

Bolsover District Council

Meeting of the Planning Committee on 28th September 2022

Report of the Assistant Director: Development

QUARTERLY UPDATE ON SECTION 106 AGREEMENT MONITORING

Classification	This report is Public
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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. This governs the work of the Council's cross-departmental Section 106 Monitoring Group. Prior the presentation of this report Members will have considered a revised Procedure.
- 1.5 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. In line with the approved Procedure (as discussed elsewhere on this agenda) this progress report is required to highlight any sums at risk of clawback that need spending within 24 months, as well as a summary of the sums being held by infrastructure type that are in years three, four and five. Accordingly, this report is the quarterly progress report following the meeting of the Section 106 Monitoring Group held on 27th July 2022.

2. Details of Proposal or Information

- 2.1 Members will recall that at the meeting in June two sums were identified as being beyond their spending deadline with a further five sums being within their 12 month deadline, although one was down to a nominal amount of £92.85 (Sterry House Farm, Clowne). The summary of these sums is as follows:

Spend Date within 12 months (by 27th July 2023)

Action Plan	Finance Spreadsheet	Site	Infrastructure	Amount	Spend Date
Item 1	Line 47	The Brambles, Doe Lea -	Art	£4,361.11	EXPIRED
Item 3	Line 73	Thurgaton Way Newton	Health	£30,132	01.08.22 since extended 01.11.22
Item 8	Line 68	Carter Lane West	Informal POS	£12,766.86	07.12.22
Item 9	Line 66	Carter Lane West	Art	£5,165.20	07.12.22
Item 10	Line 81	Meridian Close	Informal POS	£27,475.69	22.12.22
Item 10	Line 82	Meridian Close	Outdoor Sport	£16,661.37	22.12.22

2.2 At the Section 106 Monitoring Group on 29th July no further sums were highlighted as needing to be spent within 12 months. Of note, under Line 82 Meridian Close: Outdoor Sport, the sum had been reduced by a third from the previous quarter.

2.3 The Action updates for the above items that are needing to be spent within 12 months as recorded at the Section 106 Monitoring Group are as follows:

<p>1</p>	<p>Art work underspend at The Brambles, Doe Lea Finance spreadsheet: line 47 Amount: £4,361.11 Spend by date: EXPIRED</p> <p>Community Arts Development Officer (CADO) to progress and update at the July 2022 meeting.</p> <p>Update Artist is making a virtual version of the sculpture. The design has changed slightly. The fees are being paid in stages. Regarding the Lighting Up event the Parish Council are having ongoing issues regarding the electricity supply and so BDC are to take this on. The interactive website launch is still planned for September.</p> <p><u>New Actions</u> 2 weekly email exchange on progress.</p> <p>Update since July Monitoring Group Meeting 08/09/22 Email CADO: Progress made on a working version of virtual sculpture and work is in line for a late September / October 2022 Launch / Handover in partnership with Parish Council.</p>	<p>Action owners</p> <p>CADO</p> <p>CADO / JM</p> <p>CADO</p>
<p>3</p>	<p>Health contribution transfer Financial spreadsheet lines 73 Thurgarton Road (phase 2) Amount: £30,132 Spend by date: 01/11/22</p> <p>CM to continue to chase progress in line with this timeline and keep political Leadership informed.</p> <p><u>Update</u> 10.6.22 CM conversation with Sean Ingle at Wheeldon Brothers resulted in a minor extension to the deadline from 1st August 2022 to 1st November 2022.</p> <p>10.6.22 JF (legal) circulated completed paperwork necessary to transfer the £30,132 to the relevant NHS body.</p> <p>10.6.22 NHS Derby and Derbyshire Clinical Commissioning Group (CCG) confirmed that they plan on</p>	<p>CM</p>

	<p>keeping the pressure on with the practice and landlord to ensure this deadline is met so that progress can be made on the planned work to the surgery to convert the two existing admin rooms to form new clinical consultation rooms.</p> <p><u>New Actions</u> CM to continue to chase progress in line with this timeline and keep political Leadership informed.</p> <p><u>Update since July Monitoring Group Meeting</u> 5.8.22 CM email exchange and phone calls with CCG regarding progress. CCG advised that Project Initiation Document (PID) now being agreed with GP surgery landlord to approve the capacity improvement works and this will enable transfer of money from the Council to the NHS.</p> <p>2.9.22 CM phone call and email exchange with CCG regarding transfer arrangements. New NHS England officer advised transfer process can be simplified, with the money being transferred directly to CCG rather than via NHS England.</p>	<p>CM</p> <p>CM</p>
<p>8</p>	<p>Carter Lane West - Informal POS Finance spreadsheet: line 68 Amount: £12,766.86 Spend by date: 07/12/22</p> <p>SPOL to email progress to JAM (as new group Chair) 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><u>Update</u> SPOL email 23/5/22: met with South Normanton Parish Council a few weeks ago, but don't have anything definite from them in terms of preference for how to invest the funds. However, the skate park at South Street Recreation Ground and Sough Road play area are the likely recipients of the funding as both are in need of refurbishment. Aim to fit in a site visit to both week starting 23rd May followed by a request for prices.</p> <p>Further update at the meeting: Chasing quotes with request sent 3 week ago.</p> <p><u>New Actions</u> Tender out for mid-August</p> <p>2 weekly email exchange on progress.</p>	<p>SPOL</p> <p>SPOL</p> <p>SPOL / JM</p>

