

**Bolsover, Chesterfield and North East Derbyshire District Councils'**

**Internal Audit Consortium**

**Internal Audit Report**

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| <b>Authority:</b>           | <b>Bolsover District Council</b>  |
| <b>Subject:</b>             | <b>Section 106 Agreements (B020)</b>  |
| <b>Date of Issue:</b>       | <b>23<sup>rd</sup> May 2022</b>   |
| <b>Assurance Level:</b>     | <b>Substantial</b>  |
| <b>Report Distribution:</b> | <b>Principal Planning Officer<br/>Interim Planning Policy Manager<br/>Planning Manager (Development Control)<br/>Assistant Director of Development and Planning<br/>Treasurer, Section 151 Officer and Assistant Director of Finance<br/>Executive Director of Strategy and Development</b> |



# **INTERNAL AUDIT REPORT BOLSOVER DISTRICT COUNCIL SECTION 106 AGREEMENTS**

## **Introduction**

In accordance with the annual audit plan, a review of the controls and risks in respect of Section 106 Agreements at Bolsover District Council has been completed.

## **Scope and Objectives**

The objectives of the audit include a review of the controls relating to the following:-

- Previous recommendations implemented
- A central record of all S106 agreements is maintained, including unilateral agreements
- Monitoring responsibilities are defined and allocated
- Processes are in place for pursuit of S106 payments
- S106 monitoring and follow-up processes are operating satisfactorily
- Budget monitoring is in place
- S106 reporting is regular and accurate
- Liaison procedures are in place with services and partner organisations

## **Conclusion**

The conclusion of the audit was that the reliability of controls have been assessed as Substantial; there is a sound system of controls in place, designed to achieve the system objectives. Controls are being consistently applied and risks well managed; see Appendix A for definitions.

In summary, it is considered that the controls within the Planning and Finance functions are embedded and are effective. There are however, instances where delays are experienced regarding the timeliness of completing procedures which may potentially impact on obligation or 'use-by' dates for the S106 responsibilities as administered by other designated S106 officers and instances of a lack of timely actions by specific external partners; further information is provided within the main body of this report.

## **Acknowledgement**

The assistance of the Planning Manager (Development Control), Interim Planning Policy Manager and the Principal Planning Officer was appreciated during the audit review.

## **Findings and Recommendations**

### **Previous Recommendations**

1. The previous report was completed in September 2018 and included four recommendations. It was confirmed during audit testing that all recommendations have been implemented.

### **Central Record of S106 Agreements Including Unilateral Agreements**

2. Planning maintain the S106 tracker which forms the central record for monitoring all S106 agreements including where receipts are due and obtained. Finance maintain their own spreadsheet of S106 agreements which is updated to reflect spend by dates and record all sums received. The methods of recording all details relating to S106 agreements in this way has not changed since the previous audit review.
3. An updated version of the S106 procedures document has been produced by Planning in 2019 following a previous audit recommendation. The Interim Planning Policy Manager stated that a further revision is being developed which will include the responsibilities of designated S106 representatives from other service areas. This is to ensure that they take all necessary actions to make sure S106 receipts due are obtained and spent in accordance with the terms of the agreements and the risk of having to repay the developers is mitigated as much as possible. It was stated that further communication is also planned with external partners involved in the S106 process to ensure a timely and co-ordinated approach in obtaining S106 receipts.
4. Unilateral agreements are undertakings which developers voluntarily enter in to and there is no obligation to complete as part of conditions imposed through the planning process. Unilateral agreements are formally recorded in a legal agreement; however, there is no clawback or spending limitations in respect of the Council. The Principal Planner confirmed that unilateral agreements are also recorded in the Finance version of the S106 spreadsheet.

### **Monitoring Responsibilities are Defined and Allocated**

5. As stated, procedural guidance relating to the S106 process has been developed and updated, most recently in 2019 following a recommendation included in the previous audit review.
6. The S106 Monitoring Group meets quarterly, is chaired by the Interim Planning Policy Manager and is attended by designated representatives from other relevant service areas such as Finance, Leisure and Arts. Separate discussions and meetings are held with designated attendees from partner organisations including the County Council for education and highways responsibilities as well as the Clinical Commissioning Group (CCG) for health responsibilities. The S106 Monitoring Group has a duty to ensure that

receipts are obtained and spent within the defined timescales by the relevant service area and an escalation of actions is taken as necessary.

