

**Bolsover District Council**

**Meeting of the Planning Committee on 21<sup>st</sup> December 2022**

**Report of the Interim Planning Policy Manager**

**QUARTERLY UPDATE ON SECTION 106 AGREEMENT MONITORING**

<b>Classification</b>	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.

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**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. The most recent version of this was approved by Planning Committee in September 2022 and it governs the work of the Council's cross-departmental Section 106 Monitoring Group.
- 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 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 29<sup>th</sup> October 2022.

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

- 2.1 The Council's new Section 106 Agreement Monitoring Procedure requires sums within 24 months of their deadline to be highlighted for Member's attention.
- 2.2 Members will recall that at the meeting in August, six sums were identified as being within their 12 month deadline. One of these, the Thurgaton Way health contribution, has now been transferred to the CCG as per the previously reported timetable, reducing that number to five.
- 2.3 However, as of the Monitoring Group meeting on 29<sup>th</sup> October 2022 there are nine sums within their 24 month deadlines (details below).

### **Spend Date within 24 months (by 27<sup>th</sup> October 2024)**

<b>Action Plan</b>	<b>Finance Spread sheet line</b>	<b>Site</b>	<b>Infrastructure</b>	<b>Amount</b>	<b>Spend Date</b>
Item 1	Line 47	The Brambles Doe Lee	Art	£2,361.11	Expired
<b>Item 9</b>	Line 66	Carter Lane West	Art	£4,828.14 <b>Reduced by £337.06</b>	07.12.22
<b>Item 8</b>	Line 68	Carter Lane West	Informal POS	£12,767.09	07.12.22
<b>Item 10</b>	Line 81	Meridian Close	Informal POS	£27,475.69	22.12.22
<b>Item 10</b>	Line 82	Meridian Close	Outdoor Sport	£4,366.79 <b>Reduced by £12,294.58</b>	22.12.22
<b>Item 11</b>	Line 84	Spa Croft Tibshelf	Art	£10,176.20	22.03.24

<b>Item 17</b>	Line 84	Spa Croft Tibshelf	Informal POS	£26,650	22.03.24
<b>Item 18</b>	Line 85	Rosewood Lodge Farm South Normanton	Outdoor Sport	£34,584.85	21.05.24
<b>Item 19</b>	Line 85	Rosewood Lodge Farm South Normanton	Health	£80,141.59	21.05.24

2.4 As can be seen, there has been a reduction of approximately **£12,500** in the money being held on these items which is welcome.

2.5 The updates for the above items as recorded at the Section 106 Monitoring Group or as updated where relevant are set out below for Member's information.  
(CADO = Community Arts Development Officer; LSPO = Leisure Special Projects Officer; PPO = Principal Planning Policy Officer; IPPM = Interim Planning Policy Manager)

<b>1</b>	<p><b>Art work underspend at The Brambles, Doe Lea (Financial spreadsheet line 47)</b></p> <p><u>Previous Action</u> 2 weekly email exchange on progress.</p> <p><u>Update since S106 Monitoring Group</u> <b>24.11.22</b> Email from CADO: Parish Council have advised that they are in discussions with high level management at several energy companies to push the agenda for the unmetered supply to the site. CADO Proposing 31<sup>st</sup> Dec 2022 cut-off date for action from Parish on supply and to action an unmetered supply hosted by Bolsover District Council. Likely that BDC will need to invoice the Parish directly on a yearly/quarterly basis (TBC) to ensure a launch can happen before the end of Winter 2022/23.</p> <p><u>New Action</u> Two weekly email exchange on progress.</p>	<p><b>Action owners</b></p> <p>CADO</p> <p>CADO</p> <p>CADO</p>
<b>8</b>	<p><b>Carter Lane West - Informal POS £12,766.86 by 07.12.22 (Financial spreadsheet line 68)</b></p> <p><u>Previous Action</u> Tender out for mid-August. 2 weekly email exchange on progress.</p> <p><u>Update since S106 Monitoring Group</u> <b>2.11.22</b> Email from LSPO: Skate park refurbishment at South Street Recreation Ground – procurement exercise completed and contract awarded. Order to be placed w/c</p>	<p>LSPO</p> <p>LSPO/PPPO</p>

