

Bolsover District Council

Planning Committee

27 September 2017

Procedure: Section 106 Agreements

Report of the Planning Manager (Development Control)

Purpose of the Report

- To ensure that the District Council has a robust procedure for recording and monitoring Section 106 obligations.

Report Details

1. Background

- 1.1 Section 106 agreements are governed by the Town and Country Planning Act 1990. Amongst other things, they enable the District Council to secure contributions to services, infrastructure and amenities in order to support and facilitate proposed development. They work on the principle that developers should contribute towards any additional burden placed on the social and physical infrastructure of an area as a result of a development.
- 1.2 Therefore, developer contributions secured by a legal agreement often form reasons for planning approval for major development in the District. It is also more likely that a local community would be adversely affected by developments if obligations aren't met and the relevant contributions aren't made. This means if obligations required to make a development acceptable in planning terms aren't properly discharged then there is a risk of harm to the Council's reputation and public confidence in the Council's decision making.
- 1.3 Section 106 contributions received by the District Council are also subject to strict criteria on how and when they are spent. Expenditure must be relevant to a particular development and be spent within a set timescale (usually five years) otherwise the conditions of the agreement may have been breached, leaving the Authority open to legal claims from developers to recover contributions. Council departments must therefore be able to demonstrate how and when funds have been spent in order to reduce the risk of such claims against the Authority.
- 1.4 Consequently, it is important that the District Council has a robust procedure for recording and monitoring Section 106 obligations.

2. Procedure for Recording and Monitoring Section 106 Obligations

- 2.1 In an audit report completed in 2016, it was noted that consideration should be given to updating the Council's procedures in terms of recording and monitoring Section 106 agreements. Officers have since updated the procedures and the current procedure notes are attached as Appendix 1. The procedure notes cross refer to a spreadsheet maintained by Finance, which is the main tool used by planning officers to monitor section 106 agreements.
- 2.2 The spreadsheet maintained within Finance ('the Finance spreadsheet') is used to record current and future legal agreements, monitor compliance with planning approvals and ensure that obligations are fulfilled where the 106 agreement requires financial contributions. Finance will also maintain an annex to the main spreadsheet that will be used to record current and future legal agreements where the 106 agreement requires provision of physical infrastructure such as affordable housing to be built on-site. The attached procedure notes cover:
- recording of Section 106 Agreements on the Finance spreadsheet;
 - responsibilities for monitoring the progress of agreements;
 - recording and accounting for financial contributions;
 - expenditure and budgetary control of financial contributions;
 - monitoring and recording delivery of infrastructure; and
 - management reporting systems.
- 2.3 The procedure notes are therefore organised around the key stages in the life of a s.106 agreement: (1) when a planning permission is issued; (2) quarterly review; (3) when triggers are reached; (4) when payments are received; and (5) when obligations have been discharged. It is considered the updated procedure notes will provide a robust framework, which will ensure that Section 106 legal agreements are discharged in accordance with planning approvals and that all obligations are met.

3. Current Position

- 3.1 The current financial spreadsheet is attached for information. The spreadsheet shows that there are no current areas of concern in respects of payments received and the deadlines for expenditure.
- 3.2 The attached procedural notes have already been circulated and agreed by the relevant officers. Quarterly review meetings are ongoing and all the recommendations made in the 2016 audit report have been addressed. There are no current breaches of existing agreements or outstanding debts in respects of financial contributions owed to the Council.

4. Member Involvement

- 4.1 The obligations contained in S.106 legal agreements are most commonly examined by members of the Planning Committee as part of the determination of a planning application. In terms of current practice, a final decision will always be made by members on applications where officers are recommending approval of development that is not sufficiently viable to make all the financial contributions requested by consultees (i.e. financial contributions towards health, education or

highways) or all the obligations required by adopted policy (i.e. affordable housing and recreation provision). Planning permission will only be granted by officers under delegated powers for developments that are able to meet all their obligations where obligations are required to make the development acceptable in planning terms.

