

Bolsover District Council

Meeting of the Planning Committee on 28th September 2022

Report of the Assistant Director: Development

SECTION 106 AGREEMENT MONITORING PROCEDURE

Classification	This report is Public
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PURPOSE / SUMMARY OF REPORT

- To seek approval of a revised Section 106 Agreement Monitoring Procedure

REPORT DETAILS

1 Background

- 1.1 Section 106 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 and the procedure is kept under review and updated from time to time.

2. Details of Proposal or Information

2.1 In May 2022, a further Internal Audit review of the Council's S106 Agreement monitoring processes and controls was undertaken. The Audit Report confirmed that all previous recommendations had been implemented and concluded that no significant concerns were found. The reliability of the controls was once again assessed as **Substantial**.

2.2 However, the report highlighted that although controls within the Planning and Finance functions are embedded, there are cases within other Service Areas and specific external partners where delays are experienced regarding the timeliness of completing procedures in order that the S106 money that is allocated is spent. A copy of the Internal Audit Report is attached as Appendix A to this report.

2.3 In addition to this, concerns have been raised by Members of the Planning Committee regarding the sums of money remaining to be spent that are within 12 months of their deadline. This has seen the Planning Committee resolve that the Spending Officers from Service Areas responsible should attend future meetings of the Planning Committee to ensure Members were provided with first hand updates and reasons for any delays. Members also stated that it would be helpful and interesting to be provided with information in relation to S106 monies beyond the 12 month reporting period and that this information should be provided to all Council Members.

2.4 In light of these recommendations and decisions, officers have reviewed the Section 106 Agreement Monitoring Procedure and reported this to the Local Plan Implementation Advisory Group at its meeting on 29th June 2022. At the meeting, the Group advised that the procedure should also be updated to require officers to:

- i) highlight any sums at risk of clawback that need spending within 24 months rather than only within 12 months;
- ii) provides a summary of allocated sums for years 3 to 5 under each infrastructure heading;
- iii) provide a quarterly email to all Members (copying in those on the Planning Committee) with a link to the Planning Committee quarterly monitoring report to ensure all Members are aware of any progress on spend in their local area;
- iv) provide a quarterly email to those Members in Parishes where there are spending allocations within 24 months of their deadline with a link to the Planning Committee quarterly monitoring report to ensure relevant Members are aware of any concerns in their local area.

2.5 As a result, the Section 106 Agreement Monitoring Procedure has been updated as requested and this is attached as Appendix B to this report.

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 there is political oversight of this area of work and that Members receive information about the progress being made by the various Council departments to deliver Section 106 Agreements.

3.3 To ensure that this oversight is effective and supported appropriately by officers, the Council’s Section 106 Agreement Monitoring Procedure has been updated to take on board the recommendations of the Audit Report and Members and this is attached as Appendix B to this report.

3.4 Therefore, it is recommended that Members approve the revised Section 106 Agreement Monitoring Procedure.

4 Alternative Options and Reasons for Rejection

4.1 Officers have not considered alternative options as the proposed revisions to the Council’s Section 106 Agreement Monitoring Procedure address the recommendations made in the Audit Report along with the recommendations and suggestions by the Council’s Planning Committee.

RECOMMENDATION(S)

That Planning Committee approve the Section 106 Agreement Monitoring Procedure (as attached at Appendix B).

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

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

District Wards Significantly Affected	All
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"/>	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	Title
A	Internal Audit Report Bolsover District Council Section 106 Agreements (May 2022)

B	Section 106 Agreement Monitoring Procedure (August 2022 revision)
Background Papers	
<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>	