



## Agenda for Scrutiny Committee Thursday, 7th September, 2023, 6.00 pm

### Members of Scrutiny Committee

Councillors: J Bailey, I Barlow, A Bruce, F Caygill, M Chapman, B Collins, R Collins, M Goodman (Chair), A Hall, J Heath, J Kemp (Vice-Chair), D Mackinder, S Smith, A Toye and J Whibley

**Venue:** Council Chamber, Blackdown House, Honiton

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(or group number 01395 517546)

Wednesday, 30 August 2023

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- 1 Apologies
- 2 Minutes of the previous meeting held on 6 July 2023 and minutes of the meeting held on 2 March 2023 (Pages 3 - 14)
- 3 Declarations of interest  
Guidance is available online to Councillors and co-opted members on making [declarations of interest](#)
- 4 Public speaking  
Information on [public speaking](#) is available online
- 5 Matters of urgency  
Information on [matters of urgency](#) is available online
- 6 Confidential/exempt item(s)  
To agree any items to be dealt with after the public (including the press) have been excluded. There are no items which officers recommend should be dealt with in this way.
- 7 Decisions made by Cabinet called in by Members for scrutiny in accordance with the Overview and Scrutiny Procedure Rules  
There are no items identified
- 8 Section 106 and CIL Resources and Processes (Pages 15 - 30)

- 9 Update on the draft Scrutiny Protocol - Monitoring Officer
- 10 Update on progress with the quarterly performance report task force - Committee Chair
- 11 Forward Plan (Pages 31 - 37)
  1. Proposal form for car parking tariffs submitted by Cllr Mike Goodman.
  2. Proposal form for public toilet review submitted by Cllr Mike Goodman.

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**EAST DEVON DISTRICT COUNCIL****Minutes of the meeting of Scrutiny Committee held at Council Chamber, Blackdown House, Honiton on 6 July 2023****Attendance list at end of document**

The meeting started at 6.00 pm and ended at 7.36 pm

**1 Public speaking**

Jack Rowland asked a question in relation to the Service Plan reports showing a variation on delivery – specifically on:

- the objective to “Develop a mitigation strategy for phosphate levels arising from development affecting the River Axe”. The report showed the reason for the variation being due to the post of District Ecologist becoming vacant, but is soon to be filled. He asked when the post would be filled, and if the previous post holder had begun work on a mitigation strategy or if the new post holder would have to start from scratch. Bearing in mind the importance of such a strategy in relation to planning applications in the area, and impact on other authorities. The timescales for delivery were requested.
- the objective “Seaton Jurassic – conclude how best to deal with the building defect issues and alongside let/sell to ensure the site is continued to use in some form or another by March 2023”. The report showed comment that discussions progressing constructively with Seaton tramway as future operator. An opening prior to Easter 2024 is looking unlikely. Cabinet decision made September 2022 on a lease, can officers confirm if current negotiations are on track without divulging commercially sensitive information. Will the centre be open by the tourism season for 2024.

Written responses to the questions had been received from officers as follows:

River Axe phosphate levels:

The post of Ecologist, following resignation and departure of the previous post holder last year, was filled in mid-April 2023 and as part of his job the new ecologist is taking the lead on River Axe mitigation matters. The previous ecologist had left handover notes with the work that had been undertaken to date, including a review of potential mitigation options, and the new ecologist has been getting up to speed with the work previously undertaken and upskilling themselves in this complex and specialised area.

The Council are also looking to secure additional ecological staff support, specifically on account of the new demands and work requirements with Development Management associated with the implementation of mandatory Biodiversity Net Gain (BNG) required under the Environment Act 2021 from November 2023. Some of this work may overlap with the River Axe mitigation work, e.g., exploring options for nutrient mitigation and stacking these with BNG environmental credits to deliver best outcomes for the environment and land managers.

The Council has taken the role of lead authority in respect of collaborative working with partners in other planning authority areas (Dorset and Somerset) and is advancing work on strategic solutions to provide appropriate mitigation in respect of addressing net increases in phosphates arising from development and adversely impacting on the River Axe. It is relevant to note, as well, that developers can identify and deliver mitigations measures themselves that would allow for new development to come forward. It is understood that a number of schemes are being investigated by developers.

The Council are working with a wide range of stakeholders and partners including industry and farming interests to identify appropriate mitigation measures and much of the work is geared around identifying and implementing actual projects, as opposed to developing or having a strategy that is not necessarily and directly linked to projects and implementation. Milestones will arise as and when projects are identified but at this stage specific schemes that can be implemented on the ground, on specifically defined sites, are still to be properly and fully identified and progressed. The theory around what will work is understood, the bigger challenge is actually developing and implementing specific projects.

Mr Rowland had a supplementary question, which was, Somerset Council have an agreed phosphate systems, so would it be worthwhile examining this system to see how it may benefit this authority.

### Seaton Jurassic

A recommendation was made by Cabinet in October 2022 to progress heads of terms with Seaton Tramway. Negotiations continue and whilst the building has disappointingly remained closed for the summer 2023 season, both parties are committed to doing all they can to ensure a visitor attraction is open ready for Easter 2024 if the process can be agreed swiftly. A further report to Cabinet is planned for September with recommendations that will help to ensure that the project can be successfully concluded.

Mr Rowland did not have a supplementary question in response to the provided response, but looked forward to the report being before Cabinet in September.

He did have a further suggestion in relation to the Portfolio Holders' annual report and recommended they be given at least four weeks notice for preparation of the report, to take account of the time that the portfolio holder would need to prepare a comprehensive report alongside officers.

Questions arising from the officer responses included seeking clarification on monitoring the delivery of a mitigation strategy, in that any new strategy should go before the Overview Committee. The Chair advised that this issue would be left to the appropriate officer to deal with as required.

## **2 Minutes of the previous meeting**

The minutes of the previous meeting held on 9 March 2023 were agreed.

## **3 Declarations of interest**

Councillor V Johns; Other Registerable Interest: Director of OSM Community Larder that deals with Fairshare. Cllr Johns did not leave the meeting during this item.

Councillor B Collins: Other Registerable Interest: Company Director of Foodsave CIC which also deals with Fairshare. Cllr B Collins did not leave the meeting during this item.

## **4 Matters of urgency**

None.

## **5 Confidential/exempt item(s)**

None.

**6 Decisions made by Cabinet called in by Members for scrutiny in accordance with the Overview and Scrutiny Procedure Rules**

None.

**7 Quarterly performance report - quarter 4 2022 - 2023**

The Committee considered the quarterly monitoring report of the quarter January to March 2023, providing performance information and progress against the performance indicators and key objectives.

The report highlighted four indicators showing a status of concern:

- Number of households living in temporary accommodation
- Working days lost due to sickness absence
- Percentage of Stage 2 complaints responded to within stated timeframes
- Days taken to process new Housing Benefit claims and Days taken to process changes to Housing Benefit claims

Actions to mitigate those indicators were set out in the report.

The report also listed seven key service objectives showing a status of concern:

- Continue to collect and spend Community Infrastructure Levy monies to deliver the infrastructure needed to support new development
- Improve void turnaround times and review the Void Standards for properties being re-let as part of our Price Per Void contract and ensure that a suitable lettable standard is achieved for new tenants achieving “right first time”
- Review compliance procedures by an external body to drive continuous improvement
- To report on our delivery of high quality new and improved play areas, open spaces and sports pitches funded from development proposals
- Working with the neighbouring land owner to deliver a masterplan for the Hayne Lane site in Honiton December 2023
- Review of Taxi Policy to help seek to meet climate change targets, to reduce emissions and incorporating the national standards recommended by the Department of Transport
- Revising the Cemetery Regulations to ensure an updated and fit for purpose regime for burials by December 2022

Actions to mitigate those delays were set out in the report.

