

Bolsover District Council

Planning Committee

10th March 2021

Update on Section 106 Agreement Monitoring

Report of the Planning Manager

Purpose of the Report

- To ensure that the District Council has a robust procedure for recording and monitoring Section 106 obligations (also referred to as S106 agreements).
- S106 agreements are a type of legal agreement between the Council and landowners/developers often completed alongside applications for planning permission for major developments. They are needed to deal with the additional pressures on infrastructure that result from the new development. They are only required where the effects of the development would otherwise be unacceptable in planning terms and where they cannot be dealt with by conditions of the planning permission.

1. Report Details

Background

- 1.1 In accordance with the Council's procedures for recording and monitoring Section 106 obligations this report is the quarterly status report and is intended to inform and give members the opportunity to assess the effectiveness of the monitoring procedures as well as receive up-to-date information on ongoing cases where planning obligations are involved. This report accords with the Council's monitoring procedure which is additional to and separate from the national requirement to produce an Annual Infrastructure Funding Statement as was reported to Planning Committee on 13th January 2021.
- 1.2 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 that necessary infrastructure will not be provided and there would be 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.

S106 Money Received in BDC Holding Account

- 1.4 The current financial spreadsheet is attached as Appendix 1. Line numbers referred to below are on the left hand side of the table at Appendix 1. The spreadsheet shows that there is currently a total balance on hand for all S106 contributions of £1,469,471.63.
- 1.5 In accordance with the Council's procedure the following cases are highlighted because the deadline for spending S106 money is within 1 year of the 5 year spending deadline on the Council:-
- a. Line 47 The Brambles Doe Lea, art work money. The majority of the sum received has now been spent, however £4,361.11 was not spent before the deadline. This will now need to be returned to the developer in accordance with the legal agreement (unless the Developer agrees that it can be spent on an alternative project) – This has previously been reported to Planning Committee but despite chasing the developer for a response, other than receiving an acknowledgement, the developer has still not confirmed how they would like to proceed.
 - b. In the 4th November 2020 committee report, members were advised that three sums of money for art, leisure and open space from the former Woodside Stables development in Clowne needed to be spent urgently by 14/01/2021. All three sums were spent before the deadline in accordance with the S106.
- 1.6 There are no other areas of immediate concern within 1 year in respects of spending deadlines for payments received and the deadlines for expenditure. However it should be noted that there are 9 sums that are within 2 years of the spending deadline.
- 1.7 The following new S106 payments have been received by the District Council since the previous report issued to Committee Members on 4th November 2020:-

Sports Direct, Shirebrook (Improvements to Shirebrook Cricket Club) £22,169

The following sums were paid direct to DCC:-

Mooracre Lane	Education	£154,432
Mooracre Lane	Highways	£28,180

S106 Obligations Soon Due on Active Development Sites

- 1.8 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:-
- Chesterfield Road, Barlborough (13/00002/VARMAJ and 16/00187/REM).
Permission for 157 dwellings plus offices and industrial units. 26 dwellings occupied so far so no obligations triggered yet. Obligations include:-
 - Sports £765/dwg, half at 50% dwgs occupied, half at 75% occupation.
 - Open space plus maintenance if adopted triggered at 33% of dwgs occupied.
 - Education £2,255/dwg on occupation of 75 dwgs.

