

**TO EACH MEMBER OF THE  
COUNCIL**

07 December 2021

Dear Councillor

**COUNCIL - TUESDAY 7 DECEMBER 2021**

Further to the Agenda and papers for the above meeting, please find attached Member questions submitted in accordance with Council Procedure Rule 13.

The questions and answers will be taken as read without discussion but the questioners will be allowed to ask a supplementary question arising directly from the questions or from the replies.

Should you have any queries regarding the above please contact Democratic Services on  
Tel: 01684 272021

Yours sincerely

**Lin O'Brien  
Head of Democratic Services**

# Agenda Item 6

**The following questions have been received from Councillor Paul Ockelton to the Leader of the Council. The answers are given by the Leader of the Council, Councillor Rob Bird, but are taken as read without discussion.**

At January 2021 Council meeting I asked several questions, one being

“As TBC have lost 64% of appeals, I would suggest that the strategic plan is demonstrably flawed. Would Cllr Bird please inform Council, as to the cost to the taxpayer of these appeals and, what is his plan B”.

I was given written responses the following month. Can I thank the Leader of the Council and the member for Built Environment for their replies?

However, I would ask for a much fuller response, from the Leader of the Council, this time to actually answering the question instead of asking one himself and I quote: -

“Before any response can be made, further information is requested as to the derivation of the specified percentage of appeal losses”. To clarify, noun “derivation”, the action of obtaining something from source or origin.

The source of the percentage question was a report, by Pegasus Group, Proof of Evidence on Housing Need and Supply Matters on the appeal reference APP/G1630/W/18/3210903, Land at Fiddington, Ashchurch, Near Tewkesbury, Gloucester dated 7 July 2019, LPA (TBC) Reference 17/00520/OUT, Statement of Common Ground and other information included at that appeal which are held by the Planning Department.

## **Question 1**

Will the Leader of the Council please give Council a full and detailed answer to the cost to the taxpayers of lost appeals for major housing development, in the plan period 2011 to date, to now include the appeals lost this financial year.

## **Answer**

The cost to the Council of lost appeals for major housing development includes external costs for Counsel / Advocate’s fees together with the costs of appointing consultants as required to give evidence on behalf of the Council (e.g. landscape evidence, planning evidence, arboricultural evidence). In addition, there are significant amounts of work carried out by Council officers to prepare for appeals including, where required, attendance at Public Inquiries. Whilst those costs for which invoices are raised can be quantified, Council Officers do not routinely record their time and it is therefore not practically possible, over the period 2011 – 2021, to quantify the officer time spent on those appeals. I can confirm that the total of the external costs to the Council of the 16 appeals for major housing development that have been lost during the period 2011 to date, including related High Court challenges, amounts to £454.130.32.

The Statement of Common Ground agreed by the Council and the Appellants in respect of the appeal for residential development at Fiddington held in June 2019 included the following:

- “It is agreed that there is a considerable level of housing need in Tewkesbury Borough, and this is worsening year on year”.
- It is agreed that if the approach to land supply as recently endorsed by the Secretary of State in the Highnam Appeal decision is adopted, then using the Councils figures it is able to demonstrate a 2.77-year land supply.
- It is agreed that the five-year land supply shortfall will worsen from now (07 06 2019) and in the coming years.
- It is agreed that the JCS identifies that there was a plan shortfall of 2,455 homes. It is agreed that there is no plan in place to address this.

## Question 2

Would the Leader of the Council agree with the comments within the SOCG made above?

### Answer

That is an accurate statement of the Council's position as at 7 June 2019, the date when this Statement was prepared.

## Question 3

As the Conservative administration has failed completely on the issue of housing land supply and more importantly, as pointed out by the planning inspector and supported by Mr Justice Dove, repeatedly on the Highnam and recent Gotherington appeals, the lack of deliverable sites in the housing trajectory, what has the administration in mind to rectify this grotesque mismanagement of the plan led process?