Discussion by the committee included:

- Lack of post holder to liaise between local councils and others to deploy s106 monies means that some money cannot be released, particularly with time sensitive linked funds, so concern that money will be lost; the issue of resourcing was still present and further enquiries will be made to try to establish what can be done to remedy the situation.
- Work signed off by contractors on housing stock where the work has not been completed. In relation to voids, clarification will be sought from the Housing service for the committee.
- Revising the cemetery regulations – are the team any nearer to completing this or is additional resource needed to get this achieved? Cllr Whibley, as Chair of Licensing, outlined the extensive increase in work for the Licensing team and the pressures for prioritising work. If there is any scope to add additional resource to the team, this would be welcomed.
- S106 money delays the delivery of parish play areas and this has been ongoing for some time and should be prioritised to avoid loss of funds. Parishes are getting frustrated and some recommendations should be made to Cabinet to either resource correctly or relax

the schemes to permit some schemes to proceed; The Chair suggested debate under their forward plan item to undertake some research into the situation before coming up with recommendations to Cabinet. A report was expected from Ed Freeman on this issue which would be taken into account.

- Manor Pavillion attendance figures and ticket sales clarification requested;
- Fly tipping incident increase clarification – was it a seasonal issue or just a general increase? In response, there had been changes to the way these are reported which may have generated the rise, but will be investigated to provide clarification to the committee; in response the Portfolio Holder commented that he kept a close eye for last eight years, overall there had been a downward trend, including Devon wide, so will look at the reporting mechanism to see how to correct to give a clear picture to the committee.

The Chair outlined how the report presented to the Committee would be reviewed, involving a small task force from the committee. Cllrs Whibley and Barlow volunteered to work with the Chair on this review.

## 8 **Forward Plan 2023 - 2024**

The Chair asked the committee to consider a manageable schedule of work for the them to undertake whilst maintaining some flexibility to handle any urgent matters that may come up during the year.

### **Waste and recycling contract**

Waste contract discussion had already taken place prior to the meeting, and the Portfolio Holder for Coast, Countryside and Environment was present to discuss how Scrutiny can get involved with this work. The Portfolio Holder outlined how current work on an extension to the current contract was progressing, with three months extension almost agreed. Aside from this, consideration was needed for the next contract term, including aspects such as the vehicle fleet in respect of how they are powered and kept powered; changes in how waste streams are changing; charges for waste by manufacturers; changes to collection timings.

The Portfolio Holder informed the committee that the Waste and Recycling Team are working on reviewing options for future service provision to take account of industry changes and the best routes to continue our excellent service from this authority, bearing in mind that the Council is the number one in the country. A briefing paper will go before the Strategic Management Team and Cabinet in the late summer/early autumn of this year, to instigate commissioning the replacement of our current contract. He welcomed cross party nominations, with interest and knowledge of the service, to get involved with this process, being mindful of the sensitivities of contractual information. The Scrutiny committee would be kept informed of progress.

The Chair responded, commenting that he would like to see Scrutiny members involved and view the Cabinet report as a critical friend before the decision is taken by Cabinet to extend the current contract. The committee would have the topic added to their forward plan for Spring 2024 or earlier as required.

### **Other issues**

Cllr Ingham suggested inclusion of a number of issues and outlined how the Scrutiny Committee should timetable such work, particularly on the Local Plan as it does not reflect the wants and needs of the local community using the current methodology. He also felt there were no significant changes visible to deal with climate change; the threat to local business for the increase in car park charges should be examined; and concern

on the contract for Housing repairs not delivering what tenants needed, and residents suffering as a result.

Debate from the committee on the topic of the Local Plan included arguments on the methodology, changes in central government advice, but the plan should not be stalled and it would only confuse the issue to examine it while it is already underway and legislation is still pending that may change it again.

The Chair outlined recent discussions with other Chairs on housing issues and work was underway to see how best to scrutinise that work, as that remit fell to the Housing Review Board as the scrutiny function for Housing. There may be a way forward working as a collective but he needed further discussion before coming back to the committee with a way forward.

The Chair commented that car park charges would be picked up after a report went to Cabinet in November.

Making access to S.106 monies easier for towns and parishes was discussed with some examples given of those difficulties in accessing the funds. Views could be sought from town and parish councils on their experiences to date. A balance on the outstanding amount will also be required.

The proposal from Mid Devon DC Scrutiny Committee regarding a joint review into the planning controls and regulatory requirements associated with the bio-energy industry within Devon, in particular anaerobic digesters, should be followed up. Links with neighbouring authorities on their scrutiny work should be developed.

Poverty working panel recently reported 60 families in temporary accommodation – should the authority be paying rent to private landlords when there is empty housing stock that could be used. Desire to move to a position of minimal to no temporary accommodation. The Chair will raise this with the Chair of HRB and the Portfolio Holder.

Progress in finding a site for travelling community was raised. In response, the Portfolio Holder suggested a meeting with Members to discuss this, but there is a report soon to be provided in confidence to Members on the issue.

Councillors discussed grass cutting and verges, alongside re-wilding.

The Portfolio Holder informed the committee:

- Of a pending Cabinet biodiversity paper;
- that review of planning policy, in particular relating to bird boxes and bee bricks, were an issue for strategic planning to review;
- Climate change on track for most of performance; awaiting DCC input to additional policies but he agreed the benefit of scrutinising delivery;
- September Cabinet paper on nature emergency, including “re-naturing” rather than “re-wilding”.

Committee members commented on complaints from the public in respect of visibility issues when grass verges were too long; and linking with Devon County Council on their policies for verges. The committee could consider the management plan for grass verges in Dorset; and check if East Devon have got cut and mulch machines which reduces amount of grass left on site and benefits the soil.

Flooding events recently; Devon County Council are reporting on this soon and the report should be considered by the Scrutiny Committee in order to consider working with resilience groups in the area to prepare for future flood events.

The Chair also had meetings planned to discuss public toilet provision but also wanted the scrutiny committee to review this.

In reviewing their work plan, the committee added:

- Making access to S.106 monies easier for towns and parishes, for the September meeting;
- Proposal from Mid Devon DC Scrutiny Committee regarding a joint review into the planning controls and regulatory requirements associated with the bio-energy industry within Devon, in particular anaerobic digesters
- South West Water report
- Review effectiveness of Blackdown House, in terms of fit for purpose for both employees and Members
- Budget scrutiny in line with the requirements prior to recommendation to Cabinet – November/December
- Climate change action plan progress - October
- Rewilding grass verges/grass cutting review – October
- Toilet provision
- Devon County Council's flood event report

The Monitoring Officer asked the committee about the adoption of a Scrutiny Protocol. This would set out what the purpose of the committee is, the four principles of scrutiny being included. It would also set out the process that would be followed in undertaking the scrutiny process, as well as lay out expectations. This would help inform both Members, officers and members of the public. The Monitoring Officer would bring forward a draft protocol for discussion at the September meeting.

The committee considered the draft Terms of Reference for annual reports by Portfolio Holders, with the intention for the annual report to be presented to Council once during a civic term. The terms of reference could also be included in the protocol.

## **RESOLVED**

1. that the forward plan for the Scrutiny Committee be updated; and
1. that the Terms of Reference be included in the draft Scrutiny Protocol to be presented to the Scrutiny Committee at their next meeting.

## **Attendance List**

### **Councillors present:**

J Bailey  
I Barlow  
M Chapman  
B Collins  
R Collins  
M Goodman (Chair)  
A Hall  
J Heath  
J Kemp (Vice-Chair)  
A Toye  
J Whibley



**Councillors also present (for some or all the meeting)**

B Ingham  
V Johns  
G Jung

**Officers in attendance:**

Jo Avery, Management Information Officer  
Andrew Hopkins, Communications Consultant  
Sarah Jenkins, Democratic Services Officer  
Melanie Wellman, Director of Governance & Licensing (Monitoring Officer)

**Committee apologies:**

S Smith

**Other Councillor apologies:**

M Hartnell  
S Richards  
P Arnott

Chair .....