- Affordable Housing 10% at 60% of occupation.
 - Highways £111,450.34 payment for improvements to Treble Bob roundabout; £39,364.75 roundabout contribution at 60th dwelling occupied.
- Broad Lane, Hodthorpe (14/00518/OUT) 101 dwellings. Recently commenced. No occupations yet. Obligations not yet triggered include:-
 - Sport £888 per dwelling before 70 dwellings occupied.
 - Play £747 per dwelling, scheme before 10th and provided before 70th dwelling.
 - Art £984 per dwelling at 70 but less the cost of natural stone boundary walling.
 - Affordable Housing 10% on site at 70 dwellings.
 - £50,000 to use on the Social Club before 10 dwellings occupied.
- The Edge, Mansfield Road, 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 still being pursued. Awaiting advice from contractor via Leisure Officer.
- High Ash Farm, Mansfield Rd, Clowne (14/00057/OUTMAJ and 18/00084/OTHER). Permission for 41 dwellings. Substantially completed now and occupied. Obligation triggers have been reached most payments received including for Play, Education, Footpath link, and the market housing delivery targets met discharging the Affordable Housing obligation.
However the £10,000 art obligation is currently outstanding and this is being pursued by the planning case officer.
- Tamarisk, Mansfield Road, Clowne (20/00209/FUL). Permission for 17 dwellings. New site commenced. S106 obligations include:-
 - Education - £17,177 to DCC on first occupation (DCC have been notified of the start and they will request payment);
 - POS £14,586 for play at Arc or Edge or footpath/cycle links triggered at 10 dwellings occupied;
 - Play Pitches £17,374 at 10 dwellings occupied.
- Creswell Road Clowne (14/00603/FUL) permission for 28 dwellings. 18 dwellings occupied so far and the trigger for payment will be reached very soon (20 occupations) and payment has been requested. The requirement is for a formal leisure contribution £28,424.
- Skinner Street, Creswell Phase 2 (19/00475/FUL). Permission for 88 dwellings. Recently commenced. One occupation so far.
£15,036 has already been received for biodiversity.
Other obligations not yet triggered include:-
Sport £86,565 at 50 dwellings;
Health £41,760 by 50% occupation;
Affordable Housing 9 units: BDC to take AH on; 50% completion of AH required by 65 open market dwellings; 100% completion of AH by 70 open market dwellings.
- Oxcroft Lane, Bolsover Phase 2 (15/00076/). Permission for 127 dwellings. 16 occupations so far. Obligations have been largely paid in advance. The following have been received:-

- £128,710 Sport by BDC 10/03/2020; and by DCC:
- £316,111 and £38,105 Education 06/03/2020
- £167,361 Highway improvements 02/09/2020
- £2,500 Travel Plan 02/09/2020
- £55,787 Mill Lane improvements 02/09/2020

The following are outstanding:-

- Fund up to 3 TRO's to value of £5000 each.
 - Play Space to accord with scheme.
 - Affordable Housing 10% on site in accordance with the scheme approved before 70% of market dwellings occupied.
- Mooracre Lane Bolsover (17/00234/FUL). Permission for 215 dwellings. 97 dwellings now occupied. Various S106 obligations (highways, affordable housing, bus service, primary education, POS and play, SuDS, no ransom strips) with various phased triggers. DCC have confirmed receipt of the first travel plan and traffic monitoring contributions. The first triggers were due is at 60 occupations for first phase education and road network payments. These were received 30/10/2021.
The first phase of 9 affordable houses are to be provided before 101 dwellings are occupied. The developer is on track to meet this obligation.
The trigger for the bus service contribution payment of £37,388 is almost due and payable to DCC.
 - Blind Lane, Bolsover (16/00463/OUT, 18/00481/REM) permission for 218 dwellings. New site commenced. No occupations to date. Obligations not yet triggered include:-
 - Sport £191,250 50% at 150 dwellings, 50% at 200.
 - Play on site and £80,000 to improve Houghton Rd rec', at 50 dwellings.
 - Education £179,618 Phased at: 25 dwellings 10%, invitation of tenders for education works 40%, appointment of contractor 50%.
 - Affordable 30% at 20% below market value.
 - Health £81,562 Phased at: 25 dwellings 10%, on notice health care works will be undertaken, 40%, appointment of contractor 50%.
 - Site adjacent to Pattison Street Shuttlewood (19/00083/FUL). Permission for 78 dwellings. 34 occupations to date. Obligations not yet triggered include:-
 - Education: £91,192 prior to 50% occupation and a further £91,192 prior to 75% occupation.
 - Affordable Housing: 8 units on site. Contracted before 50% occupied or if not provided on site £18750 per affordable dwelling.
 - Brookvale Shirebrook Keepmoat (14/00594) First phase 153 dwellings now completed. Second phase for 200 dwellings with 56 completions so far on that phase. All s106 obligations discharged but central POS play area and multiuse games area is to be provided shortly at 200 occupations on site (required by condition rather than S106). Due to covid-19 lock down restrictions and the current bad weather a delay in the play area provision until the end of March has been agreed.
 - Rosewood Lodge Farm, Alfreton Road, South Normanton (14/00531/OUT). Permission for 144 dwellings. Now at 56 occupations. Obligations are triggered prior

