing a youth shelter on the site
			£348,798.97	Primary education contribution FORWARDED TO ECC	12.05.25	
UTT/13/0847/OP	Wickford	Brick Kiln Farm	£389,664.51	Education contribution FORWARDED TO ECC	03.06.25	To fund additional local primary and secondary school places.

<b>OTHER SITES</b>						
<b>AYTHORPE RODING</b>						
UTT/13/0571/FUL (19.08.13)	Skignesco – Granada Development Co Ltd	Keers Green Nurseries	£120,000	Affordable housing contribution	08.07.34	Contribution is spent flowing authorisation by the Cabinet
UTT/14/0779/FUL (05.11.14)	Crest Nicolson	Windmill Works	£37,255.45	Secondary education contribution FORWARDED TO ECC	14.05.25	
			£8,608.49	School transport contribution FORWARDED TO ECC	14.05.25	
<b>CLAVERING</b>						
UTT/2149/11/OP (15.10.12)	Finzel	Jubilee Works, Stickling Green	(£58,698.58)	Education contribution FORWARDED TO ECC	24.11.24	To fund additional local primary school places
UTT/2251/11/FUL (02.04.12)	Noble and Tee	R/O Oxley Close	(£46,596)	Education contribution FORWARDED TO ECC	N/A	To fund additional local primary school places
<b>ELSENHAM</b>						
UTT/1500/09/OP UTT/2166/11/DFO (07.08.12)	Persimmon	The Orchard, Station Road	£42,322	Disabled adaptation contribution	14.06.23	To fund internal adaptation of three of the houses, if required

<b>GREAT CHESTERFORD</b>						
UTT/12/5513/OP (10.07.13)	Fox and Benyon	South of Stanley Road, West of B184, Walden Road	(£228,881.05)	Education contribution FORWARDED TO ECC	04.02.24	To fund additional local early years and childcare and secondary school places
<b>GREAT DUNMOW</b>						
N/A	N/A	Dunmow Eastern Sector	£18,149.95	Historic, residual amount	N/A	To be spent on playspace at Willow Road, following authorisation by Cabinet on 07.03.12
<b>HENHAM</b>						
UTT/14/0065/FUL (15.05.14)	Abbey Developments Ltd	Lodge Cottage, Chickney Road	(£51,366)	Education contribution FORWARDED TO ECC	14.08.24	To fund additional primary school places
<b>LITTLE CANFIELD</b>						
UTT/13/1779/FUL (03.10.13)	Knight Developments Ltd	Land at Northview and 3 The Warren	(£278,331.78)	Education contribution FORWARDED TO ECC	30.03.25	To fund additional local primary and secondary school places
UTT/14/0122/FUL (15.09.14)	Bush and Walker	Land at Ersamine, Dunmow Road	(£49,089.77)	Primary education contribution FORWARDED TO ECC	18.05.25	
<b>MANUDEN</b>						
UTT/0692/12/FUL (12.02.13)	West Whittle Properties Ltd and Manuden	Land at The Street	£26,864 <i>(Approx £1.74m has so far been</i>	Construction of Manuden Community and	N/A	Money held by the District Council to pay

	PC		<i>paid to the contractor</i>	Sports Centre		the contractor
<b>SAFFRON WALDEN</b>						
UTT/0790/03/REN (10.11.04)	Countryside and British and Foreign School Society	Land at Bell College	(£64,690)  £15,044	First commuted sum FORWARDED TO SWTC  Sports development funding	N/A  N/A	For maintenance of sports facilities transferred to SWTC
UTT/0400/09/OP UTT/0407/09/OP (24.07.12) and (19.11.12)	Baron Braybrooke and Persimmon	Little Walden Road and Ashdon Road	£98,366	Disabled adaptation contribution	30.10.23	To fund internal adaptation of houses, if required
UTT/0828/09/FUL (24.12.09)	Ashwell Homes	Bell Language School	(£5,679)	Provision and maintenance of open space FORWARDED TO SWTC	09.01.24	
UTT/0188/10/FUL (31.03.11)  UTT/2154/11/FUL (09.02.12)	Hill Residential and Friends School	Friends School	£1,198.80  £28,007	Air quality monitoring contribution  Affordable housing contribution	N/A  N/A	Contribution is spent flowing authorisation by the Cabinet
UTT/1252/12/OP (14.11.12)	LPA Group plc	Tudor Works, Debden Road	£100,000	Affordable housing contribution	N/A	Contribution is spent flowing authorisation by the Cabinet
UTT/12/5226/FUL	Churchill	Former Lodge	£395,000	Affordable	N/A	Contribution is

(17.12.12)	Retirement Living Ltd	Farm, Thaxted Rd / Radwinter Rd		housing contribution		spent flowing authorisation by the Cabinet
UTT/13/0669/FUL (21.06.13)	Ford Wells Construction Management Ltd	Goddards Yard, Thaxted Road	(£38,550)	Education contribution FORWARDED TO ECC	20.06.24	To fund additional local secondary school places
<b>STANSTED MOUNTFITCHET</b>						
UTT/1522/12/FUL (07.01.13)	Hilton Properties Ltd	2 Lower Street	(£22,819)	Primary school contribution FORWARDED TO ECC	31.03.25	
<b>TAKELEY</b>						
UTT/1335/12/FUL (23.09.13)	Countryside	Land at Brewers End	(£127,875)	Education contribution FORWARDED TO ECC	20.01.25	To fund additional local primary school places
<b>THAXTED</b>						
UTT/1562/11/OP ,(09.12.11)	Croudace	Land at Wedow Road	£53,090  (£10,618)	Flood works  Walnut Tree Meadow improvements	28.03.24  28.03.24	To fund local mitigation works  Funded landscaping and footpath improvements



