

MEETING	COMMUNITIES SCRUTINY COMMITTEE
DATE	19 MAY, 2016
SUBJECT	Section 106 Agreements
PURPOSE	To submit the observations and recommendations of a sub-group
AUTHOR	Arwel E Jones, Senior Manager, Corporate Support

CEFNDIR

1. At the meeting of this scrutiny committee on 17th November, 2015, an initial report was received by the Cabinet Member and Head of Regulatory Services on Section 106 Agreements. This was largely in response to concerns amongst some members that there were fundamental problems about the usability and effectiveness of the agreements being made.
2. The committee decided to “postpone a decision for the time being and that a small Group of councillors and officers should meet with one or two external experts to look at other possible options of the Council’s use of Section 106 Agreements in the future.
3. Councillors Angela Russell, Caerwyn Roberts and Stephen Churchman were nominated to sit on the sub-group that met on two occasions. At the first meeting, the use of such agreements over recent years was reviewed in addition to how that has changed since the early days. At that meeting, the sub-group met with two external experts in the field of mortgages who could offer information and observations based on their grass roots experience of working with individuals and families facing the difficulty of securing a mortgage and entering the housing market. It should be noted that the sub-group is very grateful to these experts for their time and advice.
4. Some specific themes arose at that meeting and, at the second meeting, there was an opportunity to work through those themes and discuss proposals and practical recommendations about the use of such agreements in the future. This was done with officers from the Regulatory and Legal Departments and also with the Housing Strategy Manager who brought a new perspective on the affordable housing challenge and what are the best levers to meet that challenge.

CONCLUSIONS

5. Clearly, the original introduction of Affordable Housing Section 106 Agreements was a step taken by the Council to seek to ensure the supply of affordable houses for local people, with the hope that this system would solve the problem to a large extent. However, the housing market is very live and changes constantly and the experience of many prospective buyers of working with lenders frustrated the Councils’ intentions. There are several examples of “the goal posts being moved” with a number of lenders not willing to lend in cases where there were agreements in place.
6. However, the work of the sub-group was very useful in getting to the facts about the use of such agreements. Naturally enough, the cases about which members have been

aware are the rare cases where difficulties have been experienced and it is important that any policy proposals are based on balanced evidence on the full picture.

7. In this regard, Appendix 1 to this report is an important document since it notes the Section 106 applications decided upon between 1 April, 2011 and 31 March, 2015. The appendix shows 51 cases where Section 106 Agreements have been made (24 of them with a local need / affordability agreement), apparently successfully and effectively. It should be borne in mind that, in several cases, a large number of affordable units are part of single application; that is clear from the appendix.
8. On the basis of the work and the detailed discussions of the sub-group, we can now summarise that the sub-group is clear on the following points:-
 - Affordable Housing Section 106 agreements have been more successful than the general perception suggests.
 - Section 106 agreements are not the only way of securing affordable housing, since houses may be affordable simply because of their size and location
 - Section 106 agreements are not one type of agreement; there are different types of agreements dealing with matters like affordable housing, financial contributions towards education, transport and open land.
 - Section 106 agreements work effectively with larger developments where a covenant is laid down about a proportion of the properties in larger developments being affordable houses.
 - Such agreements are vital for developments outside development boundaries; they are the only way of allowing and managing such developments
 - Problems with such agreements arise with small, individual developments and self-build developments.
 - The Council has shown itself flexible in discussing conditions within the agreements with owners and developers.
 - A certain amount of work has been undertaken already to ensure consistency in agreements with neighbouring authorities.
9. However, the sub-group is also clear on the need to make some improvements in order to seek to address the concerns raised in recent years. Here are the recommendations:-
 - 9.1 There are some matters beyond the Council's ability to address, primarily, the difficulty, in some cases, of meeting the needs of someone who is seeking to self-build and the fact that it has not been possible, so far, to use "primary residence" clauses. The Cabinet Member is asked to seek a political move on these issues in order to respond to the challenge of ensuring a supply of affordable houses for local people.
 - 9.2 It is clear that early discussions with the Council is the way to avoid problems as developments proceed. The relevant Cabinet Members are asked to ensure that the Department and the Housing Service look at innovative ways of ensuring that developers know this, through the "Pre-application Advice" system and other means such as awareness raising sessions.

9.3 Smaller developers (less than 10 houses) should be encouraged to respond to community needs such as variety, size and the number of bedrooms. The Cabinet Member is asked to ensure that the work of promoting and supporting this work continues and develops.

9.4 It can be confusing for developers and lenders that different conditions are enforced across neighbouring authorities. However, it is proposed that our conditions should not be relaxed only in order to secure consistency. The Cabinet Member is asked to ensure that efforts should continue to secure consistency in the sorts of agreements and terms used, if not the local conditions.

9.5 There is a need to press upon lenders to improve on their willingness to offer mortgages where Section 106 conditions have been made. The Cabinet Member is asked to use all possible means, including pressure through the Welsh Local Government Association and political pressure through the Assembly to seek this.

9.6 There is a need to highlight the Council's willingness to look at old Section 106 agreements made when the housing market was very different. The Cabinet Member is asked to ensure that information on that willingness to be flexible is shared.

10. The committee is invited to consider the conclusions of the sub-group and the draft recommendations to the Cabinet Member.