

**Bolsover District Council**

**Meeting of the Planning Committee on 23<sup>rd</sup> April 2022**

**Report of the Assistant Director: Development**

**UPDATE ON SECTION 106 AGREEMENT MONITORING**

<b>Classification</b>	This report is Public
<b>Report By</b>	Chris McKinney Interim Planning Policy Manager
<b>Contact Details</b>	01246 242292 <a href="mailto:chris.mckinney@bolsover.gov.uk">chris.mckinney@bolsover.gov.uk</a>

**PURPOSE / SUMMARY OF REPORT**

- 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.

---

**REPORT DETAILS**

**1. Background**

- 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 2<sup>nd</sup> February 2022.

## **2. Details of Proposal or Information**

- 2.1 Members will recall that four sums were identified in the report to Members in June 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)
  - b. Sterry House Farm - Informal POS £12,107 by 06.02.22
  - c. Sterry House Farm - Art £3,045 by 18.04.22
  - d. Thurgaton Way P2 - Health £30,132 by 01.08.22
- 2.2 These sums are now joined by the following four sums that were highlighted at the Section 106 Monitoring Group as needing to be spent within 12 months.
  - e. Carter Lane West - Art £5,165.20 by 07.12.22
  - f. Carter Lane West - Informal POS £12,766.86 by 07.12.22
  - g. Meridian Close - Informal POS £27,475.69 by 22.12.22
  - h. Meridian Close - Outdoor Sport £24,547.95 by 22.12.22
- 2.3 The updates for these eight sums recorded at the Section 106 Monitoring Group are as follows:

	<b>Art work underspend at The Brambles, Doe Lea (Financial spreadsheet line 47)</b>	<b>Action owners</b>
	<p>DO to deliver the Orchestras Live Partnership project by end of March 2022.</p> <p><u>Update</u> DO advised that the final celebration event is to be held on 16<sup>th</sup> March 2022 and that this would see the project closed by the Jubilee.</p>	DO

	<p><u>New Actions</u> DO to document the final celebration event and close the Orchestras Live Partnership project by the Jubilee bank holiday weekend at start of June 2022.</p>	DO
	<p><b>Sterry House Farm - Informal POS £12,107 by 06.02.22 (Financial spreadsheet line 75)</b></p> <p>MC seek a date for when this work would be completed by the end of the week (Friday 29<sup>th</sup> October 2021).</p> <p><u>Update</u> MC advised that the works are now complete.</p> <p><u>New Actions</u> None – action complete.</p>	MC
	<p><b>Sterry House Farm - Art £3,045 by 18.04.22 (Financial spreadsheet line 79)</b></p> <p>DO to progress and ensure works are delivered and S106 monies are spent prior to 18<sup>th</sup> April 2022 deadline.</p> <p><u>Update</u> DO advised that he had run out of time to use this money to provide signage for the Clowne Linear Park / Clowne Gateway Environmental Improvement Scheme as originally intended. He explained that alternative arrangements were being put in place to ensure the money is spent prior to 18<sup>th</sup> April 2022 deadline.</p> <p><u>New Actions</u> DO to establish an alternative suitable scheme and ensure works are delivered and S106 monies are spent prior to 18<sup>th</sup> April 2022 deadline.</p>	DO        DO
	<p><b>Health contribution transfer (Financial spreadsheet lines 73 and 83)</b></p> <p>CM to continue to chase progress and if no response to escalate the matter.</p> <p><u>Update</u> CM advised the group that he continued to chase this matter, and had escalated it to the Leader prior to Christmas to take a steer on what approach to take with the CCG and GP Surgery. The Leader advised that a sensitive approach was appropriate given the current demand on the surgery to deliver the Covid booster programme.</p>	CM

