

Bolsover District Council

Meeting of the Planning Committee on 29th November 2023

Quarterly update on Section 106 Agreement Monitoring

Report of the Portfolio Holder for Corporate Governance

Classification	This report is Public
Contact Details	Julie-Anne Middleditch Principle Planning Policy Officer

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 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 24th October 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 September, eight sums were identified as being within their 24-month deadline as of 6th August 2023.

2.3 As of the Monitoring Group meeting on 24th October 2023 eight sums within their 24-month deadlines (details below).

Spend Date within 12 months (by 24th October 2024)

Action Plan	Finance Spreadsheet	Site	Infrastructure and amount	Amount Remaining	Date
Item 4	Line 84	Spa Croft, Tibshelf	Art (£10,176.20)	£10,176.20 Now removed (see below)	22.03.24
Item 6	Line 85	Rosewood Lodge Farm, South Normanton	Outdoor Sport (£34,584.85)	£20,460.85 No change since last quarter	21.05.24
Item 7	Line 85	Rosewood Lodge Farm, South Normanton	Health (£80,141.59)	£80,141.59 No change since last quarter	21.05.24

Spend Date within 2 years (by 24th October 2025)

Action Plan	Finance Spreadsheet	Site	Infrastructure and amount	Amount	Date
Item 12	Line 83	Mansfield Road, Tibshelf	Outdoor Sport (£164,153)	£164,153 No change since last quarter	20.12.24
Item 14	Line 89	Oxcroft Lane, Bolsover	Outdoor Sport (£125,336.69)	£124,441.61 Reduced since last quarter	10.03.25
Item 15	Line 87	Station Road, Langwith Junction	Open Space (£52,000)	£64.23 No change since last quarter	30.01.25
Item 16	Line 91	High Ash Farm, Clowne	Open Space (£10,184.39)	£10,184.39 No change since last quarter	19.3.25
Item 17	Line 88	Station Road, Langwith Junction	Health (£16,000)	£16,000 No change since last quarter	30.1.25

- 2.4 In terms of progress since the quarterly update report presented to September's meeting of the Planning Committee, the sum of £10,176.20 for Art from the Spa Croft, Tibshelf allocation is now removed from the sums at risk of clawback following formal agreement of a Variation to the Section 106 Agreement. The Variation extends the spending deadline of this allocation to 31st March 2026.
- 2.5 In addition, there has been progress with regard to the £125,336.69 sum for Outdoor Sport from the Oxcroft Lane, Bolsover allocation, with £895 spent. Beyond this, the other previously reported on allocations remain the same but there are no new allocations that have come within the 2-year threshold.
- 2.6 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; PPHSM = Planning Policy and

Housing Strategy Manager; CLE = Chartered Legal Executive; PPDM = Principal Planner Development Management; HoL = Head of Leisure; DMCO= Development Management Case Officer)

Item	Development site, relevant S106 sum and spend by date	Responsible Officer
4	<p>Spa Croft, Tibshelf – Art £10,176.20 (22.03.24)</p> <p><u>Action from previous quarterly meeting</u> CADO to provide monthly updates on progress to PPPO.</p> <p><u>Updates between and at meeting</u> It was reported to the last meeting that the developer was open to a proposed 2-year extension of the spending timeframe. Following that meeting the HoL contacted the property development company and was notified that their new Managing Director will be looking at the legal request and be in touch. The Variation Agreement was prepared by CLE in consultation with CADO. Confirmed at the Monitoring Group meeting that the draft Agreement had been sent by the CLE on 23rd October to the Developer's Solicitor for review.</p> <p><u>Update since meeting</u> 6.11.23 email CLE to PPPO confirming that response being chased and as yet not received. 14.11.23 email CLE to PPPO confirming that that the draft Deed of Variation has been agreed by both Rippon Homes' Solicitor and the County Council's Solicitor.</p> <p><u>Action going forward</u> Monthly updates</p>	<p>CADO</p> <p>CLE/CADO</p> <p>CADO/HoL/CLE</p> <p>CADO/CLE/ PPPO</p>
6	<p>Rosewood Lodge Farm – Outdoor Sport £34,584.85 (21.05.25)</p> <p><u>Action from previous quarterly meeting</u> LSPO to contact CLE for advice on impact of vandalism on contractual positions.</p> <p><u>Updates between and at meeting</u> It was reported at the last meeting that a canopy structure that was to be part funded under the S106 was irreparably damaged by fire soon after it was installed.</p>	<p>LSPO</p> <p>LSPO/CLE</p> <p>LSPO/CLE</p>

