

Bolsover District Council

Meeting of the Planning Committee on 8th June 2022

Report of the Assistant Director: Development

QUARTERLY UPDATE ON SECTION 106 AGREEMENT MONITORING

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| Classification | This report is Public |
| Report By | Chris McKinney Interim Planning Policy Manager |
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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 27th April 2022.

2. Details of Proposal or Information

- 2.1 Members will recall that seven sums were identified in April 2022 as being within their 12 month deadline for spending, namely:
 - a. The Brambles, Doe Lea - Art £4,361.11 (spend by date expired)
 - b. Sterry House Farm - Art £92.85 (spend by date expired)
 - c. Thurgaton Way P2 - Health £30,132 by 01.08.22
 - d. Carter Lane West - Art £5,165.20 by 07.12.22
 - e. Carter Lane West - Informal POS £12,766.86 by 07.12.22
 - f. Meridian Close - Informal POS £27,475.69 by 22.12.22
 - g. Meridian Close - Outdoor Sport £24,547.95 by 22.12.22
- 2.2 No further sums were highlighted at the Section 106 Monitoring Group as needing to be spent within 12 months.
- 2.3 In relation to the two sums beyond their spend by date, it has previously been reported to Members that item a. was due to a VAT amount not being applied and that the Council has since received confirmation from the developer that they do not wish to have the money returned. However, an update on the spend of the monies is provided below. It was reported in April that item b. had been substantially spent by its 18th April 2022 deadline, leaving a sum of £92.85 outstanding and at risk of needing to be returned. This sum is sufficiently small to be considered a limited risk and will be held by the Council in the limited chance the developer asks for it to be returned. However, as the sum is small the Council will not instigate correspondence regarding the return of the £92.85 due to the administrative cost of doing so being greater than the sum involved.
- 2.4 The updates for items a. and c. to g. recorded at the Section 106 Monitoring Group are as follows:

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| | <p>Art work underspend at The Brambles, Doe Lea (Financial spreadsheet line 47)</p> <p>Community Arts Development Officer (CADO) to document the final celebration event and close the Orchestras Live Partnership Project by the Jubilee Bank Holiday weekend at start of June.</p> <p><u>Update</u> The Orchestra event happened last month. The Lighting Up event is not on track as the Parish Council want to lead and do not want to do a lighting up event at this time of year. The money is spent but the event will be in September. The Principal Accountant is aware where things are at, with the remaining money of £4,361 to be spent by August 2022 and not June. An interactive website launch is planned between August and September.</p> <p><u>New Actions</u> Community Arts Development Officer to report back to next meeting on progress.</p> | <p>Action owners</p> <p>CADO</p> <p>CADO</p> |
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| | <p>Thurgaton Way (Phase 2) - Health £30,132 by 01.08.22 (Financial spreadsheet line 73)</p> <p>Interim Planning Policy Manager (IPPM) to continue to chase progress and keep the political Leadership informed.</p> <p><u>Update</u> IPPM updated that the CCG's provided timeline for the delivery of improvements and the spend of this money was as follows:</p> <ul style="list-style-type: none"> • End of April – Tender quotes from numerous businesses gathered. • Early May – submit PID, Tender Form and relevant documents in for signing. Due diligences checked completed by CCG and NHSE. • Mid/End of May – submitted to yourself for sign off and draw down the funds. • June – Work begins with expectation of being completed by mid-July. <p><u>New Actions</u> IPPM to continue to chase progress in line with this timeline and keep the political Leadership informed.</p> | <p>IPPM</p> <p>IPPM</p> |
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| | <p>Carter Lane West - Informal POS £12,766.86 by 07.12.22 (Financial spreadsheet line 68)</p> <p>Special Projects Officer – Leisure (SPOL) to progress preferred location decision with South Normanton Parish Council and to develop a suitable project by 31st March 2022.</p> <p><u>Update</u> SPOL met South Normanton Parish Council last week. Works are needed to progress the skate park and soft play area but the money will be spent by the December deadline. A timetable will be put together in the next couple of weeks.</p> <p><u>New Actions</u> SPOL to email progress to Principal Planning Officer by 13th May 2022 of how list has been narrowed from options to preferred works. With the aim to be able to go out to tender two weeks later 27th May 2022.</p> | <p>SPOL</p> <p>SPOL</p> |
| | <p>Carter Lane West - Art £5,165.20 by 07.12.22 (Financial spreadsheet line 66)</p> <p>Community Arts Development Officer (CADO) to progress and update at the April 2022 meeting.</p> <p><u>Update</u> CADO advised that there was a plan to do works in September / October in local schools.</p> <p><u>New Actions</u> Fortnightly review of progress with Principal Planning Officer starting w/c 13th May 2022.</p> | <p>CADO</p> <p>CADO / PPO</p> |
| | <p>Meridian Close - Informal POS £27,475.69 by 22.12.22 and Outdoor Sport £22,782.95 by 22.12.22 (Financial spreadsheet lines 81 & 82)</p> <p>Special Projects Officer – Leisure (SPOL) to progress and update at the April 2022 meeting.</p> <p><u>Update</u> SPOL advised that his current thinking is to use this money to secure improvements to sports facilities within the Bolsover town area, which included bringing the cricket pitch back into use for this season and using any remaining money to secure improvements to existing football pitches.</p> <p>IPPM advised that he is in discussions with Sports England about the impacts of new planned growth on playing pitches provision elsewhere in the District. However, their input to the</p> | <p>SPOL</p> |