Date: .....

## **EAST DEVON DISTRICT COUNCIL**

### **Minutes of the meeting of Scrutiny Committee held at Council Chamber, Blackdown House, Honiton on 2 March 2023**

#### **Attendance list at end of document**

The meeting started at 6.00 pm and ended at 8.04 pm

#### **100 Public speaking**

There were no members of the public registered to speak.

#### **101 Minutes of the previous meeting**

The minutes of the previous meeting held on 2 February 2023 were agreed and signed as a true record.

#### **102 Declarations of interest**

There were no declarations of interest.

#### **103 Matters of urgency**

There were no matters of urgency.

#### **104 Confidential/exempt item(s)**

There were no confidential / exempt items.

#### **105 Decisions made by Cabinet called in by Members for scrutiny in accordance with the Overview and Scrutiny Procedure Rules**

There were no decisions made by Cabinet called in by Members for scrutiny.

#### **106 Portfolio Holder Annual Report - Coast, Country and Environment**

Cllr Geoff Jung, Portfolio Holder for Coast, Country and Environment presented his report and thanked the Countryside Team for their Annual Review, which had been circulated to all Councillors. Questions and comments on the Portfolio Holder report included the following points:

- Issues with staffing were starting to improve following the recent pay review.
- A recent waste survey had shown that elderly households are most likely to recycle, with busy families the least likely. Food waste continues to be a big issue, although a Devon wide survey showed that EDDC has a higher rate of food waste collection than other authorities.
- It was noted that each service within the portfolio now has a workforce plan which includes succession planning.
- Recycling of waste in public areas is mixed due to improper use by members of the public, resulting in most waste going to the Exeter incinerator.
- There was discussion regarding types of flaps on recycling vehicles and it was noted that this is also a health and safety issue for operatives as well as a practical matter.

- The lower Otter Estuary project is now being seen in a positive light, despite initial opposition, and is viewed as a good example of collaborative working across various organisations.
- There was discussion regarding on-going concerns about beach pollution in Exmouth and continuing incidences of sewage discharges as a result of storm overflow. It was noted that South West Water sewage treatment plants are at capacity. SWW are trying to resolve issues at the Maer nature reserve which is managed by the Countryside team.
- It was noted that the fitting of meters to storm overflow pipes is likely to give rise to more pollution alerts as information will be in real time and will result in more beach closures.
- It was further noted that the new draft Local Plan included a new sewage treatment plant connected to the proposed new town, which could be viewed as preferable to additional housing in locations across the district with no new sewage treatment capacity.
- Regarding the energy from waste incinerator, it was noted that constant air sampling is undertaken and that the operation is both efficient and clean.
- Pest control in Council properties should be carried out immediately in order to avoid increasing problems.

The Director of Housing, Health and Environment advised the Committee that the Environmental Health team is aware of pollution incidents across the district and continues to hold South West Water to account. The service plan includes a more proactive approach to enforcement.

The Committee thanked Cllr Jung for his report and for attending the meeting.

## **RECOMMENDATIONS TO CABINET**

1. That the Council encourages South West Water to bring the new sewage treatment plants and other infrastructure improvements into operation as soon as possible for the benefit of residents and that the Council takes proactive action wherever possible to protect its residents from the effects of pollution.
2. That the Council works with other authorities in the south west and involves the relevant MPs in support of its dialogue with South West Water to achieve improvements.
3. That the Council, through its partners, ensures that food waste is reduced and recycled and that, if necessary, a campaign is introduced after the next election to educate and encourage residents.

The Committee agreed to request a report from MPs setting out their actions on requiring improvements from South West Water and that this be put on the Forward Plan for the new Committee following the election.

## **107 Expenditure on consultants and agency staff 2021 - 2022**

The Finance Manager and Deputy S.151 Officer presented the report on expenditure on consultants and agency staff 2021-22 and advised that the detail in the report had been generated from the Council's financial systems, with commentary provided by budget managers.

Cllr Kim Bloxham had submitted questions on the report prior to the meeting and a response had been circulated to all Councillors. Cllr Bloxham had further questions on the report and the Finance Manager agreed to provide a response following the meeting. Additional information regarding consultancy projects which had not been completed would be added to future reports.

It was suggested that a review of the value of engaging consultants as against direct employment or short term contracts in certain areas of work could be added to the Scrutiny Forward Plan.

Discussion and questions on the report included the following points:

- Consultants are recruited where specialist expertise for certain projects is required in the short term, rather than being a full time post.
- The Legal team requires high level advice from time to time and is also currently experiencing difficulty with recruitment.
- The external audit report includes the issue of value for money in this regard.

The Finance Manager agreed to provide a summary of previous reports to show year on year comparisons of costs.

### **RECOMMENDATION TO CABINET**

That where the Council has to employ consultants it always aims to achieve best value for money.

## 108 **Quarterly performance report - quarter 3**

The quarterly performance report was taken as read.

Concern was expressed with regard to the turnaround of void properties. The Director of Housing, Health and Environment advised that issues with void properties had arisen due to contractor capacity, more voids than usual, a backlog of repairs following the pandemic and the number of properties being returned to the Council in an appalling state. It was noted that the Housing Review Board is monitoring the situation closely and that the Housing service plan is focussed on this issue.

Questions and discussion on the quarterly performance report included the following:

- With regard to housing benefit claims, it was noted that the team has a significant workload due to the delivery of various Government schemes and emergency help which is on-going, often with complex cases.
- There is a need for a good stock of emergency accommodation.

The Director of Housing, Health and Environment advised that the need for temporary accommodation has increased dramatically in recent years and that the Council's own stock is sometimes used for temporary housing as well as private lets using rent deposits, and property acquisitions to increase the housing stock. The Housing Task Force is working to bring forward schemes to boost the supply of affordable housing.

The Housing Review Board can bring in additional contractors to help when required. More frequent inspections of properties and pre-termination visits can be effective with regard to improving the state of void properties.

The Committee noted that Councillors should be encouraged to participate with officers in estate inspections in their wards as these prove to be very useful.

It was also noted that the Portfolio Holder Sustainable Homes and Communities is proactively involved with the various strategies to engage Council tenants on their

estates. There is a planned programme of estate walk-about covering all areas of the district.

### **RECOMMENDATIONS TO HOUSING REVIEW BOARD**

1. That the Council continues to encourage tenants to return properties in a good state of repair and condition.
2. That improved monitoring of void properties is undertaken when they are due to be returned to the Council for re-letting.
3. That Councillors be encouraged to accompany officers on property and estate inspections in their wards.

## 109 **Forward Plan**

Discussion on the Forward Plan included the following points:

- The new County wide Tree Policy will include many of the points raised in the recommendations made previously by the Scrutiny Tree TaFF. The Tree Policy, developed with various partner agencies, is due to be presented to the Strategic Planning Committee in June and will include a mix of protective measures and increasing the County's tree stock.
- The report of the Scrutiny Tree TaFF from 2015 would be circulated following the meeting.

Following discussion, it was agreed to remove the review of recommendations of the Tree TaFF from the Forward Plan.

The following changes to the Forward Plan were also agreed:

- To leave the proposal from Mid Devon District Council for a joint review into planning controls and regulatory requirements associated with the bio-energy industry within Devon to the next Council year following the elections.
- To add the review of the value of consultants against direct employment or short term contracts in certain areas of work to the Forward Plan.
- To delete the consideration of the use and provision of all forms of renewable energy across the whole district from the Forward Plan.

With the above amendments, the Forward Plan was agreed.