### **Procedures for Pursuit of S106 Payments**

7. Monitoring and pursuing S106 payments is the primary responsibility of Planning. When an obligation trigger occurs, correspondence is entered into with the developer requesting receipts to be paid. Obligations are checked and progress is updated for presentation to the S106 Monitoring Group.
8. A sample of S106 agreements were reviewed which included evidence of follow-up correspondence issued based on obligation triggers to pursue payments, including amounts relating to the County Council for education and highway commitments. The sample testing of evidence of follow-up correspondence was confirmed as satisfactory.
9. The Planning Manager (Development Control) and the Interim Planning Policy Manager stated that all S106 triggers are reviewed regularly to ensure that a proactive approach is in place to ensure none are missed. Submissions to the S106 Monitoring Group quarterly meetings include trigger review reports which are used to provide information and serve as reminders to ensure obligations are discharged, examples of trigger review reports as submitted to the S106 Monitoring Group meetings were provided as part of the audit review. The Planning Manager (Development Control) and the Interim Planning Policy Manager also stated that a process has been in place in relation to housing developments which is not based on developer notification but involves Planning officers conducting site visits to survey housing completions and detail progress on all relevant sites in quarterly completion reports for submission and further discussion at meetings of the S106 Monitoring Group, samples of completion reports were also provided as part of the review. The sample testing of evidence was considered to be satisfactory.

### **S106 Monitoring and Follow-Up Processes**

10. A sample of three S106 arrangements and two amended / supplementary S106 arrangements signed in the 2021/22 operational year were verified to the formal agreement documents. Selection of the sample was concentrated on the most recent operational year to ensure that the legal agreements are drawn up on a timely basis.
11. All S106 agreements are recorded on the monitoring spreadsheet and subsequently included in the Finance spreadsheet from the date of the initial receipt. The sampled S106 agreements selected for testing comprise those agreements which were referred to in the S106 Monitoring Group quarterly meetings held in the 2021/22 financial year. Audit testing included a review of the sampled S106 agreements which were followed through to ensure that they were fully recorded including within the Finance spreadsheet.

12. As stated above, where DCC Education contributions are included in S106 agreements, these are usually administered separately by the partner organisation. The County Council Highways receipts are recorded in the Finance spreadsheet on occasions where DCC are not a party to the S106 agreement. The CCG contributions are also subject to recording in the Finance spreadsheet with the resultant sums being transferred following receipt. It was stated that delays can be experienced in receiving relevant information from the CCG which also impacts on the time delays in requesting contributions. The Planning Manager (Development Control) stated that a potential solution to this would be to have the CCG as signatories of the S106 agreements which would then make them responsible for collection of their S106 contributions; however, this would require the CCG to ensure that they engage a legal resource into the process and if this wasn't available it may delay or deter their involvement in S106 agreements.
13. The following details summarise the testing which is based on information in the Finance spreadsheet of April 2022:-
- A total of twenty three S106 agreements were included in the spreadsheet.
  - Five specific S106 agreements were within 12 months of the 'use by' or obligation date, this is 22% of the total. Updates provided to the April 2022 S106 Monitoring Group meeting were evidenced.
  - One further S106 agreement had exceeded the obligation date at the time of audit testing, this is 4% of the total. This refers to an arts contribution relating to Sterry House Farm at Clowne where the obligation or 'use-by' date expired in April 2022. Although this had a minimal residual unspent amount of £92, there are increased risks to the Council relating to unspent contributions both financially and the associated reputational impact.
14. It is considered that controls within the Planning and Finance functions are embedded although there are cases within other service areas and specific external partners where delays are experienced regarding the timeliness of completing procedures which impacts on the obligation or 'use-by' dates. Planning managers have also referred to a partner organisation where delays are experienced in the relevant S106 procedures which they are responsible for. It was stated that communications have been entered into with this partner organisation; however, there continues to be frustration regarding the timeliness of required actions in the S106 process.