## Scoping Report for Scrutiny Committee Review

<b>Review Topic</b>	Local Council Tax Support (LCTS) 2017/18			
<b>Scoping Report to go to meeting on</b>	15 March 2016			
<b>Review to take place at meeting on</b>	To be confirmed			
<b>Review format required at meeting</b> <i>(tick as appropriate)</i>	Written report (to be supplied at least five working days before the meeting)	TBC	Presentation	TBC
<b>Portfolio Holder</b>	Cllr Simon Howell			
<b>Lead Officer</b>	Adrian Webb			
<b>Stakeholders</b>	Uttlesford residents			

<b>Suggested Terms of Reference</b>	<ul style="list-style-type: none"> <li>• Explanation of what LCTS is and how it came into being</li> <li>• Timetable for the 2017/18 scheme approval</li> <li>• Comparison of the UDC scheme with others in Essex</li> <li>• Consultation process</li> </ul>
<b>Suggested Purpose and/or Objective of the Review</b>	To understand LCTS so as to enable Members to positively contribute to the options available for the 2017/18 scheme.
<b>Methodology/Approach</b>	Officers recommend a written report to May meeting covering the above points and a further report to July meeting with the proposed scheme for pre-Scrutiny prior to Cabinet.

<b>Attendees Required</b>	TBC



**Committee:** Scrutiny

**Agenda Item**

**Date:** 15 March 2016

**13**

**Title:** Scrutiny Committee 2015/16 Review

**Author:** Richard Auty, Assistant Director Corporate Services

Item for information

## Summary

1. This report provides a summary of the work undertaken by the Scrutiny Committee in 2015/16 and asks the committee to begin considering the 2016/17 work programme.

## Recommendations

2. None

## Financial Implications

3. None.

## Background Papers

4. None

## Impact

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

## Situation

5. Membership of the Scrutiny Committee has changed since the elections in May 2015, with only four of the pre-election committee returning to it for the 2015/16 Council year.
6. With more than half of the committee either new to Scrutiny or returning to the committee after some years away, officers arranged training to be held at the committee's first meeting in June 2015. The training was well-attended and well-received.
7. Subsequently, the committee established a work programme and has scrutinised several areas of Council work.
8. The main areas of the committee's work in 2015/16 were as follows:
  - Received the final report from the Planning Advisory Service on the council's Local Plan
  - Surveyed all members on topics potentially suitable for Scrutiny review and established a Task and Finish Group to evaluate those suggestions
  - Established a new standing item through which Cabinet Members can be invited to update the committee on particular topics
  - Considered the outcome of the Local Council Tax Support Scheme consultation
  - Considered the draft Air Quality Action Plan
  - Established a Task and Finish Group to review the Enforcement service
  - Scrutinised the draft 2016/17 Budget
  - Accepted a report concluding the Car Park review previously carried out by the Scrutiny Committee
9. The following topics have been agreed by the committee as being suitable areas of work and have been timetabled:
  - Building Control partnership
  - The 2017/18 Local Council Tax Support Scheme
  - Review of the Cabinet system
  - Quiet Lanes
  - The relationship between Essex County Council and Uttlesford District Council
10. The following topics were identified as potentially being suitable for review but have not yet been timetabled:
  - Affordable housing provision (the committee has agreed it should wait until the position on the Housing Act is clear)
  - Evaluation of controls in place regarding information provided by developers
  - Methods used to assess sustainability in planning applications

- Possibilities around enhancing the council's recycling and waste collection scheme
- The Council Tax arrears collection process
- Community engagement (the committee has agreed this should be put on hold until the Constitution Working Group has done its work on the subject)
- The North Essex Parking Partnership

11. Attached as Appendix A is a draft work programme for 2016/17 which currently only includes those agenda items officers know will need to be timetabled, such as the 2017/18 budget.

### **Risk analysis**

There are no risks associated with this report.



## Work Programme 2016/17

Date	03 May 2016	05 July 2016	06 September 2016	22 November 2016	17 January 2017	07 February 2017	11 April 2017
Standard agenda items	Consideration of any decisions called in	Consideration of any decisions called in	Consideration of any decisions called in	Consideration of any decisions called in	Consideration of any decisions called in	Consideration of any decisions called in	Consideration of any decisions called in
	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee
	Invited Reports from the Executive	Invited Reports from the Executive	Invited Reports from the Executive	Invited Reports from the Executive	Invited Reports from the Executive	Invited Reports from the Executive	Invited Reports from the Executive
	Cabinet Forward Plan	Cabinet Forward Plan	Cabinet Forward Plan	Cabinet Forward Plan	Cabinet Forward Plan	Cabinet Forward Plan	Cabinet Forward Plan
	Scrutiny Work Programme	Scrutiny Work Programme	Scrutiny Work Programme	Scrutiny Work Programme	Scrutiny Work Programme	Scrutiny Work Programme	Scrutiny Work Programme
Agenda items	<u>Enforcement Review:</u> Update from Task and Finish Group	<u>Review of Cabinet system</u> Report from CWG Chairman	<u>Review of Cabinet system - update</u>		<u>Budget process</u> – preparatory report and briefing	<u>Budget</u>	<u>2016/17 Scrutiny review and forward plan</u>
	<u>LCTS 2017/18</u> Report from officer	<u>Enforcement Review:</u> Final report					
	<u>Quiet Lanes</u> Scoping report	<u>Quiet Lanes</u> Update					
	<u>Relationship between UDC &amp; ECC:</u> Scoping report	<u>LCTS 2017/18 Scheme</u> Report					
	<u>Building Control Partnership</u> Report from officer						

