

Bolsover District Council

Meeting of the Planning Committee on 7th June 2023

Report of the Interim Head of Planning Policy

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 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 27th April 2023.

2. Details of Proposal or Information

- 2.1 The Council's 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 in the report provided in March, seven sums were identified as being within their 24 month deadline as at 25th January 2023 (one in error, see paragraph 2.4).
- 2.3 As of the Monitoring Group meeting on 27th April 2023 there are eight sums within their 24 month deadlines (details below).

Spend Date within 12 months (by 27th April 2024)

Action Plan	Finance Spreadsheet	Site	Infrastructure	Amount	Date
Item 6	Line 82	Meridian Close	Outdoor Sport	£3,360.00	22.06.23 (formerly 22.12.22)
Item 7	Line 84	Spa Croft Tibshelf	Art	£10,176.20	22.03.24

Spend Date within 24 months (by 27th April 2025)

Action Plan	Finance Spreadsheet	Site	Infrastructure	Amount	Date
Item 12	Line 85	Rosewood Lodge Farm South Normanton	Outdoor Sport	£34,584.85	21.05.24

Item 13	Line 85	Rosewood Lodge Farm South Normanton	Health	£80,141.59	21.05.24
Item 20	Line 83	Mansfield Road, Tibshelf	Outdoor Sport	£164,153	20.12.24
New	Line 87	Station Road, Langwith Junction	Open Space	£52,000	30.01.25
New	Line 89	Oxcroft Lane, Bolsover	Outdoor Sport	£125,336.69	10.03.25
New	Line 91	High Ash Farm, Clowne	Open Space	£10,184.39	19.03.25

2.4 Three further items have come within the 2 year spending threshold; they total £125,336.69 for Outdoor Sport and £62,184.39 for Open Space. These 3 items will be included in the Action Plan. Item 17 Spar Croft Tibshelf £26,650 against Open Space that was previously reported as being within a spend date of 12 months is to be removed from the Action Plan. This is a maintenance sum, not available for capital works. As a maintenance sum, there is no clawback.

2.5 The updates for the above items as recorded at the Section 106 Monitoring Group are set out below for Member's information.

(CADO = Community Arts Development Officer; LSPO = Leisure Special Projects Officer; PPPO = Principal Planning Policy Officer; IHPP = Interim Head of Planning Policy; CLE = Chartered Legal Executive; PPDC = Principal Planner Development Control)

Item	Development site, relevant S106 sum and spend by date	Responsible officer
6 was 7	Meridian Close, Bolsover – Outdoor Sport £24,547.95 by 22.06.23 (formerly 22.12.22) <u>Action from previous quarterly meeting</u> Letter to be written to Jones Homes regarding the £3,543.33 remaining that is planned for the cricket pitch to offer for it to be paid back or an agreement for an extension of the spending deadline. Legal to review the letter prior to	LSPO LSPO / CLE

	<p>sending. To be completed at the end of the week ending 24/01/23</p> <p><u>Updates between and at meeting</u> 03.02.23: letter emailed to Jones Homes 03.02.23: confirmation from Jones Homes stating that as a gesture of good will they are agreeable to extend the deadline date in the S106 Agreement from the 22nd December 2022 for a 6 month period up to 22nd June 2023. 27.4.23: LSPO confirmed that contractor has started on site.</p> <p><u>Action going forward</u> LSPO to monitor contractor progress and updated PPPO on a fortnightly basis.</p>	LSPO
7 was 9	<p>Spa Croft, Tibshelf – Art £10,176.20 by 22.03.24</p> <p><u>Action from previous quarterly meeting</u> Diary an update on progress for 8 weeks' time.</p> <p><u>Updates between and at meeting</u> 28.03.23: CADO working with two groups in the village (an arts / crafts group and the Green Bunch horticultural group) to look at their ideas around some work involving this Section 106 project. This may require a revision to the S106. 27.4.23: CADO advised that the Community want something physical from the project. So there may be a need to extend the timeframe too. CADO advised that the developer is happy to reuse money on something else so the S106 could be amended in the standard manner, provided all parties including DCC are in agreement.</p> <p><u>Action going forward</u> CLE to look at original agreement as starting point and send proforma for amending the S106 to DO.</p>	<p>CADO</p> <p>PPPO / CADO</p> <p>CLE / CADO</p>
12 was 15	<p>Rosewood Lodge Farm, South Normanton – Outdoor Sport £34,584.85 by 21.05.25</p> <p><u>Action from previous quarterly meeting</u> LSPO to provide two weekly updates to PPPO.</p> <p><u>Updates between and at meeting</u> 10.02.23: LSPO advised that South Normanton Parish Council have identified a suitable project</p>	<p>LSPO</p> <p>LSPO / PPPO</p>

