

Bolsover District Council

Planning Committee

19th January 2022

Update on Section 106 Agreement Monitoring

Report of the Assistant Director: Development and Planning

Classification: This report is public

Report By: Interim Planning Policy Manager

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** *(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 26th October 2021.

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| | <p><u>New Actions</u> MC to seek a date for when this work would be completed by the end of the week (Friday 29th October 2021).</p> | MC |
| | <p>Sterry House Farm - Art £3,045 by 18.04.22 (Financial spreadsheet line 79)</p> <p>DO to progress and ensure works are delivered and S106 monies are spent prior to 18th April 2022 deadline.</p> <p><u>Update</u> DO advised that the Clowne Linear Park signage design work is being scheduled in order to enable delivery alongside the planned completion event for the Clowne Gateway Environmental Improvement Scheme discussed above.</p> <p><u>New Actions</u> DO to progress and ensure works are delivered and S106 monies are spent prior to 18th April 2022 deadline.</p> | <p>Action owners</p> <p>DO</p> |
| | <p>Thurgaton Way P2 - Health £30,132 by 01.08.22 (Financial spreadsheet lines 73 and 83)</p> <p>JF to pursue progress with the legal agreement to enable the transfer of the S106 monies from BDC to NHS England by 31st August 2021.</p> <p><u>Update</u> CM advised the group that JF had tried to secure progress in this matter but that no response had been received. CM advised that he had emailed Rachael Preston at NHS England on Friday to ask for an update prior to the meeting and had phoned her 3 times yesterday, all to no avail.</p> <p>The group noted that the first tranche of the allocated S106 money was due to be returned to the developers in August 2022 and that if a response could not be achieved within the week this matter should be escalated, ideally to the Leader of the Council.</p> <p><u>New Actions</u> CM to continue to chase progress and if no response to escalate the matter.</p> | <p>Action owners</p> <p>CM</p> |

- 2.4 As can be seen, the Sterry House Farm sum of £12,107 for Informal Public Open Space (POS) has now been transferred to Clowne Parish Council and spent on the Clowne Gateway Environmental Improvement Scheme in advance of the 6th February 2022 deadline. Related to this, the Sterry House Farm sum of £3,045 for Public Art should be spent soon and in advance of the 18th April 2022 deadline also.
- 2.5 In relation to the new sum at Thurgaton Way Phase 2 sum of £30,132, at the time of writing this sum is yet to be transferred to the NHS for Primary Health Care improvements at the Staffa GP Practice in Tibshelf. Discussions are ongoing with the various NHS organisations involved and the urgency of the situation is being communicated to them and a timeframe that would see the money transferred to the relevant NHS organisation in April 2022 for spending commitment prior to the 1st August date is possible. As per the Section 106 Monitoring Group notes, this situation was escalated to the Leader of the Council prior to Christmas 2021 to establish the degree of concern that should be directed at the Staffa GP Practice from the Council. In light of the increasing pressure on GP surgeries to facilitate the accelerated roll out of the Covid-19 vaccination booster programme, the Leader understandably decided that it would be inappropriate to add to the pressure on the Staffa GP surgery at this time but that officers should continue to work to ensure the money is transferred in a timely manner and to keep him informed of the situation.
- 2.6 Beyond these two cases, progress continues to be made but officers will continue to monitor and pursue the implementation of the Section 106 Agreements.

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 |
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| 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) | |
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