### **Attendance List**

#### **Councillors present:**

A Bruce  
M Chapman  
O Davey (Vice-Chair)  
B De Saram (Chair)  
D Key  
H Parr  
B Taylor

#### **Councillors also present (for some or all the meeting)**

P Arnott  
K Bloxham  
G Jung

M Rixson  
J Rowland  
T Wright

**Officers in attendance:**

John Golding, Director of Housing, Health and Environment  
Sarah Jenkins, Democratic Services Officer  
John Symes, Finance Manager  
Anita Williams, Interim Director of Governance and Licensing and Monitoring Officer

**Councillor apologies:**

J Bailey  
S Hawkins  
E Rylance  
J Whibley  
T Woodward

Chair .....

Date: .....



Report to: Scrutiny Committee

Date of Meeting 7 September 2023

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

## Section 106 and CIL Resources and Processes

### Report summary:

The report highlights a number of issues in relation to the Council's work in administering planning obligations such as Community Infrastructure Levy (CIL) and Section 106 agreements. Some of these issues were highlighted in an audit in 2020 and while the actions recommended by the audit were completed due to various staffing issues there is a significant backlog again. The report proposes measures to address this including a new staffing structure within the planning team that would be funded by a revised S106 Monitoring fees charging schedule as well as changes to the process for the spend of Section 106 monies to try and reduce the administrative burden on the council.

### Is the proposed decision in accordance with:

Budget Yes  No

Policy Framework Yes  No

### Recommendation:

That Members:

1. Recommend that Cabinet support the proposed revised S106 Monitoring Fees charging schedule appended to this report and recommend to Council that these charges be applied with effect to Section 106 agreements associated with planning applications received once the new charges have been published on the Council's website.
2. Recommend to Cabinet and to Council that the proposed Planning Obligations Team incorporating the existing CIL and Section 106 Officer posts and the proposed new Planning Obligations Manager and Planning Obligations Support Officer posts be created with the new posts to be funded from S106 Monitoring Fees and CIL admin funds.
3. Recommend to Cabinet that the current spend process for S106 receipts for spend in the community on play areas, open space and other community spaces be amended as per option 2 as detailed in the report and delegated authority be given to the Assistant Director – Planning Strategy and Development Management to issue best practice guidance on the Council's website on how town and parish councils should engage their communities on spend decisions.
4. Agree that Scrutiny Committee receive an update report in late Summer 2024 to advise of progress in forming the new Planning Obligations Team and their progress in addressing the issues highlighted in this report.

## Reason for recommendation:

To ensure Members are informed of the current position with regard to S106 and CIL processes and that additional resources are found to enable this work and that this be funded through S106 Monitoring Fees and CIL admin monies.

Officer: Ed Freeman – Assistant Director – Strategic Planning and Development Management

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Portfolio(s) (check which apply):

- Climate Action and Emergencies
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Culture, Tourism, Leisure and Sport
- Democracy and Transparency
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk;

**Links to background information** Audit and Governance Committee Report 28<sup>th</sup> Jan 2021 - [S106CILAuditandGovernanceReport.pdf \(eastdevon.gov.uk\)](#); SWAP Audit Report - [S106CILFinalInternalAuditReport.pdf \(eastdevon.gov.uk\)](#); Audit and Governance Committee Report 23<sup>rd</sup> September 2021- [Section 106 and CIL Update.pdf \(eastdevon.gov.uk\)](#)

**Link to [Council Plan](#):**

Priorities (check which apply)

- Outstanding Place and Environment
- Outstanding Homes and Communities
- Outstanding Economic Growth, Productivity, and Prosperity
- Outstanding Council and Council Services

## **Background**

In December 2020 SWAP completed an audit into the S106 and CIL planning contributions system. The objective of the audit was to ensure that appropriate arrangements are in place to manage the receipt and expenditure of S106 and CIL contributions. The audit noted that a number of weaknesses were already known to the service at point of testing, such as the Exacom system not being up to date and work was ongoing at the time of the audit to ensure that the system was brought up to date before the end of the 2020/21 financial year.

The audit gave a rating of “limited assurance” and a number of actions to address the findings were agreed. These actions were all completed as noted in the SWAP follow up audit in the 21/22 audit work. The key findings and proposed actions of the audit are set out below with a comment on the current position with regard to the issues raised.



## **Findings, Actions and Progress**

**Finding 1: The audit identified a large number of outstanding actions on the Exacom system.**

Action: It was agreed that we would review resources and look to appoint a temporary member of staff to assist with the backlog of actions by April 2021.

*A review of resources was carried out and it was concluded that additional temporary staff were needed to help to get the system up to date and that this could be funded through money held in the S106/CIL admin and monitoring fees held by the Council. Two additional members of staff were in place for much of 2021 and into 2022 and over half of the outstanding actions were resolved including the most pressing ones. The temporary staff were not replaced when their contracts ended as it was felt that having substantially reduced the number of outstanding actions to a more manageable number the S106 Monitoring Officer would be able to manage the remaining tasks.*

*Finding suitable officers to undertake this work is also very challenging in the current employment market. Unfortunately progress with reducing the number of outstanding tasks since that time has been slow and there remain around 600 outstanding tasks. There were 1249 noted in the audit of 2021.*

*Unfortunately the S106 Monitoring Officer left the Council in October 2022. We have a temporary monitoring officer in post who continues to work through the outstanding tasks list.*

Action: It was also agreed that the Planning Obligations Officer would provide a quarterly report on the status of the outstanding actions from Jan 2021.

*Managers have access to the system and can generate the report themselves to check on progress and act upon the information.*

**Finding 2: Not all demands are raised on a timely basis and the recovery processes are ineffective.**

Action: It was agreed that we would start to utilise Exacom to track the recovery process including using further notices and date tracking by June 2021.

*A new invoicing and recovery process was produced following the audit which clearly documents the relevant stages and actions needed using the Exacom system. This process has been in place since then and work is ongoing to work through the outstanding invoices and overdue payments.*

*This work faltered following the departure of the Development Manager (August 2022) and S106 Monitoring Officer (October 2022), however meetings with Revenues and Benefits Officers who are working on the debt recovery side of this work are recommencing with the temporary S106 Monitoring Officer and the Assistant Director.*

**Finding 3: Participatory Budgeting Guide is out of date and not easily located.**

It was agreed that we would review and update the Participatory Budgeting Guide, to include recommending that Parish and Town Councils should take minutes of the steering/working groups and publish them on their website. This to be done by the end of Jan 2021.

*The participatory budgeting guide was updated and the recommended amendments incorporated into the new guide which was published in January 2021. The guide is available at: [Participatory Budgeting - East Devon](#)*

*The guide remains in place, however resourcing issues mean that it has not been possible to provide support to town and parish councils seeking to pursue spend on projects in recent months. The departure of the Section 106 Monitoring Officer initially led to some delay but with a temporary officer now in place and up to speed it is considered that it is the long term absence of relevant officers in the communications and engineers teams that is causing most delay. Options for addressing this situation have recently been discussed by the Senior Management Team and a report will be prepared setting out the options and seeking Members views on how this is to be resolved.*

#### Finding 4: Parish and Town Councils are not advised on how much S106 has been collected.

It was agreed that we would ensure that the Public Facing Exacom is made available as soon as we have been given assurance that Exacom is complete and accurate. This to be done by the end of March 2021.