to occupation of any dwelling and the following have already been received and reported: Sports/rec, Education and Health. The following are outstanding:-

- Art Scheme (to £10,000) with timetable for implementation. The developer is in discussions with the Arts Officer and is looking at a later delivery timescale.
- Affordable Housing – to be provided only if delivery targets not met for market housing.
- Thornhill Drive, South Normanton (17/00148/OUT). Permission for 29 dwellings. 8 dwellings occupied so far. S106 obligations not yet triggered include:-
 - Sports £33,264 at 15 dwellings occupied
 - Play £28,260 at 15 dwellings occupied
 - Art £10,000 at 15 dwellings occupied
 - Affordable housing 10% at 23 dwellings
 - Health £10,955 at 15 dwellings occupied.

2 Conclusions and Reasons for Recommendation

- 2.1 The report be noted. It is for information give members the opportunity to assess the effectiveness of the monitoring procedures as well as receive up-to-date information on ongoing cases where planning obligations are involved.

3 Consultation and Equality Impact

- 3.1 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.

4 Alternative Options and Reasons for Rejection

- 4.1 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.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 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.

5.2 Legal Implications including Data Protection

- 5.2.1 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.

5.3 **Human Resources Implications**

5.3.1 None.

6 **Recommendation**

6.1 That the Planning Committee notes this report.

7 **Decision Information**

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: BDC: <i>Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> NEDDC: <i>Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	Yes
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.

8 **Document Information**

Appendix No	Title
1	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)	

Report Author	Contact Number
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Appendix 1 - Financial Spreadsheet