- 4.2 It is therefore considered members currently have appropriate oversight with regard to the Council's acceptance of s.106 legal agreements within the existing decision making process.
- 4.3 Earlier this year, officers presented a report to the Planning Committee promoting early member engagement with major applications. The report was accepted by members and local members have since been invited to a number of pre-application meetings with developers to discuss forthcoming applications. It was agreed that this type of early engagement should improve the ability of members to influence development proposals and guide officer negotiations especially where priorities need to be agreed with developers in terms of what might be included in s.106 agreements. Therefore, members now have a better opportunity to raise issues that are of particular interest or concern to the local community at an early stage.
- 4.5 Where applications have not been subject to pre-application discussions, or where appropriate, officers propose inviting members from Wards likely to be affected by major development proposals to a meeting with officers and the Chair and Vice Chair of the Planning Committee once all consultation responses have been received to discuss the proposals and any proposed obligations and/or draft heads of terms. This would normally be anticipated to be around six to eight weeks after an application has been validated.
- 4.7 It is therefore considered that members currently have an appropriate degree of oversight in respects of the negotiation of s.106 legal agreements prior to an application being reported to the Planning Committee and where possible, prior to a formal submission through early engagement. In these respects, early engagement supplements the decision making process by allowing members to gain a better insight to how s.106 legal agreements are negotiated and influence what should be included in a s.106 legal agreement in the best interests of their local communities and the District as a whole.
- 4.8 This report and attached procedural notes are not intended to seek adoption of a new policy or protocol. They are intended to supplement the existing procedures and provide members an opportunity to review how obligations are monitored by officers and subsequently discharged once Section 106 agreements have been agreed and secured through early engagement, negotiation and the decision making process. Subject to acceptance of the recommendations in this report by members, officers will report on the status of s.106 agreements to Planning Committee on a quarterly basis from December 2017 giving members the opportunity to assess the effectiveness of the updated procedures.
- 4.9 Therefore, the recommendations of this report should ensure members continue to have adequate oversight over the recording and monitoring of s.106 legal agreements and the discharge of planning obligations. More generally, the recommendations in this report will also support the ability of members to engage with the 'end to end' planning process from early engagement at pre-application

stage through to decision making at Planning Committee and then on to ensuring that developers are meeting their obligations made in Section 106 legal agreements.

5. Recommendations

5.1 That the Planning Committee:

- i. notes this report;**
- ii. supports the introduction of the updated procedure notes; and**
- iii. accepts the officer recommendation of quarterly reporting on the status of current s.106 legal agreements from December 2017.**

6 Consultation and Equality Impact

6.1 There has been no public consultation in respect of this report, and there are no negative equality impacts identified. Officers consider that increasing member involvement in the discharge of s.106 legal agreements should promote **equality** of opportunity for local residents through ensuring obligations are met. All relevant officers have agreed the procedure notes.

7 Alternative Options and Reasons for Rejection

7.1 The updated procedure notes and reporting the status of current s.106 legal agreements to Planning Committee address recommendations made in the 2016 audit report. Therefore, officers have not considered alternative options.

8 Implications

Finance and Risk Implications

8.1 If obligations required to make a development acceptable in planning terms aren't properly discharged then there is a risk of harm to the Council's reputation and public confidence in the Council's decision making. If financial contributions are not spent within a defined period then the money has to be returned to the developer and normally returned with interest. Therefore, there are finance and risk implications if procedures for recording and monitoring s.106 legal agreements are not sufficiently robust.

Legal Implications including Data Protection

8.2 There are no data protection implications insofar as s.106 legal agreements are part of the statutory planning register and are therefore public documents. S.106 of the 1990 Act provides the legal framework for the acceptance and discharge of s.106 legal obligations and the procedure notes address the key legislative provisions of this section of the 1990 Act.

Human Resources Implications

8.3 None.

9 **Decision Information**

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:</p> <p><i>BDC:</i> <i>Revenue</i> £75,000 <input type="checkbox"/> <i>Capital</i> £150,000 <input type="checkbox"/></p> <p><i>NEDDC:</i> <i>Revenue</i> £100,000 <input type="checkbox"/> <i>Capital</i> £250,000 <input type="checkbox"/></p> <p><input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No.
District Wards Affected	All
Links to Corporate Plan priorities or Policy Framework	<ul style="list-style-type: none"> • Unlocking Our Growth Potential (main aim); • Providing our Customers with Excellent Services • Supporting Our Communities to be Healthier, Safer, Cleaner and Greener; • Transforming Our Organisation.

10 **Document Information**

Appendix No	Title
1	Procedure: Section 106 Agreements
2	Financial Spreadsheet
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
n/a	
Report Author	Contact Number
Chris Fridlington	Ext 2265