

Bolsover District Council

Planning Committee

30th June 2021

Update on Section 106 Agreement Monitoring

Report of the Assistant Director: Development and Planning

Classification: This report is public

Report By: Principal Planning Officer (Planning Policy)

Contact Officer: Chris McKinney

PURPOSE / SUMMARY

To provide a progress report in respect of the monitoring of Section 106 Agreements in order to give members the opportunity to assess the effectiveness of the Council's monitoring procedures.

RECOMMENDATIONS

1. That Planning Committee note the contents of the report and highlight any concerns about the implementation of the Section 106 Agreements listed.

Approved by the Portfolio Holder – Corporate Governance

IMPLICATIONS

Finance and Risk: Yes No

Details:

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 taking. 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 Section 106 Agreements are not sufficiently robust.

On Behalf of the Section 151 Officer

Legal (including Data Protection): **Yes** **No**

Details:

There are no data protection implications insofar as Section 106 Agreements are part of the statutory planning register and are therefore public documents. Section 106 of the Town and Country Planning Act 1990 provides the legal framework for the acceptance and discharge of the Section 106 Agreements and the Council's approved procedure addresses the key legislative provisions of this section of the 1990 Act.

On Behalf of the Solicitor to the Council

Staffing: **Yes** **No**

Details:

None.

On behalf of the Head of Paid Service

DECISION INFORMATION

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: Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input checked="" type="checkbox"/> NEDDC: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <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
District Wards Significantly Affected	All
Consultation: Leader / Deputy Leader <input type="checkbox"/> Cabinet / Executive <input checked="" type="checkbox"/> SAMT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input checked="" type="checkbox"/>	Yes Details: Chair of Planning Committee

Links to Council Ambition (BDC)/Council Plan (NED) priorities or Policy Framework including Climate Change, Equalities, and Economics and Health implications.

- Enabling housing growth;
- Developing attractive neighbourhoods;
- Increasing customers' satisfaction with our services.

REPORT DETAILS

1 Background

- 1.1 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.
- 1.2 As can be observed, implementation of these Section 106 Agreements in a timely manner alongside the build-out of the approved developments is important as failure to achieve this will mean important infrastructure improvements lag behind the impact of the development.
- 1.3 Furthermore, if the Council fails to spend monies provided through the Section 106 Agreement within a set period, often within 5-years of entering into the agreement, there is a risk to the Council that the developer would be entitled to request the money back. This risk is thankfully relatively low but it is one that the Council must take seriously due to both the negative impact on the affected local community and the consequential reputational impact on the Council.
- 1.4 To manage and mitigate this serious risk the Council has approved a procedure for recording and monitoring Section 106 Agreements and this was most recently approved by Planning Committee at its meeting in January 2019. This governs the work of the Council's cross-departmental Section 106 Monitoring Group.
- 1.5 In accordance with this approved procedure, following the quarterly Section 106 Monitoring Group meeting officers provide a progress report to the Planning Committee in respect of the monitoring of Section 106 Agreements. This progress report is required by the procedure to highlight any sums at risk of clawback that need spending within 12 months.
- 1.6 This report is the quarterly progress report following the meeting of the Section 106 Monitoring Group held on 27th April 2021.

2. Details of Proposal or Information

2.1 Members will recall that one sum was identified in the report to Members in January 2021 as being at risk of clawback that need spending within 12 months, namely:

a. The Brambles, Doe Lea - Art £4,361.11 (spend by date expired)

2.2 This sum is now joined by the following two sums that were highlighted at the Section 106 Monitoring Group as needing to be spent within 12 months.