Funding of budgets from \$106 holding accounts - B922/0563 + B918/0561													
Related Centre Code	Description	Planning Application Number	Related Cost Centre	Exp and Income Code	Proj Code	Expenditure at current year	Unspent expenditure up'd back in year	Actual Expenditure in year	Income Received	Restriction Balance at 31/3/21	Condition Balance at 31/3/21	Use by future years	Comments
G172	Affordable Housing Totals	14/00057/OUTMAJ	G172	4093 9123	4042	18,196.00	(1,116.00)	18,195.12	0.00	(1,116.00)	0.00	19.03.25	5 years (No legal clawback - but could still be challenged if not spent)
G171	Education Totals		G171			18,196.00	(1,116.00)	18,195.12	0.00	0.00	0.00		
G125	C The Brambles, Doe Lea	05/00735	G125	4087 9114	4023	4,361.00	(4,361.00)	0.00	0.00	0.00	(4,361.11)	28.05.19	5 years from receipt, DO - contact made - awaiting resp.
G125	C Woodside Stables, Rotherham Rd Clowne	14/00226/FUL	G125	4087 9114	4023	6,939.00	0.00	6,939.00	0.00	0.00	(0.67)	14.01.21	Complete
G125	C Carter Lane West South Normanton	14/00551/FUL	G125	4087 9114	4034	5,165.00	0.00	5,165.00	0.00	(0.20)	(5,165.20)	07.12.22	5 years from payment of sundry debtor
G125	C Sterry House Farm, Clowne	15/00455/FUL	G125	4087 9114	4030	16,572.00	(8,511.00)	8,061.00	0.00	0.00	(10,176.00)	18.04.22	5 years from receipt
G125	C Spa Croft, Doe Hill Lane, Tibshelf	17/00209/FUL	G125	4087 9114	4037	10,176.00	(10,176.00)	0.00	0.00	0.00	(10,176.20)	22.03.24	5 years from receipt
G125	C Former Sherwood Lodge Site, Bolsover	17/00615/FUL	G125	4087 9114	4039	37.00	(37.00)	0.00	0.00	0.00	(37.00)	28.10.19	5 years from receipt
G125	Percent for Art Totals		G125			43,250.00	(28,250.00)	15,000.00	0.00	0.00	(28,251.18)		
G125	C The Brambles, Doe Lea	05/00735	G125	4090 9120	4006	18,023.00	(18,023.00)	0.00	(0.71)	0.00	(18,023.65)		no clawback on remaining amount
G170	C Woodside Stables, Rotherham Rd Clowne	14/00226/FUL	G170	4090 9120	4029	36,673.00	0.00	36,673.00	0.00	0.00	0.00	14.01.21	Complete
G170	C Carter Lane West South Normanton	14/00551/FUL	G170	4090 9120	4034	2,711.00	(446.00)	2,265.00	0.00	0.00	(446.70)	07.12.22	5 years from payment of sundry debtor
G170	C Baibington St, Former Allotment Gardens, Tibshelf	03/00755/FULMAJ	G170	4090 9120	4031	0.00	0.00	0.00	0.00	0.00	0.00	21.03.22	no clawback per SP
G170	C Meridian Close, Bolsover	17/00314/FUL	G170	4090 9120	4035	24,547.00	(24,547.00)	0.00	0.00	0.00	(24,547.95)	20.12.22	5 years from receipt
G170	C Mansfield Road, Tibshelf	13/00182/OUT	G170	4090 9120	4036	81,394.00	(81,394.00)	0.00	0.00	0.00	(81,394.00)	20.12.24	21/22 part
G170	C Rosewood Lodge Farm, South Normanton	14/00551/OUT	G170	4090 9120	4038	129,347.00	(126,252.00)	3,095.00	0.00	0.00	(126,252.25)	21.05.24	5 years from receipt
G170	C Oxcroft Lane, Bolsover	15/00076/OUT	G170	4090 9120	4041	0.00	0.00	0.00	0.00	0.00	(128,710.00)	10.03.25	5 years (No legal clawback - but could still be challenged if not spent)
G170	C Shirebrook Cricket Club	16/00391/FUL	G170	4090 9120	4044	22,169.00	(22,169.00)	0.00	0.00	0.00	(22,169.00)		Use by? Paid 24/12/20
G170	Outdoor Sport (Format) Totals		G170			314,864.00	(272,831.00)	42,033.00	(22,169.00)	0.00	(484,301.30)		
G126	R Heritage Drive, Clowne (GL Homes)	BOL9504/0126	G126	4091 9121	4019	10,644.00	(10,644.00)	0.00	0.00	0.00	(6,284.87)		no clawback
G126	C Hazelnere Park (Skinner St) Creswell	04/00066	G126	4091 9121	4002	6,285.00	(6,285.00)	0.00	0.00	0.00	0.00		maint
