

**Bolsover District Council**

**Planning Committee**

**15th September 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

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**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.

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**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

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**IMPLICATIONS**

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**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

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**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

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

**Details:**

None.

On behalf of the Head of Paid Service

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**DECISION INFORMATION**

<b>Decision Information</b>	
<b>Is the decision a Key Decision?</b> 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:  <b>BDC:</b> <b>Revenue - £75,000</b> <input type="checkbox"/> <b>Capital - £150,000</b> <input checked="" type="checkbox"/> <b>NEDDC:</b> <b>Revenue - £100,000</b> <input type="checkbox"/> <b>Capital - £250,000</b> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
<b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)	No
<b>District Wards Significantly Affected</b>	All
<b>Consultation:</b> <b>Leader / Deputy Leader</b> <input type="checkbox"/> <b>Cabinet / Executive</b> <input checked="" type="checkbox"/> <b>SAMT</b> <input type="checkbox"/> <b>Relevant Service Manager</b> <input type="checkbox"/> <b>Members</b> <input type="checkbox"/> <b>Public</b> <input type="checkbox"/> <b>Other</b> <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** *(reasons for bringing the report)*

- 1.1 S106 agreements are a type of legal agreement between the Council and landowners / developers that are 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 27<sup>th</sup> July 2021.



	<u>New Actions</u> MC to progress and ensure works are delivered and S106 monies are spent prior to 6 <sup>th</sup> February 2022 deadline.	MC
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	<b>Sterry House Farm - Art £3,045 by 18.04.22 (Financial spreadsheet line 79)</b>  <u>Previous Action</u> DO email a timetable for progressing this S106 contribution by Friday 21 <sup>st</sup> May.  <u>July Update</u> DO advised that these funds are allocated to develop Clowne Linear Park signage and are planned for delivery between September and December 2021.  <u>New Actions</u> DO to progress and ensure works are delivered and S106 monies are spent prior to 18 <sup>th</sup> April 2022 deadline.	<b>Action owners</b>          DO
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2.3 At the time of writing, these three sums remain unspent but work is ongoing to deliver the specified works in the required time. This situation represents 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
<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)	