### Answer

The Council has worked hard to prepare a Local Plan to reflect the needs of the Borough. The Local Plan has been through an independent examination and the Inspector has advised the Council that, subject to main modifications which the Council is currently consulting upon, the Plan will be sound. Upon the adoption of the Tewkesbury Borough Plan, anticipated in Spring 2022, the Council will have a 5-year housing supply.

**The following questions have been received from Councillor Helen Munro to the Lead Member for Built Environment, Councillor Mel Gore. The answer is given by the Lead Member for Built Environment, Councillor Mel Gore, but is taken as read without discussion.**

### Question:

Please can Members be updated with the progress the S106 Officer has made since appointment on updating the S106 system and the timeline with dates for the tasks that need to be completed to enable planning staff and Members to have clear visibility of all S106 agreements, upcoming trigger points and dates in S106 agreements?

### Answer:

#### Overview

S106 deeds are currently visible to the public in their entirety via the Tewkesbury Borough website 'Planning – Simple Search' tool. The current monitoring software EXACOM, purchased previously by the council, is specifically designed for the monitoring of S106 and CIL obligations and has the option to purchase a publicly accessible module. Once EXACOM is up to date the public module would allow for S106 financial obligations due, received, and spent to be viewed in real time.

A S106 monitoring officer has been in position since 5 October 2021 and is employed on a fixed two-year contract of twenty-two hours a week. The overall objective for the monitoring officer is to create an efficient, streamlined, and transparent process for the implementation, monitoring, and delivery of S106's at Tewkesbury Borough Council. Steady progress is being made through taking a multi focus approach which includes 1) updating the current system 2) implementing monitoring practices for current developments and 3) working towards creating robust processes for all future monitoring and funding. With regards to timelines, these are difficult to quantify at this stage given the complexity of the task of updating the system which involves collating large amounts of information from a variety of sources. Added to this are the ongoing tasks of responding to live requests and the establishment and monitoring of current obligations. **Therefore, all dates provided below are provisional.**

## Objectives, timelines, and related tasks

### Updating monitoring software (EXACOM)

**Purpose** To allow for an efficient monitoring review system of S106's moving forward, production of annual infrastructure and quarterly reports, and to allow for the option of the public facing module thereby providing transparency and reducing time spent responding to S106 public enquiries.

**Timeline** September 2022 - with all tasks currently ongoing

- Inputting all historical receipts and spends so that the system balances with the current financial system.
- Entry of claw back dates so system can allow for monitoring.
- Training carried out so services responsible for spends and delivery of non-financial obligations use the EXACOM software in real time and in doing so provide a clear audit trail.
- Updating all non-financial obligations on the system including Affordable Housing, Public Open Spaces, Community Buildings etc.
- Inputting review dates for live monitoring moving forward.

### Monitoring of current S106's

**Purpose** To allow for efficient monitoring and a proactive approach moving forward.

**Timeline** Ongoing tasks in real time and worked in conjunction with updating the system as above

- Establishing a list of current developments and triaging as appropriate.
- Carrying out a full audit on each S106 and setting up review dates.
- Responding to queries relating to current S106 and calling on obligations.
- Work with other services ensuring obligations are/have been met.

### Develop, implement, and enhance S106 processes

**Purpose** To develop relevant standard operating procedures, protocols, and guidance including publishing information to allow for streamlined monitoring, public transparency, and reduced workload burden.

**Timeline** Draft procedures produced by September 2022 with tasks ongoing

- Adoption of a standard S106 deed (draft currently out for consultation).
- Work with other officers on standard procedures of delivery and spends.
- Check compliance of financial reporting and data protection.
- Investigation re purchasing the public facing and back-office finance modules of EXACOM to reduce workload.
- Collaboration with and learning from other councils S106 process.
- Update the website to provide clear communication allowing the public to understand the borough's approach to S106 and any processes.

### Self-Funding of S106 Monitoring

**Purpose** Work towards establishing ongoing funding to cover the costs of S106 monitoring

**Timeline** September 2022

- Research other Council's approaches (initial scoping exercise completed).
- Costing exercise carried out with a view to producing clearly justifiable monitoring and administration fees for inclusion within any new S106.