*The public facing module for Exacom has been live on our website since July 2021. The system can be found at: [East Devon PFM - Home \(exacom.co.uk\)](#).*

*It is understood that the data as presented does unfortunately cause some confusion and leads to requests for clarification from officers. The data includes that for habitats mitigation and the non-neighbourhood proportion of CIL which the town and parish councils are not able to spend as these come to the district council and either go to delivery of the joint habitats mitigation strategy or into the central CIL pot for spend on strategic infrastructure. This is something that needs to be reviewed with the software provider to try and remove these fields and simplify the data so that this can be relied on by the town and parish councils and other interested parties.*

## **Current Issues**

### Outstanding Tasks on Exacom

Although a lot of tasks on Exacom were cleared by the temporary staff referred to above these tasks did not close off the issue. In many cases the task was to serve a notice of payment on a developer where a trigger point in a section 106 agreement had been reached. As a result a notice of payment was served but in many cases payment was never actually received and this has not been followed up. As a result there are around 150 cases where a notice of payment has been issued and monies remain outstanding. In some cases these are small amounts of a few pounds where partial payment has been made but some interest or indexation has not been included. In these cases it may not be expedient to pursue the outstanding funds. In other cases the amounts are many thousands of pounds and urgent action is required to chase up and recover these funds where it is still possible to do so.

The task list on Exacom also includes a number of cases where trigger points appear to have been reached but a notice of payment has not been issued – these being among the remaining

outstanding tasks from the time of the SWAP audit that has never been completed. These will further add to the outstanding funds that need to be recovered.

### Staff Resources

The Section 106 Monitoring Officer post is currently the only post dedicated to the monitoring of Section 106 agreements and ensuring that obligations are complied with. Over the years the post had various temporary staff to support in this role notably during the implementation of the Exacom system and following the SWAP audit referred to above.

The previous post holder left the authority in November 2022 shortly after her line manager had departed in August 2022. This left a significant gap in knowledge and understanding of the S106 system while even before this we were struggling to address a growing backlog in S106 work. The hard work of our interim Section 106 Monitoring Officer has highlighted that a significant increase in resource in this area is required to not just keep on top of new work but to address the backlog.

It has become clear that not only is some form of permanent Section 106 Monitoring Officer required but that further permanent resources are needed to oversee this work not least a dedicated manager who can fully understand and oversee this distinct area of work. The work often involves the handling of significant financial payments and the recovery of financial debts which are not areas of work that the management team within Development Management are usually involved with or have particular knowledge or skills in.

Linked to the Section 106 work is a related capacity issue in relation to the collection of Community Infrastructure Levy (CIL) we have an excellent CIL Officer who is successfully calculating the liabilities due from developments and issuing liability notices to the liable parties. This work also involves handling applications for exemptions such as in relation to affordable housing and self and custom build developments. There is however a lack of resource currently to monitor compliance with exemptions, phased payments and other areas of work to ensure that we are maximising income from CIL.

Section 106 and CIL are in themselves a separate area of planning work that most professional planners have little involvement with and yet require a great deal of knowledge of the complex legislation and regulations that control these areas of work. Management of this area by the Development Manager, Assistant Development Manager or a Principal Planning Officer has shown that they are unable to provide the time and support needed for this area of work alongside their more traditional planning work.

It should also be noted that the government through the Levelling Up and Regeneration Bill are proposing to replace CIL with a new Infrastructure Levy which would also significantly change the role of Section 106 agreements. The new levy seeks to capture more value through the process by applying charges based on the value of a property at the time of first occupation. This is likely to however generate a lot of administrative work in valuing the proposed development potentially at 3 different times during the process. A recent government consultation proposed valuing the development at application stage, determination stage and then again at occupation stage. This was to give the developer certainty and to enable the LPA to charge the rate at determination stage so that money was paid upfront and only secure any further uplift at occupation stage. This multi-stage process could significantly increase the resources needed to administer it which could be far in excess of those currently required for CIL. Substantial resources would also be needed to set up any new system and the relevant processes.

It is considered that it would now be appropriate to take the existing CIL and S106 Monitoring Officer posts and form a Planning Obligations Team supported by an additional support officer post, an extra CIL Officer and with a dedicated Planning Obligations Manager. A potential structure could look like the following:



It is considered that this structure would provide the additional capacity to address the current issues with the retention of the existing interim Monitoring Officer for a number of months to ensure a smooth transition to the new recruits and provide additional capacity to address the backlog. The new structure would then be sufficient to ensure that the proper monitoring of Section 106 and CIL continues into the future.

Monitoring and Admin Fees

Clearly the additional staff resources referred to above would come at a not insignificant cost. The legislation does allow us to secure Monitoring Fees to help recover the cost of monitoring compliance with Section 106 agreements. These can be imposed on all agreements but should be proportionate to the obligations included in the agreement and the costs of monitoring them. Historically we have only been securing monitoring fees on the most major of developments where there are a significant number of complex clauses in need of monitoring. It is considered that this approach should be reviewed and we should look to maximise the monitoring fees being imposed and minimise the costs to the council. A review of these charges is included at Appendix 1 of this report which concludes with the proposed charges:

Scale of development	Charge per financial obligation	Charge per non-financial obligation
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Major developments (>10 dwellings)	£476	£1,058
Minor developments (<10 dwellings)	£476	£476

There is also at least £10k in uncollected Monitoring Fees under the current charges which if secured could help to fund additional staff resources.

In terms of CIL it is possible to spend upto 20% of CIL receipts on the administration of CIL. The CIL administration monies already held equal £320k with a further £200k estimated to be collected in CIL admin monies in the current financial year. There is also a future potential CIL admin income of £500k if developments granted are implemented.

In conclusion on this issue it is anticipated that between the CIL admin monies and the S106 Monitoring Fees there should be sufficient funding available to fund the additional posts referred to above. This would however be reliant on income in monitoring fees and CIL admin continuing into the future which is not guaranteed and so there is an element of risk associated with creating new posts funded from these sources.

### The Spend Process

We have a long established spend process for S106 monies which is based on a participatory budgeting framework whereby when there are sufficient funds available to deliver projects in a given area the town or parish council should instigate a public consultation on potential projects in their area. Essentially the projects that have community support should then be funded and delivered. There is then often further community engagement over the detailed design of play and sports facilities to ensure that they are what the community want. Details of the spend process can be found at: [Guide for town and parish councils - East Devon](#)

As far as we are aware we are the only Local Planning Authority that does this. Many simply spend the monies themselves on delivering whatever facilities they see fit on their own land as part of the capital programme. While some may see this as desirable it is difficult to roll back from the current position which has many benefits in terms of delivering projects that the community want and care about and it has important synergies with neighbourhood planning.

In recent years with the development of neighbourhood plans we have encouraged communities to identify projects in their neighbourhood plan which is itself consulted on and indeed is subject to a community referendum. Where this is the case monies can be committed to the identified projects in the neighbourhood plan without the need for further consultation. There are however a significant number of communities that do not have a neighbourhood plan and are not progressing one or have done so without addressing this issue. Hence there is still a lot of work to be done in support of the participatory budgeting process.

It should be noted that with the implementation of the Community Infrastructure Levy (CIL) off site infrastructure is now delivered through CIL payments a proportion of which goes to the town and parish councils to spend as they see fit. We have no real say over how they spend this money or how they engage with their community to decide on spend. Similarly this means that S106 receipts for off-site spend are no longer being collected, however we do still get involved in the consultation

with communities on on-site open space, sport and play areas and this is written into Section 106 agreements.

Although we do not have to be so involved in terms of consultation it is essential that we ensure that the monies are spent for the purposes for which they were received.

### **Capacity Issues**

The spend process has always been quite labour intensive largely using resources from the planning team, namely the Section 106 officer and the Engagement and Funding Officer from the communications team. Resources are often drawn from the engineer's team in street scene as well. Projects often involve council land and even when they don't play and sports equipment have to be designed to meet health and safety standards, drainage requirements etc.

In recent years it has been a struggle for the various officers to support the demand from town and parish councils to undertake consultation and design projects for the spend of S106 monies. Over the last year the situation has been exacerbated with the departure of the Section 106 Officer in Planning and long term sickness of the relevant officers in the Communications and Engineers teams. As a result projects have not progressed for more than 6 months and the town and parish councils are getting increasingly frustrated with us. This has put a lot of pressure on the planning team not least the temporary Section 106 officer. Escalating costs at the moment only make the delays even more frustrating for the town and parish councils and in some cases is putting projects at risk as there may no longer be sufficient funding available to deliver it.

