

**Bolsover District Council**

**Planning Committee**

**16<sup>th</sup> January 2019**

**Update: 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 In September 2017, members of the Planning Committee noted the new procedures for recording and monitoring Section 106 obligations proposed by officers. At the same meeting, members agreed with an officer recommendation that compliance with planning obligations in s.106 agreements should be reported to the Planning Committee on a quarterly basis. This report is the quarterly status report and is intended to give members the opportunity to assess the effectiveness of the updated procedures as well as receive up-to-date information on ongoing cases where planning obligations are involved.
- 1.2 It was agreed that it is important to provide this information to members for two key reasons: (i) 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; and (ii) there are strict criteria on how and when Section 106 contributions received by the District Council should be spent; if these criteria aren't met then there is a risk the proposed contribution will have to be returned to the developer and the associated infrastructure will not be provided.
- 1.3 Consequently, it is not only important that the District Council has a robust procedure for recording and monitoring Section 106 obligations, it is also important that there is appropriate oversight of how effectively these procedures work in practice: hence the purpose of this report.

**2. Internal Audit Report**

- 2.1 In accordance with the 2018/19 Annual Audit Plan, an internal audit has been undertaken and a report produced on the processes and controls in place in respect

of S106 Agreements at Bolsover District Council, which includes the work of the S.106 Monitoring Group that meets on a quarterly basis. .

2.2 The conclusion of the 17/09/18 Internal Audit Report is that no significant concerns were found and that the reliability of the controls was assessed as **Substantial**. There is a sound system of controls in place, designed to achieve the system objectives. Controls are being consistently applied and risks well managed. However some refinements of the processes were recommended (R1 – R4). All recommendations are low priority as set out in the Internal Audit Report Implementation Schedule. These are set out below together with the actions now taken to address the Audit Report recommendations.

2.3 *R1 Update the S106 Agreement procedure to reflect the actual processes in place.*

The procedure has now been updated in response to the audit recommendations.

2.4 *R2 Consideration should be given to developing the S106 Monitoring Group action plan further and add target dates and/or actual completion dates for a clear and concise record of actions completed.*

This will be undertaken where practical although it will not always be appropriate to add further target dates. The procedure is already governed by a set of clear triggers and targets to chase S106 obligations and deadlines to spend monies by. Hence in most circumstances there is no need to add a further layer of target dates. However the format of the meeting minutes has now been changed to provide for a clearer record of when actions have been completed.

2.5 *R3 Define timescales for reporting S106 Agreements “contributions to be spent” to S106 Monitoring Group and to Planning Committee to ensure adequate time has been given for Member consultation.*

As 5 year spend by dates approach the relevant S106 sums will now be brought to the attention of the Monitoring Group no later than 2 years from spend by date; and reported to Planning Committee no later than 1 year from the spend by date. The procedure has been amended.

2.6 *R4 Record dates of letters/chasers on Planning spreadsheet to ensure a history of each S106 obligation is documented and available quickly in one place to avoid inefficiencies of checking information back to minutes/notes/emails and accidentally chasing a payment twice. This will further assist in reporting information to Planning Committee.*

This will be undertaken in future and the S106 procedure has been amended.

### **3. S106 Money in BDC Holding Account**

3.1 The current financial spreadsheet is attached as Appendix A. Line numbers referred to below are on the left hand side of the table at Appendix A. The spreadsheet shows that there is currently a total balance on hand for all S106 contributions of £945,550.46.

- 3.2 The following cases are highlighted because the deadline for spending S106 money is approaching and within 1 year of the 5 year spending deadline:-
- a. Line 47. The Brambles Doe Lea, art work £34,063.86 remaining which needs to be spent in accordance with the S106 terms by 01.05.19. The installation date for the art work is now set for March 2019 such that the art sum will have been substantially spent by the deadline. However the Arts Officer has reported that there may be an underspend. Additional works will need to be identified for this by the Arts officer or any unspent monies returned.
  - b. Line 51. Carter Ln South Normanton, art work £4,953.20 needs spending by 24.09.19. Becoming more urgent now. The Arts Officer needs to progress with scheme allocation and spend.
  - c. Line 55. Town St Pinxton. £10,368 for formal sports needs spending by 17.11.19. Whilst this amount is still showing on the Condition Balance at 31.03.19 at Appendix A this money has in fact now been spent and works provided on site.
  - d. Line 56. Town St Pinxton. £8,724 for informal POS needs spending by 17.11.19. As above this sum has now been spent and works provided on site.
- 3.3 Line 36. The Vale Croft, Carr Vale, Bolsover play area money £8,067 reported to committee in the last S106 update report as being at risk, has now been spent within the 5 year deadline on footpath improvements serving the play area at Carr Vale.
- 3.4 There are no other areas of concern in respects of spending deadlines for payments received and the deadlines for expenditure.
- 3.5 No new S106 payments have been received this quarter.