	<p><u>Update since July Monitoring Group Meeting</u> 30/08/22 Email SPOL: Quotations being sought for refurbishment of existing skate park. Site meeting with Fearless Ramps today (30 August 2022). May need to go down request for quotations (RFQ) route unless there is a framework that can be used.</p>	SPOL
9	<p>Carter Lane West - Art Finance spreadsheet line: 66 Amount: £5,165.20 Spend by date: 07/12/22</p> <p>Fortnightly review of progress with JM (as new group Chair) starting w/c 13th May 2022.</p> <p><u>Update</u> CADO email 18/522: ... have an artist in mind who specialises in community mural / art work with young people....a site in mind discussed informally with the Parish Council, No major concerns were raised...‘sticking point’ is the School...awaiting their contact despite several attempts to make headway...will explore other community groups in June/July if there isn’t anything forthcoming.</p> <p>CADO email 7/6/22: met with the artist and she is keen to work on the project in whatever fashion it shapes up to be, but seeing as we are just coming out of the half term / jubilee break it has been a busy period for schools...DO chasing up over that week and will update.</p> <p>Further update at the meeting: no response from school. Gone instead to the Parish Council. Decision made to move forward without the community. The Artist has suggested Junction Arts in lieu of community involvement.</p> <p><u>New Actions</u> 2 weekly email exchange on progress.</p> <p><u>Update since July Monitoring Group Meeting</u> 08/09/22 email CADO: Paragraph 3 on public schedule section of signed Section 106 Agreement from 12/5/2015 states:</p> <p>"For the avoidance of doubt, for the purposes of paragraph 1(b) of this schedule, the public space open contribution and the public art contribution shall be deemed to be committed if the council has entered into any contract or given any undertaking (whether enforceable in law or otherwise) the fulfilment of which will require the council to expend funds in future."</p>	<p>CADO / JM</p> <p>CADO</p> <p>CADO / JM</p> <p>CADO</p>

	<p>I have an agreement with an artist to develop a representative community arts programme in consultation with the community of the development area that has been postponed due to Covid and other factors over last 18 months. Scheduling has been the main factor in the closeness to clawback in this particular project.</p> <p>I plan to put this programme into a written agreement between the council and the Artist to complete works between November 2022 and March 2023 at the latest. All parties are aiming for Early December 2022 but this paragraph seems to give leeway to extend the activity if required.</p>	
10	<p>Meridian Close – POS and Outdoor Sport Finance spreadsheet: lines 81 and 82 Amount: POS £27,475.69 and Outdoor Sport £24,547.95 Spend by date: 22.12.22</p> <p>Fortnightly review of progress with JM (as new group Chair) starting w/c 13th May 2022.</p> <p><u>Update</u> MC email 23/5/22: Working through the various projects that are being carried out to improve the facilities at Castle Leisure Park.</p> <p>The latest investments have been to the cricket pitch, which saw its first game in 5 years last Saturday. We have interest from a second team / club who want to play on Sundays, so the need for further investment can be demonstrated / justified.</p> <p>The next job will be improving the football pitches in readiness for the next season. These works will probably need to go out to tender (via a request for quotations) in the next few days. It is likely that the funding will be gradually spent over the next few months rather than being invested in a single larger project.</p> <p>Further update at the meeting: as regards ‘informal’ there is an equipment quote for the remaining spend. The suppliers are on ESPO so there is no need to procure. As regards ‘formal’ 16K left was programmed for football pitches but the dry weather has put this work back. Quotation awaited from Abacus Lighting. Storage container quote awaited.</p> <p><u>New Actions</u> 2 Weekly email exchange on progress.</p>	<p>SPOL / JM</p> <p>SPOL / JM</p>

	<p><u>Update since July Monitoring Group Meeting</u> 30/08/22 email SPOL: Informal: Scheme (new play equipment from HAGS) agreed with Old Bolsover Town Council. To be procured through ESPO framework as direct award via OBTC. Total price circa £28,000 Formal: Pitch works (£3,600) completed. Replacement storage container for grounds maintenance equipment (mainly for bowling green) (£3,525) ordered, due to be delivered w/c 12 September. Lighting enhancement works (LED floodlights, plus timing switch – approx. £12,000 out for quotations (RFQ), return date 16 September). RFQ used as there isn't an existing framework that could be used.</p> <p>Once complete, the whole s106 allocation will have been spent.</p>	SPOL
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- 2.4 Under the revised Procedure (as discussed elsewhere on this agenda), the sums needing to be spent within 12 - 24 months will be reported to Members from now going forward in order to give Members greater scrutiny of sums coming down the track. The summary of these sums is as follows:

Spend Date within 1 to 2 years (by 27th July 2024)

Action Plan	Finance Spreadsheet	Site	Infrastructure	Amount	Date
Item 11	Line 84	Spa Croft Tibshelf	Art	£10,176.20	22.03.24
Not on Action Plan	Line 84	Spa Croft Tibshelf	Informal POS	£26,650	22.03.24
Not on Action Plan	Line 85	Rosewood Lodge Farm South Normanton	Outdoor Sport	£34,584.85	21.05.24
Not on Action Plan	Line 85	Rosewood Lodge Farm South Normanton	Health	£80,141.59	21.05.24

- 2.5 Since the previous quarter there has been an increase in the sums needed to be spent within two years, with two sums against Rosewood Lodge Farm, South Normanton. It was agreed to now include these two sums in the Action Plan along with that for Informal Public Open Space at Spa Croft given that they fall within the 2 year spend threshold.

- 2.6 The Action update for items needing to be spent within 12 to 24 months as recorded at the Section 106 Monitoring Group is as follows:

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 It is recommended that Members; note the contents of the latest monitoring 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 addresses recommendations made in the 2016 Audit report and recommendations of Members of the Planning Committee as set out in the Council’s 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

<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

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? (Only Key Decisions are subject to Call-In)	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.
<ul style="list-style-type: none">• 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 Executive you must provide copies of the background papers).	