Linked to this is the fact that some of the monies are time limited and should technically be returned if not spent within 5 or 10 years of receipt. On more recent agreements this has been changed so that the time limit relates to the allocation of a project but even identifying and allocating monies is impossible with current resourcing and the required process. There is therefore a significant risk of the council needing to hand back monies received to help deliver important infrastructure in our communities which the evidence suggests is needed to support developments that have either been built or are in the process of being built.

There is therefore an urgent need to take action to address these issues and ensure that Section 106 monies can be spent.

### **Options**

#### **1. Bring in further resource – Recruit more staff or bring in consultants**

Although we have a temporary Section 106 officer who is able to answer queries from the town and parish councils, undertake monitoring, invoicing developers etc. she is not able to progress the delivery of projects without support from the communications and engineers teams. It is understood that resources are not currently available in these areas because of long term sickness. One option is therefore to recruit additional resource in these areas to assist.

The additional posts within planning referred to earlier in this report could provide some of the support needed but it is considered even then that a lighter touch approach would be required.

## 2. Amend the spend process – An alternative option would be to amend the spend process so that it is less onerous on EDDC.

We could empower our town and parish councils by saying that we will no longer dictate the level of consultation and engagement that they need to undertake and simply leave them to assure themselves that the projects that they put forward to us reflect the wishes of their community. We could do this by issuing guidance and a consultation statement to be submitted with any proposed project to us or we could simply leave them to it. This could remove the need for the communications team to be involved in the spend process and could be supported by the proposed Planning Obligations Team. As long as the monies are available and the project meets the purpose to which the monies were paid to us then they could be signed off by SMT+.

In terms of Engineers support SMT+ have recently agreed that up to 15% of funding for any project can be used on project management so potentially town and parish councils could use this to bring in design and engineering advice themselves. This would limit the monies available for spend on delivery of the project but would reduce the burden on Engineers. It would not remove it entirely however as they would still need to be involved to some extent where projects are on our land, however if a list of recommended engineers were provided to them and clear guidance issued the burden of this work on the engineers could potentially be reduced.

Similarly moving forward we could require developers to engage directly with town and parish councils on the delivery of play, sport and open space areas on their own land rather than coming through us and us overseeing the whole process. We would need to continue with legacy agreements but depending on the wording of specific agreements a lighter touch approach could be taken.

With some work it is considered that a lighter touch approach that empowers the town and parish councils could work and may even be welcomed by the town and parish councils given their current frustrations. Given that they get to spend CIL monies however they see fit it would also address a current contradiction where we are applying a level of control over the spend of Section 106 monies which doesn't apply to CIL.

## 3. Leave things as they are – Wait until the officers that are on long term sick return

This option carries significant risks of further frustration on the part of the town and parish council, monies needing to be returned and/or underwritten by EDDC and ultimately required infrastructure not being delivered.

## **Conclusion**

Action is needed to address this issue. The participatory budgeting process has ensured that we have been instrumental in delivering high quality play, sports and open space facilities that are valued by the community and popular and so it seems a shame to move away from this approach and lose the good news stories that this generates but the system has ground to a halt.

Realistically option 2 seems like the best option at least on a trial basis since the current process creates a lot of work that we simply do not have to do.

## **Future work**

It is understood that the Chair has met with a number of town and parish councils in recent weeks to discuss S106 and CIL issues. Out of these positive and helpful discussions have come a

number of issues which will need to be addressed once the additional staff resources are in place and up to speed. These include:

- Training for town and parish clerks on how CIL and S106 monies are collected, distributed and the responsibilities of town and parish councils.
- A clear plan for the spend of S106 monies held and timelines for spending the monies so that all parties are clear on priorities and when support will be available.
- Greater support and guidance to town and parish councils on the spend of the neighbourhood proportion of CIL and how they can work together with EDDC, DCC and other infrastructure providers to get best value for money when making spend decisions.
- Investigate improvements to the dashboard and training to help town and parish council's understand the monies that are held and what they can be used for.
- Clear points of contact for CIL and S106 so that town and parish councils know who to contact.
- Investigate opportunities for more proactive engagement with town and parish councils to identify projects through neighbourhood planning and other routes so that they are known in advance.

These issues will need to form part of a work programme for the new team once established. Unfortunately this will take time while the posts are recruited to and the new staff get up to speed. It is therefore likely to be early next spring before significant progress can be made on these issues.

In order to keep Members advised of progress with the establishment of the team and addressing all of the issues highlighted in this report it is proposed that an update report be brought to Scrutiny Committee late Summer 2024 to advise on progress with these matters.

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### **Financial implications:**

The financial implications and the currently available administration funds are contained within the body of the report.

### **Legal implications:**

There are no legal implications requiring comment.

### **Appendix 1:**

## **Section 106 Monitoring Fees Review**

### **Background**

The governments Planning Practice Guidance is clear that charges can be imposed to recover the reasonable costs to the authority of monitoring and reporting on planning obligations – see paragraph 36 below:

#### **“How can local authorities fund reporting on planning obligations?”**

Authorities, including county councils, should work together to ensure that resources are available to support the monitoring and reporting of planning obligations.

Authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 obligation. Monitoring fees can be used



to monitor and report on any type of planning obligation, for the lifetime of that obligation. Monitoring fees should not be sought retrospectively for historic agreements.

Fees could be a fixed percentage of the total value of the section 106 agreement or individual obligation; or could be a fixed monetary amount per agreement obligation (for example, for in-kind contributions). Authorities may decide to set fees using other methods. However, in all cases, monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. Authorities could consider setting a cap to ensure that any fees are not excessive.

Authorities must report on monitoring fees in their infrastructure funding statements (see [paragraph \(2\)\(h\)\(iii\) of Schedule 2](#)).

Paragraph: 036 Reference ID: 23b-036-20190901

Revision date: 01 09 2019”

The Council has been charging monitoring fees particularly on large scale major developments when there may be a series of trigger points for planning obligations whether that be a financial contribution or delivery of a piece of infrastructure on the site. In some cases a trigger point may be for the submission of further information only. In either case trigger points are usually based on a number of homes occupied or completed and this can require checking against Council records for council tax or building regulations completions. Checking compliance can involve checking records of payments received and issuing invoices or reminders or in other cases checking on site whether a play area, footpath, open space or other piece of infrastructure has been delivered and if not taking appropriate action. This can be a significant piece of work requiring officer time and other council resources and the cost of doing this should be borne by the developer without whose development the need for monitoring would not exist.

The Council's adopted SPD on Planning obligations available at: [final-version-for-adoption.pdf \(eastdevon.gov.uk\)](#) sets out the types of planning obligations that we often require from developments and also says that we will impose monitoring fees in the circumstances and as set out below:

Planning obligation monitoring and administration support contributions	This would depend upon the scale and nature of the development. Such as where a very large development is proposed to be delivered in several phases with a wide suite of planning obligations which would place an added burden on the local planning authority requiring additional resources to cover the administration and monitoring of the site above that already provided.	Before development commences
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In reality we have not imposed monitoring fees in many cases but it is clear that in the case of significant major developments where there is a number of obligations which require monitoring and have significant resource implications then we have done so.