G126	C Rangewood Rd Development, S/N	00/00378	G126	4091 9121	4005	4,465.00	(4,465.00)	0.00	0.00	0.00	0.00		maint
G126	C The Brambles, Doe Lea	05/00735	G126	4091 9121	4005	5,824.00	(5,824.00)	0.00	0.00	0.00	(6,284.87)		no clawback
G126	C Woodside Stables, Rotherham Rd Clowne	14/00226/FUL	G126	4091 9121	4023	195.00	0.00	195.00	0.00	0.00	(6,284.87)	14.01.21	Complete
G126	C Carter Lane West South Normanton	14/00551/FUL	G126	4091 9121	4034	12,766.00	(12,766.00)	0.00	0.00	0.00	(12,766.86)	07.12.22	5 years from payment of sundry debtor
G126	C Thurgarton Way (phase 2)	14/00065/OUT	G126	4091 9121	4033	2,015.00	(2,015.00)	0.00	0.00	0.00	(2,015.16)	01.08.22	5 years from receipt assumed
G126	C Sterry House Farm, Clowne	15/00455/FUL	G126	4091 9121	4030	12,107.00	(9,121.00)	2,986.00	0.00	0.00	(9,121.13)	06.02.22	5 years from receipt
G126	C Baibington St, Former Allotment Gardens, Tibshelf	03/00755/FULMAJ	G126	4091 9121	4031	0.00	0.00	0.00	0.00	0.00	0.00	21.03.22	no clawback per SP
G126	C Meridian Close, Bolsover	17/00314/FUL	G126	4091 9121	4035	27,475.00	(27,475.00)	0.00	(0.69)	0.00	(27,475.69)	22.12.22	5 years from receipt
G126	C Spa Croft, Doe Hill Lane, Tibshelf	17/00209/FUL	G126	4091 9121	4037	27,856.00	(27,856.00)	0.00	0.00	0.00	(27,856.00)	22.03.24	5 years from receipt
G126	C Station Rd, Langwith Junction	16/00530/FUL	G126	4091 9121	4040	52,000.00	(52,000.00)	0.00	0.00	0.00	(52,000.00)	30.01.25	5 years from receipt
G126	C High Ash Farm, Clowne	14/00057/OUTMAJ	G126	4091 9121	4042	0.00	0.00	0.00	0.00	0.00	(10,945.39)	19.03.25	5 years (No legal clawback - but could still be challenged if not spent)
G126	Open Space (Informal) Totals		G126			161,632.00	(153,251.00)	8,381.00	0.00	(15,108.50)	(149,089.92)	21/22	
G226	C Carter Lane West South Normanton	14/00551/FUL	G226	4118 9170	4028	569,000.00	(569,000.00)	0.00	0.00	0.00	(569,000.00)	77	5 years from receipt
G226	C Brookvale - South Shirebrook	14/00594/OUT	G226	4118 9170	4042	12,588.00	(12,588.00)	0.00	0.00	0.00	(30,463.68)	19.03.25	5 years (No legal clawback - but could still be challenged if not spent)
G226	Land at Skinner Street, Creswell	14/00057/OUTMAJ	G226	4118 9170	4043	0.00	0.00	0.00	0.00	0.00	(30,463.68)	07.08.25	5 years from receipt
G226	Land at Skinner Street, Creswell	15/00386/FUL	G226	4118 9170	4043	0.00	0.00	0.00	0.00	0.00	(30,463.68)		Budget yr7
G327	Highways Totals		G327			581,588.00	(569,000.81)	12,587.19	(30,463.68)	0.00	(599,483.88)		5 years from receipt assumed
G327	C Thurgarton Way (phase 2)	14/00065/OUT	G327	4119 9171	4033	30,132.00	(30,132.00)	0.00	0.00	0.00	(30,132.00)	01.08.22	5 years from receipt
G327	C Mansfield Road, Tibshelf	13/00182/OUT	G327	4119 9171	4036	33,249.00	(33,249.00)	0.00	0.00	0.00	(87,056.00)	20.12.24	5 years from receipt
G327	C Rosewood Lodge Farm, South Normanton	14/00551/OUT	G327	4119 9171	4038	80,141.00	(80,141.00)	0.00	0.00	0.00	(80,141.59)	21.05.24	5 years from receipt
G327	C Station Rd, Langwith Junction	16/00530/FUL	G327	4119 9171	4040	0.00	0.00	0.00	0.00	0.00	(16,000.00)	30.01.25	5 years from receipt
G327	Health Totals		G327			143,522.00	(143,522.00)	0.00	0.00	0.00	(193,329.59)		5 years from receipt
G331	Land To The Rear Of Nos 34 To 54 Skinner Street, (19/00475/FUL	G331	4128 9122	4043	0.00	0.00	0.00	0.00	0.00	(15,035.96)		Use by? Paid 02/10/20
G331	Biodiversity Totals		G331			0.00	0.00	0.00	0.00	0.00	(15,035.96)		
						1,263,052.00	(1,167,971.69)	95,080.31	(67,668.64)	(16,224.50)	(1,469,471.63)		