	<p>CM added that CCG had advised that the Surgery has agreed terms with their landlord and that DV report could be expected in mid-Jan 2022, although he added that this had not yet been achieved. Potential for money to be transferred in new financial year.</p> <p><u>New Actions</u> CM to continue to chase progress and keep the Leader informed.</p>	<p>CM</p>
	<p><b>Carter Lane West - Informal POS £12,766.86 by 07.12.22 (Financial spreadsheet line 68)</b></p> <p>MC to progress preferred location decision and to develop a suitable project by 30<sup>th</sup> November 2021.</p> <p><u>Update</u> MC advised that he is yet to meet with South Normanton Parish Council about the potential use of money at South Street Recreation Ground, but would get a date in the diary for a February meeting before the end of the week (Friday 4<sup>th</sup> February 2022).</p> <p><u>New Actions</u> MC to progress preferred location decision with South Normanton Parish Council and to develop a suitable project by 31<sup>st</sup> March 2022.</p>	<p>MC</p> <p>MC</p>
	<p><b>Carter Lane West - Art £5,165.20 by 07.12.22 (Financial spreadsheet line 66)</b></p> <p>DO to progress and update at the January 2022 meeting.</p> <p><u>Update</u> DO advised that he had programmed some time to look at this one in April / May 2022.</p> <p><u>New Actions</u> DO to progress and update at the April 2022 meeting.</p>	<p>DO</p> <p>DO</p>
	<p><b>Meridian Close - Informal POS £27,475.69 &amp; Outdoor Sport £24,547.95 by 22.12.22 (Financial spreadsheet lines 81 &amp; 82)</b></p> <p>MC to look at what improvements needed at King George's Recreation Ground, progress discussions with Old Bolsover Town Council about bringing forward this project and update at January 2022 meeting.</p>	<p>MC</p>

	<p><u>Update</u> MC advised that he will liaise with Old Bolsover Town Council to agree an improvement plan for King George's Recreation Ground.</p> <p><u>New Actions</u> MC to progress and update at the April 2022 meeting.</p>	MC
--	---	----

- 2.4 As can be seen, it was reported that the Sterry House Farm sum of £12,107 for Informal Public Open Space (POS) had been spent and the Clowne Gateway Environmental Improvement Scheme delivered. However, the sum of £3,045 for Public Art remained outstanding and the Community Arts Development Officer advised that he was urgently establishing an alternative suitable scheme that could be delivered to ensure the S106 monies are spent prior to 18<sup>th</sup> April 2022 deadline. At the time of writing, the Community Arts Development Officer has advised that an alternative suitable scheme had been established and that the monies had paid for the development of a community arts resource to address anti-social behaviour on green spaces in the Clowne Parish area.
- 2.5 The Thurgaton Way Phase 2 sum of £30,132 for health is still yet to be transferred to the NHS for Primary Health Care improvements at the Staffa GP Practice in Tibshelf despite significant chasing. However, further to the update above the NHS Derby and Derbyshire Clinical Commissioning Group, the NHS organisation responsible for facilitating the increase to capacity at the Staffa GP Practice, has advised that they are currently working with the practice and their landlord to convert two existing admin rooms to form new clinical consultation rooms. These new consultation rooms are intended to be multi-functional, so providing further appointment availability to local residents in advance of the planned extension of the Staffa GP Practice building. At the time of writing, the plans for the new clinical consultation rooms are expected to be finalised during April 2022, enabling the sum of £30,132 to be transferred to the NHS and the conversion work to take place and be completed prior to the 1<sup>st</sup> August 2022 date. This situation has been reported to the Leader and he is supportive of continuing the taken approach to ensure the money is transferred in a timely manner.
- 2.6 The four new sums remain unspent but as is stated above work is ongoing to deliver the specified works in the required time. Beyond these 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.

---

#### **RECOMMENDATION(S)**

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

Approved by 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:** There are no human resources implications arising from this report.

On behalf of the Head of Paid Service

## DECISION INFORMATION

<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"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
<b>Is the decision subject to Call-In?</b> <i>(Only Key Decisions are subject to Call-In)</i>	No

<b>District Wards Significantly Affected</b>	All
<b>Consultation:</b> <b>Leader / Deputy Leader</b> <input checked="" type="checkbox"/> <b>Executive</b> <input type="checkbox"/> <b>SLT</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: Customers, Economy and Environment

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

## 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)*