### **Proposed changes to the framework for charges**

It is considered that there is no reason why we should not be charging monitoring fees on virtually all section 106 agreements as long as they are proportionate to the obligations to be monitored and are simply recovering the costs associated with monitoring those obligations. The wording of the first sentence within the DPD referred to in the box above makes this clear, however the example that follows implies that only very large developments will be charged. Changing the wording in the SPD is not straight forward as this requires a wider review and consultation on a

new version. However it is considered appropriate to provide further guidance on the website within the Section 106 pages to make it clear that Monitoring Fees will be imposed in all cases albeit they will be in proportion with the scale and nature of the development and the obligations to be monitored. It is considered that this change would give us a strong basis to request monitoring fees for many more Section 106 agreements and ensure that wherever possible the cost of monitoring compliance with obligations can be recovered.

### **Calculating an appropriate Monitoring Fee**

Back in 2012 Members agreed a fee structure for monitoring fees. The agreed rates were:

#### **Financial Monitoring**

- £44.60 (hourly rate including overheads) with 7 hour average officer time handling the contribution - £312.20 per financial contribution

#### **Physical Monitoring**

- Based on an hourly rate of £44.60 including overheads
- Checking triggers – assuming commencement/completion are checked 10 times a year = £446.00
- A minimum monitoring period of one year should be applied. If it can be shown that monitoring will be for a greater defined period the charge would be increased proportionally
- For those obligations which need monitoring indefinitely a minimum 10 years should be incorporated into the equation with a quarterly monitor only i.e. 1 clause to be monitored indefinitely would incur a charge of £44.60 x 4 (quarterly visits) x 10 (years) = £1784.00.

Below are some examples taken from the report showing how these are applied in practice:

Clause	Topic	Summary	Monitoring Cost
1	Notification /Commencement	The developers duty to notify	£0 costs of monitoring this via subsequent clauses.
2	Highway Works	Commencement, occupation triggers. Specific Highway Works	Based upon 2 year physical monitoring £892.00
3	Travel Plan	Compliance following occupation	Indefinite monitoring so cost based on quarterly visits over a 10 year period £1784.00

4	Footpath Link	Commencement trigger	Based upon 1 year physical monitoring £446.00
5	Landscape Management Plan	Prior to commencement triggers and completion triggers relating to relevant landscaping	Based upon 3 year quarterly physical monitoring £535.20
6	Sustainability Strategy	Prior to occupation triggers relation to BREEAM accreditation and ongoing responsibilities	Indefinite monitoring so cost based on quarterly visits over a 10 year period £1784.00
7	HGV Route Plan and CEMP	Commencement triggers linked to the site route	Based upon 2 year physical monitoring £892.00
8	Maintenance Regime	Ongoing compliance with maintenance regime	Indefinite monitoring so cost based on quarterly visits over a 10 year period £1784.00

Clearly these charges are now over 10 years old and out of date. It is also considered that the charging schedule is overly complicated and not very transparent. It can take a significant resource simply to calculate the fee and it is questioned as to whether this is a sensible use of resource for the difference it makes in terms of the amount being charged compared with a more simple charging schedule.

An investigation of other authorities and how they charge for the monitoring of Section 106 agreements reveals that there are a variety of approaches from very simple flat rate costs per obligation through to complex calculations based on hourly rates for different types of obligations and scales of development.

The following options have been identified:

Option	Approach	Comments
1	Set fee for each obligation	This is a clear approach, easy for all to calculate. However it would be based upon an average time spent, and does not take account of more complex Section 106's with a number of trigger points which

		will take longer to monitor than a more simple S106.
2	Bespoke fee for each obligation	Separating each obligation with a separate fee can become more complicated to calculate and time consuming. Also it is not always possible to identify every different type of obligation, as some can be bespoke to the development. This could provide a more accurate cost for each obligation; however it doesn't take into account the greater time spent on more complex Section 106 agreements applying to larger developments.
3	Standard fee per agreement with the fee increasing in increments for more complex development/applications.	This is a clear approach which will be easy to calculate and also takes into account that the larger the development the more complex the Section 106 becomes and amount of time spent monitoring it increases.
4	A fee per agreement multiplied by the number of obligations/trigger points	This uses the assumption that the more triggers there are, the more complex the Section 106 agreement is. This can often be the case, but not always. Also this could be quite time consuming to calculate and will need a final draft of Section 106 agreement to give an accurate figure, this could result in time delays and more resources needed to calculate the monitoring fee.

On balance it is considered that a simple, easy to understand, clear and transparent approach is favoured and a tailored approach where a fee is calculated based on an hourly rate in each case is not favoured. It is however important that any charges reflect as closely as possible the actual cost of monitoring the agreement and so a simple flat rate that does not reflect the complexity of the case is not favoured either. It is therefore considered that option 3 is the best option with a scale of charges by scale of development calculated based on an hourly rate for the staff and other resources required.

**How much to charge?**

As highlighted at the start of this report it is important that charges reflect the actual cost of undertaking the work involved as we can only seek to cover our reasonable costs and may be challenged if the charges are seen to be unreasonable. Previously resources involved in the monitoring of section 106 agreements has simply been the Section 106 Monitoring Officer with time of the Assistant Development Manager and Development Manager also included appropriately as this was the structure at the time the current charges were calculated. It is proposed as part of this review to introduce a new structure that puts additional resource into this important area of work. This is to ensure that we can better ensure that obligations are met and support the spend of monies to deliver infrastructure in a more timely way.

With this in mind the following structure of a newly formed “Planning Obligations Team” within Development Management is envisaged.



Essentially a new Planning Obligations Team Leader post would be created whose responsibility it would be to oversee and manage the CIL collection and spend process and Section 106 work. It is envisaged that the post holder would have the capacity to not simply manage the staff and processes but also to get involved in dealing with CIL appeals and considering requests for exemptions to CIL but also to help with supporting communities with the spend of S106 receipts and the CIL neighbourhood proportions. This would free up the existing (but currently vacant) S106 Monitoring Officer to focus on the monitoring of compliance with S106 obligations both in terms of financial contributions and on-site delivery. The Planning Obligations Support Officer would be a further new post who would be able to support both the S106 Monitoring Officer and CIL Officer with more straight forward tasks around data collection and organisation, general customer enquiries etc.

Based on this structure it is considered that a new hourly rate of £68 per hour should form the basis of a new Monitoring Fees Charging Schedule. This rate is based on the whole time of the Section 106 Monitoring Officer and a proportion of the time of the Team Leader and Support Officer that would be dedicated to this work. The remaining cost of these posts would be covered from the CIL administration monies which make up 5% of all CIL receipts received. This is considered to be a relatively modest increase in the charges given the current charges and the fact that 10 years has elapsed since they were reviewed but it reflects the fact that less time of the Development Manager and Assistant Development Manager would be involved with this work with these being more expensive roles to be involved. The benefit of this approach however is to allow the work to be done at the appropriate level and for a team leader to specialise in planning obligations work rather than a qualified planner be involved in issues which do not necessarily require their expertise on a day to day basis. The new team leader role would also give greater management oversight of this area of work.

Based on these hourly rates and carrying forward the previous approach that around 7 hours work is involved on average for the monitoring of a financial obligation and around 16 hours for a non-financial obligation; bearing in mind this could involve site inspections, liason with town and parish councils etc; it is considered that a suitable charging schedule would be as follows:

Scale of development	Charge per financial obligation	Charge per non-financial obligation
Major developments (>10 dwellings)	£476	£1,058
Minor developments (<10 dwellings)	£476	£476

The charging rate for non-financial obligations on minor developments is deliberately lower as these smaller scale developments are not usually required to deliver infrastructure on site and so such obligations are likely to be less onerous to monitor than those on larger sites where delivery is more likely to be on site. It is acknowledged that in some cases these charges may be too low or too high for the scheme in question but they reflect an average cost and so overall they should reflect a fair and justified charge based on the costs incurred.