b. Sterry House Farm - Informal POS £12,107 by 06.02.22

c. Sterry House Farm - Art £3,045 by 18.04.22

2.3 The updates for these three sums recorded at the Section 106 Monitoring Group are as follows:

	<p>Art work underspend at The Brambles, Doe Lea (Financial spreadsheet line 47)</p> <p><u>Previous Action</u> Continue to press Gleeson Homes for a decision on whether the underspend money can be used on another project or if not for them to supply payment details for the return of the money to them.</p> <p><u>April Update</u> CM advised the group that he had spoken to the relevant person at Gleeson Homes about using the underspend for a further art work project and that they had advised they had no objection to this. They indicated they were unlikely to need much input in the type of artwork.</p> <p>DO referred to his circulated options document and set out the pros and cons of the two identified options that the underspend could be put to, namely 1) Orchestras Live Partnership project or 2) Arts Sessional development extension. Following consideration of these options, the group identified option 1 as the preferred one.</p> <p>CM advised that aim was to get this agreed with Gleesons in time to report that progress to the June meeting of Planning Committee.</p> <p><u>New Actions</u> DO to develop the Orchestras Live Partnership project proposal and write it up and circulate it to SP and CM by Friday 14th May to enable it to be put to Gleeson Homes for their sign off.</p>	<p>DO</p>
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	<p>Sterry House Farm - Informal POS £12,107 by 06.02.22 (Financial spreadsheet line 75)</p> <p><u>Previous Action</u> N/A</p> <p><u>April Update</u> MC working with Parish Council to look at gateway site opportunity.</p> <p><u>New Actions</u> CM welcomed this update and requested that MC email a timetable for progressing this S106 contribution by Friday 21st May.</p>	MC
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	<p>Sterry House Farm - Art £3,045 by 18.04.22 (Financial spreadsheet line 79)</p> <p><u>Previous Action</u> N/A</p> <p><u>April Update</u> DO working with Barlborough History Group to look at art project at Clowne Linear Park.</p> <p><u>New Actions</u> CM welcomed this update and requested that DO email a timetable for progressing this S106 contribution by Friday 21st May.</p>	DO
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2.4 At the time of writing, these three sums remain unspent by the actions above have been progressed and the following updates can be reported.

Art work underspend at The Brambles, Doe Lea

The Community Arts Development Officer has developed the arts / music / multimedia partnership project proposal to be delivered by Orchestras Live and Bramley Vale Primary School as required and this was sent to Gleeson Homes on 15th June 2021 for their sign off and this was received on 16th June 2021.

This confirmation enables the Council to now progress with this project without the risk of Gleeson's asking for the remaining Section 106 monies back. The Community Arts Development Officer has advised that the project will be developed further with the aim of delivering it in January 2022.

Sterry House Farm - Informal POS

The Leisure Department's Special Projects Officer has advised that Clowne Parish Council are leading this project and started the procurement exercise in May 2021. Based on this, the timetable being worked to for the delivery of this project is Autumn 2021 – so prior to the funding deadline.

Sterry House Farm - Art

The Community Arts Development Officer has advised that the timetable being worked to for the delivery of this one is September to December 2021 – so prior to the funding deadline.

- 2.5 These updates represent progress and on this basis it is expected that the risk of clawback is guarded against. However, these and other Section 106 Agreements will continue to be monitored.

3 Reasons for Recommendation

- 3.1 The implementation of Section 106 Agreements in a timely manner is essential to achieving sustainable growth across the District and protecting the quality of life for the District's residents and businesses.
- 3.2 As a result, it is important that Members receive information about the progress being made by the various Council departments to deliver Section 106 Agreements and to give Members the opportunity to assess the effectiveness of the monitoring procedures.
- 3.3 Therefore, it is recommended that Members note the contents of the report and highlight any concerns about the implementation of the Section 106 Agreements listed.

4 Alternative Options and Reasons for Rejection

- 4.1 Providing a progress report in respect of the monitoring of Section 106 Agreements to Planning Committee address recommendations made in the 2016 Audit report and has been agreed by members of the Planning Committee as part of the procedure for recording and monitoring Section 106 Agreements. Therefore, officers have not considered alternative options.

DOCUMENT INFORMATION

Appendix No	Title
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)	