	<p>1 November 2022 (approx. £9,500). That leaves approximately £4,500 from CLP (to be spent on cricket pitch improvements) and approximately £2,500 from Carter Lane West (to be used as a contribution to a youth shelter at South Street Rec.).</p> <p><u>New Action</u> Update on progress prior to Planning Committee. Completed as above.</p>	LSPO
9	<p><b>Carter Lane West - Art £5,165.20 by 07.12.22 (Financial spreadsheet line 66)</b></p> <p><u>Action</u> 2 weekly email exchange on progress.</p> <p><u>Update since Monitoring Group Meeting</u> <b>24.11.22</b> Email from CADO: Initial works on public consultation and community arts work have been ongoing both onsite and with artist. Work has been created on a virtual exhibit of art works / recordings / projection clips to be exhibited on site on or around evening of 30<sup>th</sup> November 2022. Project is due to be completed by 30<sup>th</sup> Nov 2022 and funds will be expended (or in the system for expenditure) by the 4<sup>th</sup> Dec 2022. All project works will be collated in Dec 2022 for exhibition online where possible.</p> <p><u>New Action</u> PPPO to contact CADO and update regarding the impending written agreement between the Council and the Artist. Action completed as above.</p>	<p>CADO</p> <p>CADO</p> <p>CADO/PPPO</p>
10	<p><b>Meridian Close - Informal POS £27,475.69 by 22.12.22 and Outdoor Sport £24,547.95 by 22.12.22 (Financial spreadsheet lines 81 &amp; 82)</b></p> <p><u>Action</u> 2 weekly email exchange on progress.</p> <p><u>Update since Monitoring Group</u> <b>2.11.22</b> Email from LSPO: Informal: New play equipment at King George's Field – start date scheduled for 14 November 2022, pre-start meeting scheduled for 9 November. Formal: Castle Leisure Park lighting enhancements – works completed 25 October 2022 (approx. £7,500).</p> <p><u>New Action</u> Update on status of remaining monies prior to reporting to next Planning Committee. Action completed as above.</p>	<p>LSPO</p> <p>LSPO/PPPO</p> <p>LSPO</p>

11	<p><b>Spa Croft, Tibshelf – Art £10,176.20</b></p> <p><u>Action</u> Update at the meeting on 27 October 2022.</p> <p><u>Update at Monitoring Group</u> CADO: Initial discussions have taken place with Councillor Deborah Watson around convening a working group in Early 2023 concerning this project. Consisting of residents, local community groups and exiting partners in activity in the parish of Tibshelf. Updates to be ongoing.</p> <p><u>New Actions</u> PPPO contact CADO for update on this and all other Arts Actions for an update to be circulated prior to the next meeting in lieu of a verbal update at the meeting. Action completed as above.</p>	<p>CADO</p> <p>CADO</p> <p>PPPO/CADO</p>
17	<p><b>Spa Croft Tibshelf – Informal Public Open Space £26,650 by 22.03.24</b></p> <p><u>Action</u> Potential project to be discussed at meeting.</p> <p><u>Update at Monitoring Group</u> LSPO: Most of the money was spent on the playground with money still to spend. Projects being looked at presently including a new link to the school.</p> <p><u>New Action</u> Update at next meeting.</p>	<p>LSPO</p> <p>LSPO</p> <p>LSPO</p>
18	<p><b>Rosewood Lodge Farm – Outdoor Sport £34,584.85 by 21.05.25</b> Sum within 2 years spend threshold.</p> <p><u>Action</u> To be discussed at meeting.</p> <p><u>Update at Monitoring Group</u> LSPO: Dealing on the projects that need to be spent by December as a priority, before moving on to the next batch.</p> <p><u>New Action</u> Update at next meeting.</p>	<p>LSPO</p> <p>LSPO</p> <p>LSPO</p>

19	<b>Rosewood Lodge Farm – Health £80,141.59 by 21.05.24</b> Sum within 2 years spend threshold.	
	<u>Action</u> To be discussed at meeting.	IPPM
	<u>Update since Monitoring Group</u> IPPM: The CCG has made contact about this sum and they are drawing up plans for its spend in advance of the deadline.	
	<u>New Action</u> Update at next meeting.	IPPM

- 2.6 In line with the new S106 Monitoring Procedure the relevant Spending Officers will be in attendance at the Committee to answer any questions to Members on the above Action Plan items.
- 2.7 In addition to these time sensitive items, the new Procedure requires that Members are provided with summary information in relation to Section 106 Agreement monies held with deadlines beyond the 24 month period. Based on the position at the end of Quarter 2 (30 Sept 2022), the following ‘summary of sums’ can be provided for years three, four and five.

Infrastructure type	Amount in later years		
	Year 3	Year 4	Year 5 or beyond
Art	£37.00	£10,757.25	£12,602.26
Outdoor Sport	£291,407	£37,882.90	£88,496.24 (of which, no clawback against £39,772.71)
Green Space	£62,184.39	£56,606.98	£116,794.50
Health	£83,056	£11,784.56	£48,039.70
Highways	Nil	Nil	£569,000.00 (no clawback)
Biodiversity	Nil	Nil	£14,679.46
	<b>£436,684.39</b>	<b>£117,031.69</b>	<b>£849,612.12</b>

- 2.8 The spend profiles for Art, Green Space, Highways and Biodiversity remain the same as for the previous financial quarter. The sums for year 5 and beyond have increased against Outdoor Sport, with an additional £29,697.04 from the Alfreton Road development at Pinxton and against Health, with an additional £48,039.70 from the Skinner Street development at Creswell.

### **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.

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## **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 Council McGregor, 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

**Environment:** Yes  No

*Please identify (if applicable) how this proposal / report will help the Authority meet its carbon neutral target or enhance the environment.*

**Details:** Section 106 Agreements cover a range of policy and infrastructure requirements, albeit they do not specifically contribute to this subject.

**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>Revenue - £75,000</b> <input type="checkbox"/> <b>Capital - £150,000</b> <input 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 type="checkbox"/>	No

### 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
<b>Background Papers</b>	
<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>	