<b>Scrutiny Committee Forward Plan 2023/24</b>
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**Work for scoping and/or allocation to the Forward Plan**

<b>Proposed date</b>	<b>Topic</b>
5 October 2023	Scoping report on grass cutting and re-naturing
5 October / 2 November	Report on climate change action plan progress
10 & 11 January 2024	Joint Scrutiny and Overview budget meetings
<b>Dates to be confirmed</b>	
TBC	Draft Scrutiny protocol (including the terms of reference for Portfolio Holder reports) – update to be provided at the meeting on 7 September
TBC	Portfolio Holder reports to be scheduled
TBC	Report from MPs setting out their actions on requiring improvements from South West Water
TBC	Proposal from Mid Devon DC Scrutiny Committee regarding a joint review into the planning controls and regulatory requirements associated with the bio-energy industry within Devon, in particular anaerobic digesters. Note: no response was received from MDCC with regard to their proposal; this to be followed up again
TBC	Review of effectiveness of Blackdown House in terms of fit for purpose for both employees and Members – proposal form and scoping required
TBC	Devon County Council's flood event report
Correspondence regarding Scrutiny Committee topics	
Date received	Details

# PROPOSAL FORM FOR ITEMS FOR CONSIDERATION BY THE SCRUTINY COMMITTEE

## Submitted by :

Mike Goodman

## Please describe the matter you would like considered:

The cost of parking in East Devon and in particular the coastal areas increased by 100% in 2022. This made our car parks the most expensive car parks operated by the Council in the South West.

I would like this to be reviewed and overview to consider a policy going forward.

I would like the review to be evidence based including the views of businesses.

## Please identify why this item should be considered:

- a) It is a district level function over which the district has some control
- b) It is part of the Council Plan, or a policy or service area of activity which would be timely to review
- c) It is a gap in service provision within District Council's remit
- d) It is a major proposal for policy or procedural change
- e) It is an issue raised from complaints received
- f) It is an area of public concern
- g) The issue relates to an area where Council, or one of its partners, is not performing well
- h) It would be of benefit to residents of the district
- i) Other (please specify):

A review of the effect on business is an important element.



**Having regard to the role of the Scrutiny Committees (see end of form) - please describe as precisely as possible what you would like to see achieved:**

I would like to understand what the effects of the high car parking costs are on EDDC, tourists and businesses. If the evidence reflects the high tariff is not achieving its original aims without affecting businesses and others. Council consider a change to the tariff and a future strategy.

**Any other comments that you consider relevant:**

**PLEASE RETURN THIS FORM TO DEMOCRATIC SERVICES**

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**Monitoring Officer comments:**

In the absence of the Monitoring Officer, the Deputy Monitoring Officer would comment that the subject is capable of scrutiny by the Scrutiny Committee. The DMO will seek to understand what proposals Cabinet have to consider on this issue already as she believes that it was Cabinet's intention to review the impact of the parking changes in the autumn and it would be preferable not to create duplication. An update will be given at the meeting.

## Scrutiny Committees' Role

The Council's Constitution details the role of the Scrutiny Committee in [Article 7](#) and in the Terms of Reference in [Part 3 Section 2](#). It has statutory powers through the Local Government Act 2000.

The following sets out the role of the Scrutiny Committee in general terms:

*The Overview and Scrutiny Committees operate within the guiding principles of effective scrutiny promoted by the Centre for Public Scrutiny, namely:*

- a) Provide a 'critical friend' challenge to the Cabinet as well as external authorities and agencies;*
- b) Its aim is to hold Council to account on behalf of the public and its communities;*
- c) Take the lead and own the scrutiny process on behalf of the public;*
- d) Make an impact on the delivery of public services*

*The **Scrutiny Committee** will principally take the lead and own **the post decision scrutiny process** (in its widest sense) on behalf of the public with a view to making an impact on the delivery of public*

More specifically the role and powers of the Scrutiny Committee are to;

- *Review and scrutinise the decisions made by and performance of the Cabinet and Council officers both in relation to individual decisions and over time.*
- *Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas.*
- *Question Members of the Cabinet and Senior Officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects.*
- *Make recommendations to the Cabinet and/or Council arising from the outcome of the scrutiny process.*
- *Review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Scrutiny Committee and local people about their activities and performance.*
- *Question and gather evidence from any person (with their consent).*
- *Exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Cabinet and/or a Portfolio Holder Member of the Cabinet.*

Please note the following:

- Scrutiny aims to improve the efficiency and effectiveness of Council Services
- The Scrutiny Committee can gather evidence on issues affecting local people and make recommendations based on its findings.
- It is important to demonstrate that scrutiny work adds value for local people.
- Those scrutinizing should be independent-minded but not apolitical although political point scoring should be avoided.
- Individual planning and licensing decision cannot be considered and nor can matters concerning an individual or entity where there is a right of review or appeal conferred by law being considered by the committee unless it relates to a function for which the authority is responsible not being discharged at all or that its discharge has failed or is failing on a systemic basis.
- Scrutiny will not consider matters which are vexatious, discriminatory or are not reasonable to be included in the agenda.
- You can identify and prioritise potential scrutiny topics, considering the resources they would require and the level of impact they could achieve by:
  - consulting with all members of scrutiny committees, senior officers, cabinet members
  - looking at corporate priorities, business plans and the Forward Plan
  - consider events and decisions in the council's calendar that could require an input from scrutiny
  - evaluate previous council performance and identifying any follow-up work required to previous scrutiny work
  - carry out work to engage with local people, for example through surgeries, local media, opinion surveys and online forums
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Members will also find useful information in the following guidance:

- Government's 'Overview and Scrutiny: statutory guidance for Councils' – statutory status
- Centre for Public Scrutiny 'The Good Scrutiny Guide' – non-statutory status

# PROPOSAL FORM FOR ITEMS FOR CONSIDERATION BY THE SCRUTINY COMMITTEE

## Submitted by :

Mike Goodman

## Please describe the matter you would like considered:

Several public toilets have been closed or sold off and the standard of cleanliness in some toilets is not acceptable. I would like to see a review of all public toilets in terms of those open and their cleanliness.

## Please identify why this item should be considered:

- a) It is a district level function over which the district has some control
- b) It is part of the Council Plan, or a policy or service area of activity which would be timely to review
- c) It is a gap in service provision within District Council's remit
- d) It is a major proposal for policy or procedural change
- e) It is an issue raised from complaints received
- f) It is an area of public concern
- g) The issue relates to an area where Council, or one of its partners, is not performing well
- h) It would be of benefit to residents of the district
- i) Other (please specify):

**Having regard to the role of the Scrutiny Committees (see end of form) - please describe as precisely as possible what you would like to see achieved:**

An agreed policy of public toilets going forward and a contractor who cleans the toilets to an acceptable standard.

**Any other comments that you consider relevant:**

Sometime ago there was a review with some toilets being closed and others being taken on by other councils. It is timely that the consequences of these decisions are reviewed.

**PLEASE RETURN THIS FORM TO DEMOCRATIC SERVICES**

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**Monitoring Officer comments:**

The subject is capable of scrutiny by the Scrutiny Committee, the exact proposal can be confirmed through scoping to reflect whether the intention is to scrutinise the disposal of the toilets and the impact of that and/or whether it relates to the condition of the remaining toilets, including cleaning regimes etc. Depending on the detail discussed, some aspects of this may be more suited to the Overview Committee.

## Scrutiny Committees' Role

The Council's Constitution details the role of the Scrutiny Committee in [Article 7](#) and in the Terms of Reference in [Part 3 Section 2](#). It has statutory powers through the Local Government Act 2000.

The following sets out the role of the Scrutiny Committee in general terms:

*The Overview and Scrutiny Committees operate within the guiding principles of effective scrutiny promoted by the Centre for Public Scrutiny, namely:*

- a) Provide a 'critical friend' challenge to the Cabinet as well as external authorities and agencies;*
- b) Its aim is to hold Council to account on behalf of the public and its communities;*
- c) Take the lead and own the scrutiny process on behalf of the public;*
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