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| | <p>overall playing pitches strategy for Bolsover town would potentially be beneficial.</p> <p><u>New Actions</u> Fortnightly review of progress with Principal Planning Officer and IPPM starting w/c 13th May 2022.</p> | <p>SPOL / PPO</p> |
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- 2.5 At the meeting of the Planning Committee in April, Members raised strong concerns about the number of sums of money within a year of their deadline. These strong concerns have been communicated to all officers at the Section 106 Monitoring Group. In addition, more frequent reviews of progress have been put in place to try to ensure officers responsible for spending the sums in question make the necessary progress in the delivery of their projects.
- 2.6 In relation to the Carter Lane West, South Normanton, sum of £5,165.20 for public art works that needs to be spent by 7th December 2022, these more frequent reviews have seen the Community Arts Development Officer (CADO) agree the brief with South Normanton Parish Council for a community mural / art work project aimed at young people. The CADO is now trying to engage with the local schools to secure the input of their pupils, which is proving slightly difficult, but the CADO has advised that if this avenue does not lead to sufficient progress then other community groups will be approached in June / July to avoid further delays.
- 2.7 In relation to the Merridan Close, Bolsover, sums of £27,475.69 for Informal POS and £22,782.95 for Outdoor Sport that need to be spent by 22nd December 2022, these more frequent reviews have seen the Special Projects Officer – Leisure (SPOL) put together a potential list of improvement works that would account for £45,000 of the approximately £50,000 total. Work is now focussing on helping the SPOL develop and deliver this potential list of improvement works by the required deadline.
- 2.8 In relation to the Thurgaton Way, Newton sum of £30,132 for health that needs to be spent by 1st August 2022, the timetable set out above is being followed and the legal documents that trigger the transfer of the monies to the NHS Clinical Commissioning Group are in the process of being signed. This should see the monies transferred by the end of May 2022.
- 2.9 Regarding the other cases, work is ongoing to deliver the specified works in the required time and 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

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| <u>IMPLICATIONS:</u> | |
| <u>Finance and Risk:</u> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 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 | |
| <u>Legal (including Data Protection):</u> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 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 | |
| <u>Staffing:</u> | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| Details: There are no human resources implications arising from this report. | |
| On behalf of the Head of Paid Service | |

DECISION INFORMATION

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| <p>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:</p> <p>Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p> | No |
| <p>Is the decision subject to Call-In? <i>(Only Key Decisions are subject to Call-In)</i></p> | No |

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| <p>District Wards Significantly Affected</p> | All |
| <p>Consultation: Leader / Deputy Leader <input checked="" type="checkbox"/> Executive <input type="checkbox"/> SLT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input checked="" type="checkbox"/></p> | <p>Yes</p> <p>Details: Chair of Planning Committee</p> |

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| <p>Links to Council Ambition: Customers, Economy and Environment.</p> |
| <ul style="list-style-type: none"> • Enabling housing growth; • Developing attractive neighbourhoods; • Increasing customers' satisfaction with our services. |

| DOCUMENT INFORMATION | |
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| Appendix No | Title |
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| <p>Background Papers</p> |
| <p><i>(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 Executive you must provide copies of the background papers).</i></p> |
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