#### **4. S106 Obligations Soon Due on Active Development Sites**

- 4.1 In terms of current development sites, there are a number of sites where development has been commenced and officers are monitoring progress against S106 trigger points. The current monitoring list includes:-
- The Edge, Clowne (12/00529). Permission for 149 dwellings now completed. £100,000 maintenance sum payable to BDC when Public Open Space adopted following resolution of snagging issues which still being pursued.
  - High Ash Farm site (14/00057/OUTMAJ and 18/00084/OTHER). Permission for 41 dwellings. Commenced but obligation triggers not yet reached. Main trigger is occupation of 24 dwellings:-
    - a. Play £10,000 and land
    - b. Education £16,623
    - c. Art £10,000
    - d. Footpath Link contribution £11,500
    - e. Affordable – none provided 5 market dwellings delivered by 14/08/19.

- Skinner Street Creswell (15/00368/FUL) permission for 82 dwellings. Now at 14 occupations. The only requirements are for a School Link and footpath link to be delivered by 50<sup>th</sup> occupation.
- Hawk Brook Close / Cavendish Grange / Oxcroft Lane, Bolsover (17/00314/FUL). Permission for 35 dwellings. Development has commenced and 3 units have been sold. The Applicant has already paid S106 sums due in advance of triggers. Also 3 affordable houses yet to be provided – trigger is 16 occupations and negotiations on the this obligation are underway.
- Mooracre Lane Bolsover (17/00234/FUL). Permission for 212 dwellings. Commenced on site in April 2018. First occupation November 2018. Various S106 obligations (highways, affordable housing, bus service, primary education, POS and play, SuDS, ransom strips) with various phased triggers. The first trigger due for BDC payments is at 60 occupations which will not be reached for some time yet.
- Brookvale Shirebrook Keepmoat (14/00594) permission for first phase 153 dwellings. 148 occupations as at 30/09/18. Highways/GP surgery/Bus sum £879,000 received by BDC. £310,000 of this amount now transferred to DCC for Highway improvements. Remaining money for CCG request /Bus Service incentive and further highway works.
- Station Road, Langwith Junction (16/00530/FUL). Permission for 68 dwellings. Trigger for payment is 34 dwellings occupied which is not yet reached. Sums eventually due:-  
£52,000 informal - to upgrade Langwith Rec  
£16,000 health – GP practice at Langwith
- Mansfield Road Tibshelf (13/00182/OUT). Permission for 170 dwellings. At 80 occupations as at 30.09.18. First trigger now reached for payment of the first phase education payments. This was received by DCC in March 2018. Informal play equipment on site at 90 occupations to max value of £123,590 has now been provided on site.  
Next trigger is 85 occupations for first stage payments for:-  
Formal sport and recreation in the parish 50% of £146,880 = 73,440 plus inflation;  
Health, Staffa Tibshelf Surgery 50% of £60,000 = 30,000 plus inflation;  
A request for payment for these amounts is due to be sent out within the next few weeks.  
Second phase education payments are due within the next 12 months or so, to be paid direct to DCC at 120 dwellings occupied.
- Doe Hill Lane Tibshelf. Permission for 57 dwellings (15/00438/FUL). 22 dwellings occupied by 22.10.18. First Trigger is 28 dwellings so a request for payment will be issued shortly.  
Obligations include:-  
Informal POS £765/dwelling plus £27,010 maintenance at 28 occupations.  
Education £4857/dwelling at 75% occupation.  
Art £10,000 at 75% occupation.  
Affordable – none if delivery targets met.  
Other – ecology and local employment.

- Rosewood Lodge Farm, Alfreton Road, South Normanton (14/00531/OUT).  
Permission for 144 dwellings. Just started on site. However several obligations are triggered prior to occupation and so are likely to be triggered soon:-  
Sports/rec £131,950  
Education £68,394  
Art Scheme (to £10,000) with timetable for implementation  
Health £79,895  
Affordable – only if delivery targets not met for market housing.

## **5. Recommendations**

- 5.1 **That the Planning Committee notes this report.**

## **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 oversight of compliance with s.106 legal agreements should promote **equality** of opportunity for local residents through ensuring obligations are met.

## **7 Alternative Options and Reasons for Rejection**

- 7.1 Reporting the status of current s.106 legal agreements to Planning Committee address recommendations made in the 2016 audit report and has been agreed by members of the Planning Committee. 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**

<b>Is the decision a Key Decision?</b> (A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No.
<b>District Wards Affected</b>	All
<b>Links to Corporate Plan priorities or Policy Framework</b>	<ul style="list-style-type: none"> <li>• Unlocking Our Growth Potential (main aim);</li> <li>• Providing our Customers with Excellent Services</li> <li>• Supporting Our Communities to be Healthier, Safer, Cleaner and Greener;</li> <li>• Transforming Our Organisation.</li> </ul>

## 10 Document Information

Appendix No	Title
1	<b>Financial Spreadsheet</b>
<b>Background Papers</b> (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
Steve Phillipson	Ext 2248