**Recommendation:-**

|           |   |
|-----------|---|
| <b>R1</b> | <p>The Interim Planning Policy Manager should submit an ad-hoc report to the Senior Leadership Team which highlights any S106 agreements which are within twelve months of the obligation dates for receipts to be used to ensure that the relevant senior managers are notified and are responsible for necessary actions being implemented. Where there is considered to be concerns with the timeliness of actions by external partners, reports and updates should continue to be made to the Leader and Planning Committee to consider the need for further action.</p> <p><b>Priority: Medium</b></p> |
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## **Budget Monitoring**

15. Extracts of the Financial Management System (FMS) for the 2021/22 were obtained which provided details of S106 receipts within the financial year. The Principal Accountant provided a copy of the Finance spreadsheet which provided a basis to trace the sampled individual receipts to the Finance spreadsheet; the testing was confirmed as satisfactory.
16. The Planning Manager (Development Control) and the Principal Accountant stated that regular budget meetings are held for monitoring the overall S106 position. It is also acknowledged that the Principal Accountant has regular liaison with the Planning managers regarding S106 matters, attends the S106 Monitoring Group quarterly meetings and maintains the Finance spreadsheet; consequently no further testing was considered necessary.

## **S106 Reporting**

17. Copies of the previous four Planning Committee reports, which at the date of audit testing included report dates of March, June, September 2021 and January 2022, were obtained. The Planning Committee reports provide detailed information to Members and are considered to accurately reflect the position regarding the specific S106 agreements which are nearing the obligation or 'use by' date or within the twelve month period of this.
18. Quarterly reporting to Planning Committee is considered to be the optimal periodicity for reporting the S106 information, particularly as previous audit recommendations have specified this basis and this has been agreed by Members and adopted as part of the S106 recording and monitoring procedure. Additionally, the information relating to those S106 contributions which have a 'use by' date which is within 12 months is considered to warrant a quarterly basis for reporting.

## **Liaison with Services and External Partners**

19. As previously stated, the S106 Monitoring Group has been established which meets on a quarterly basis and is chaired by the Interim Planning Policy Manager with other designated attendees from relevant service areas such as Arts, Leisure and Housing. Each of the representatives has specific responsibility for S106 agreements within their own service area and for providing information to the Monitoring Group at the quarterly meetings. It has also been acknowledged that the S106 Monitoring Group Chair informs the Leader should communications with an external partner organisation be necessary regarding the prompt administration of S106 contributions.


## Appendix A

| <b>Assurance Level</b>       | <b>Definition</b>   |
|------------------------------|---|
| <b>Substantial Assurance</b> | There is a sound system of controls in place, designed to achieve the system objectives. Controls are being consistently applied and risks well managed.  |
| <b>Reasonable Assurance</b>  | The majority of controls are in place and operating effectively, although some control improvements are required. The system should achieve its objectives. Risks are generally well managed.                     |
| <b>Limited Assurance</b>     | Certain important controls are either not in place or not operating effectively. There is a risk that the system may not achieve its objectives. Some key risks were not well managed.                            |
| <b>Inadequate Assurance</b>  | There are fundamental control weaknesses, leaving the system/service open to material errors or abuse and exposes the Council to significant risk. There is little assurance of achieving the desired objectives. |

## Internal Audit Report Implementation Schedule

|                      |                     |                              |                            |
|----------------------|---------------------|------------------------------|----------------------------|
| <b>Report Title:</b> | BDC S106 Agreements | <b>Report Date:</b>          | 23 <sup>rd</sup> May 2022  |
|                      |                     | <b>Response Due By Date:</b> | 15 <sup>th</sup> June 2022 |

| Recommendations   | Priority (High, Medium, Low) | Agreed | To be Implemented By: |           | Comments  |
|---|------------------------------|--------|-----------------------|-----------|---|
|   |                              |        | Officer               | Date      |   |
| <b>R1</b> The Interim Planning Policy Manager should submit an ad-hoc report to the Senior Leadership Team which highlights any S106 agreements which are within twelve months of the obligation dates for receipts to be used to ensure that the relevant senior managers are notified and are responsible for necessary actions being implemented. Where there is considered to be concerns with the timeliness of actions by external partners, reports and updates should continue to be made to the Leader and Planning Committee to consider the need for further action. | <b>M</b>                     | Y      | Chris Fridlington     | 16/6/2022 | It is intended to take the Committee Report for June 2022 with a covering report to the next available SLT on 16/6/2022 |

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| Signed Head of Service: |  | Date: | 25 May 2022 |
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**Note: In respect of any High priority recommendations please forward evidence of their implementation to the Internal Audit team as soon as possible.**