

Procedure: Section 106 Agreements (B011)

Background

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.

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.

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.

Consequently, it is important that the District Council has a robust procedure for recording and monitoring Section 106 obligations. The following procedures are intended to ensure that Section 106 legal agreements are discharged in accordance with planning approvals and that all obligations are met.

Procedure for Recording and Monitoring Section 106 Obligations

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 following procedures 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.

The following procedures are 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.

1 Planning Permission Issued

Once planning permission has been granted subject to a completed legal agreement containing obligations made under s.106 of the 1990 Act, and the planning permission has been issued, the following actions are required by the named Service areas / officers:

(i) Planning

(a) E-mail copies of the legal agreement to:

- Finance;
- all other departments at BDC that would benefit from obligations in the agreement (normally Outdoor Leisure; Housing Strategy and/or the Arts Officer); and
- any departments at Derbyshire County Council that would benefit from obligations in the agreement (normally Education and/or Highways)

(b) Provide Finance with a summary of the obligations in the legal agreement including relevant trigger points.

(c) Publish an electronic copy of the legal agreement on Public Access

(d) Retain original hard copy in S.106 Register

(ii) Finance

(a) Update Finance spreadsheet and annex, as appropriate, with data from legal agreement forwarded from Planning.

(iii) Legal

(a) Register the agreement as a Land Charge n.b. Land Charges do not need a copy of the whole agreement- they need:

1. names of the parties;
2. address of property;
3. date of agreement;
4. planning reference; and
5. a plan of the land.

2 Quarterly Reviews

The responsibility for monitoring compliance with legal agreements is shared by a number of officers within different Service areas across the Council. However, officers are individually responsible for spending the monies and / or procuring services or works secured by legal agreements that relate directly to their Service area and ensuring any expenditure or works are carried out strictly in accordance with the terms of the legal agreement. The relevant Service area will also be responsible for checking that monies are spent before any claw-back clause in the agreement is triggered.

To ensure efficient and effective monitoring of compliance with legal agreement across different Service areas, officers involved in the process attend a quarterly review meeting where the Finance spreadsheet is used to highlight any issues e.g. review whether triggers have been met, contributions where claw back clauses may become an issue etc. Action points should be agreed at quarterly reviews whenever there is a risk that monies will not be spent within the relevant timescale, and/or there is a risk development will not proceed in accordance with the planning approval, and/or there is a risk that an obligation will not be met. To ensure this monitoring process is robust, the following actions are required by the named Service areas / officers:

(i) Planning

- (a) Arrange dates for the quarterly reviews for each financial year
- (b) Prepare agenda and minutes from previous meetings including action points in advance of quarterly review.
- (c) Report progress on any relevant action points from the previous meeting at the quarterly review.
- (d) Report developments where triggers have been met since the previous meeting at the quarterly review.
- (e) Prepare report for Planning Committee following quarterly review.
- (f) Progress any relevant action points arising in the quarterly review in advance of the next meeting.

(ii) Finance

- (a) Finance spreadsheet and annex to be circulated at quarterly review to highlight any issues
- (b) Finance spreadsheet and annex to be updated in respects of officer updates following quarterly review.
- (c) Report action points that have not been progressed to relevant Joint Assistant Director/Director.

- (d) Request Accounts Department to issue invoice where developer has not responded to two written officer requests for payments to be made when required.

(iii) Arts Officer

- (a) Report progress on any relevant action points from the previous meeting.
- (b) Provide update on any expenditure of 'one per cent for art' monies since the previous meeting.
- (c) Provide update on any provision of additional public art since the previous meeting.
- (d) Progress any relevant action points arising in the quarterly review in advance of the next meeting.

(iv) Housing Strategy

- (a) Report progress on any relevant action points from the previous meeting.
- (b) Provide update on provision of on-site affordable housing since the previous meeting on sites where the relevant triggers have been met.
- (c) Provide update on any expenditure of commuted sums for affordable housing since the previous meeting.
- (d) Progress any relevant action points arising in the quarterly review in advance of the next meeting.

(v) Leisure Services

- (a) Report progress on any relevant action points from the previous meeting.
- (b) Provide update on any expenditure of any monies (open space/facilities/maintenance) since the previous meeting.
- (c) Provide update on any provision of additional infrastructure since the previous meeting.
- (d) Progress any relevant action points arising in the quarterly review in advance of the next meeting.

3. Trigger Points

Typically, legal agreements will have a 'trigger point' when payments are required to be made or when affordable housing or other infrastructure should be delivered. In many cases, a trigger point will be related to the number of new houses that have been built and/or occupied. Planning officers are

responsible for monitoring the trigger points for obligations including payments of commuted sums. To ensure this monitoring process is robust, the following actions are required by the named Service areas / officers:

(i) Planning

- (a) Planning officers will monitor all sites where 'trigger points' have not been previously met every six months.
- (b) Where a trigger point has been reached, planning officers will either:
- request discharge of the obligation from the developer and if necessary request Finance to instruct the Accounts Department to raise an invoice in respects of a financial contribution or commuted sum; or
 - e-mail the officer from the relevant Service area that a trigger point has been reached in respects of an obligation for delivery of infrastructure.

4. Receipt of Payment

Payment should be received once a request for payment or an invoice has been issued. Finance should be notified and provided with a receipt once payment is received by the Authority. The Accounts Department will be responsible for taking payment and for unpaid invoices. To ensure monies received is spent by the relevant Service area within the relevant time period, the following actions are required by the named Service areas / officers:

(i) Finance

- (a) Where financial contribution is to be made to Bolsover District Council, Finance to update Finance spreadsheet on a monthly basis.
- (b) Where financial contribution is to be transferred to Derbyshire County Council, Finance to update Finance spreadsheet on a monthly basis.
- (c) Finance to update monitoring group on payments received over the previous three months at the Quarterly Meeting.
- (d) Finance to maintain a record of annual receipts and payments on the Finance spreadsheet.

5 Discharge of Obligations

Officers are individually responsible for spending the monies and / or procuring services or works secured by legal agreements that relate directly to their Service area and ensuring any expenditure or works are carried out strictly in accordance with the terms of the legal agreement. The relevant Service area will also be responsible for ensuring that Finance are updated when obligations

have been discharged so the Authority can demonstrate that all obligations have been discharged within the relevant time period.

Officer updates on expenditure and delivery of infrastructure at quarterly reviews will provide a robust framework to monitor discharge of obligations. To ensure that the Finance spreadsheet provides an accurate record of current and discharged obligations and to ensure time limits are met, the following actions are required by the named Service areas / officers:

- (i) Finance
 - (a) Update Finance spreadsheet on receipt of confirmation an obligation has been discharged.
 - (b) Delete record of legal agreement from the Financial spreadsheet once all obligations attached to that particular legal agreement have been discharged, and all monies received have been spent seven years after the date all obligations were discharged.
 - (c) Record contributions where claw back clauses may become an issue as an Action Point to be monitored at the following quarterly review meetings.

Management Reporting

The main management reporting of the Section 106 process is as follows:

- officers involved in the process attend the quarterly Section 106 monitoring group where the monitoring spreadsheets are reviewed.
- the budgetary position is reported the Quarterly Budget Monitoring Report which is prepared in Finance and presented to Executive
- from September 2017, summary/progress report taken to Planning Committee in respect of Section 106 agreements

Freedom of Information Requests

Freedom of information requests relating to S106 financial information are dealt with by the Chief Accountant.