	<p>(improvements to Market Street Recreation Ground) that can be funded. LSPO will however look to retain some of the S106 monies for additional works at Broadmeadows Open Space.</p> <p>27.04.23: LSPO to re-approach South Normanton Parish Council following the forthcoming local elections to agree the sum of money to be allocated to the potential projects.</p> <p><u>Action going forward</u> LSPO to provide monthly updates to PPPO.</p>	LSPO / PPPO
13 was 16	<p>Rosewood Lodge Farm, South Normanton – Health £80,141.59 by 21.05.24</p> <p><u>Action from previous quarterly meeting</u> IHPP to provide update at next meeting.</p> <p><u>Updates between and at meeting</u> 27.04.23: IHPP in regular contact with NHS Derby and Derbyshire Integrated Care Board (formerly Clinical Commissioning Group). The Board is currently investigating how best to use the S106 sum to provide additional health facilities in the vicinity of the development.</p> <p><u>Action going forward</u> IHPP to provide update at next meeting.</p>	<p>PPPO / IHPP</p> <p>IHPP</p> <p>IHPP</p>
20	<p>Mansfield Road, Tibshelf – Outdoor Sport £164,153 by 20.12.24</p> <p><u>Action from previous quarterly meeting</u> LSPO to provide updated at next meeting.</p> <p><u>Updates between and at meeting</u> 27.04.23: LSPO currently in active discussions with both Tibshelf Parish Council and the Football Foundation to look at the potential for developing a 3G Football Turf Pitch (FTP) at Shetland Road Recreation Ground. Following a positive site meeting in April, the Football Foundation are looking at the best location for the pitch. However, the cost of the project is likely to be greater than the available S106 funding, although significant additional funding could be available from the Football Foundation. LSPO advised that if this potential project does not progress sufficiently quickly, there are other projects in the parish on which the funds can be spent.</p>	<p>LSPO</p> <p>PSPO</p>

	<u>Action going forward</u> LSPO to provide monthly updates to PPPO.	LSPO / PPPO
New	Station Road, Langwith Junction – Open Space £52,000 by 30.01.25 <u>Action from previous quarterly meeting</u> N/A <u>Updates between and at meeting</u> 27.04.23: LSPO advised they are yet to focus on this sum but will now prioritise this. <u>Action going forward</u> LSPO to provide update at next meeting.	LSPO LSPO
New	Oxcroft Lane, Bolsover – Outdoor Sport £125,336.69 by 10.03.25 <u>Action from previous quarterly meeting</u> N/A <u>Updates between and at meeting</u> 27.04.23: LSPO advised they are yet to focus on this sum but will now prioritise this and consider it light of other sport sums in Bolsover. <u>Action going forward</u> LSPO to provide update at next meeting.	LSPO LSPO
New	High Ash Farm, Clowne – Open Space £10,184.39 by 19.03.25 <u>Action from previous quarterly meeting</u> N/A <u>Updates between and at meeting</u> 27.04.23: LSPO advised they are yet to focus on this sum but will now prioritise this and consider it light of other sport sums in Bolsover. <u>Action going forward</u> LSPO to provide update at next meeting.	LSPO LSPO

2.6 These updates demonstrate the monitoring carried out by officers and the progress being made to ensure that S106 monies are spent in a timely manner alongside the build-out of the approved developments. However, in line with the Council's S106 Agreement 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 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 4 (31 March 2023), 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	£0	£10,757.25	£12,602.26
Outdoor Sport	£0	£37,882.90	£82,215.75 (of which, no clawback against £22,169)
Informal Open Space	£26,207	£30,399.98	£116,794.50
Health	£0	£11,784.56	£60,316.90
Highways	Nil	Nil	£569,000.00 (no clawback)
Biodiversity	Nil	Nil	£8,029.96
	£26,207	£90,824.69	£848,959.37

- 2.8 The spend profiles for Art and Biodiversity remain the same as for the previous financial quarter. Elsewhere the sums have moved into different years with the passage of time.
- 2.9 For information, the sum against Health for 5 years and beyond, i.e. £60,316.90, is as recorded on the Financial Ledger as of 31 March 2023. The sum includes £12,772.20 from the development at Blind Lane Bolsover which represents 10% of the full sum. With respect to this initial payment, £4,121 interest payment is also due.

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 recent Audit reports 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 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

<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

<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 type="checkbox"/></p>	No

<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.

<p>DOCUMENT INFORMATION</p>	
<p>Appendix No</p>	<p>Title</p>
<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>	