	<p>A decision as to how to proceed was to be taken after the Parish Council met in September. The Parish Council confirmed to the LSPO their intention of a replacement structure through their insurance company.</p> <p><u>Update since meeting</u> 31.10.23 email from CLE to All: Advice to transfer the financial sum to the Parish Council to secure the contribution. The Parish Council could sign a side agreement on similar terms as when BDC makes payments to the ICB in respect of Health Care Contributions. Views of the Group requested.</p> <p>8.11.23 email from LSPO to PPPO: the Parish Council have been contacted regarding the advice of the CLE. The next meeting of the Parish Council on 9th November 2023.</p> <p>9.11.23 email from LSPO to PPPO: confirming spend to date comprising a shipping container for the Rugby Club, drainage works to Common Meadows Recreation Ground and a contribution to crowd barriers for Common Meadows Recreation Ground.</p> <p><u>Action going forward</u> Revisit S106 Agreement Two weekly updates Request legal documentation and confirmation from the Parish Council that they are taking it through insurance process.</p>	<p>CLE (done) LSPO/PPPO LSPO</p>
<p>7</p>	<p>Rosewood Lodge Farm – Health £80,141.59 (21.05.24)</p> <p><u>Action from previous quarterly meeting</u> PPHSM/PPPO to continue to chase progress from the Integrated Care Board.</p> <p><u>Updates between and at meeting</u> PPHSM advised that the Integrated Care Board (ICB) have agreed to utilise this allocation (together with the allocation of £11,784.56 from Thornhill Drive, South Normanton to be spent by 24.6.26) to pay for an internal reconfiguration of the Limes Medical Centre in nearby Alfreton that would create capacity for a wider range of medical appointments. The ICB will prepare the Project Implementation Document and submit this</p>	<p>PPHSM</p> <p>PPHSM</p> <p>PPHSM</p>

	<p>to the Council before Christmas 2023, so drawing down the relevant S106 sums.</p> <p><u>Action going forward</u> Report to next meeting</p>	PPHSM
12	<p>Mansfield Road, Tibshelf – Outdoor Sport £164,153 (20.12.24)</p> <p><u>Action from previous quarterly meeting</u> LSPO to provide monthly updates on progress to PPPO.</p> <p><u>Updates between and at meeting</u> At the last meeting LSPO was due to meet with the Parish Council. Three projects were discussed as possibilities (all at Shetland Road Recreation Ground):</p> <ul style="list-style-type: none"> • An extension of the existing pavilion, • Pitch improvements, and the • Installation of a multi-use games area (MUGA) <p>Of these, the pavilion extension is the most complicated, whereas the MUGA proposal potentially has the most community benefit. LSPO is having regular meetings with Tibshelf Parish Council to pin down a project or projects to deliver with the available funding. There will be some community consultation this month on the potential projects. A final decision is due in November with suggestions now including additional play equipment.</p> <p><u>Update since Meeting</u> 8.11.23 email from LSPO to PPPO with the results of the consultation undertaken by the Parish Council. An open-ended consultation. 79 responses were counted with a Skatepark getting the majority of the votes (17). LSPO will be meeting the Parish Council on November 14th. The recommendation from this meeting will be taken to the full Parish Council for ratification on November 21st.</p> <p><u>Action going forward</u> Monthly updates</p>	<p>LSPO</p> <p>LSPO/PPPO</p> <p>LSPO</p> <p>LSPO/PPPO</p>

<p>14</p>	<p>Oxcroft Lane, Bolsover – Outdoor Sport £125,336.69 (10.03.25)</p> <p><u>Action from Previous Quarterly Meeting</u> LSPO to provide monthly updates on progress to PPPO.</p> <p><u>Updates between and at meeting</u> As previously reported the allocation will contribute to new skatepark at Hornscroft Park, which is currently in development. Since the last meeting a contractor has been appointed and a planning application was due to be submitted in late October or early November. Subject to planning permission, work should start on site in early 2024.</p> <p><u>Update since the meeting</u> A planning application was submitted w/s 6th November (23/00572/FUL).</p> <p><u>Action going forward</u> Report to next meeting</p>	<p>LSPO</p> <p>LSPO/PPPO</p> <p>LSPO</p> <p>LSPO</p>
<p>15</p>	<p>Station Road, Langwith Junction – Open Space £52,000 (30.01.25)</p> <p><u>Action from Previous Quarterly Meeting</u> LSPO to provide an update at the next meeting.</p> <p><u>Updates between and at meeting</u> This item is still on the Action Plan pending the spending of a residual amount of £64.23 left over from the installation of the playground, towards a bench. LSPO informed the group that he is awaiting an invoice from the Parish Council for the money.</p> <p><u>Update since the meeting</u> 9.11.23 email LSPO to PPPO confirming intention to contact Parish Council to submit an invoice.</p> <p><u>Action going forward</u> If residual monies spent before the next meeting this item is to be removed from the Action Plan.</p>	<p>LSPO</p> <p>LSPO</p> <p>LSPO</p> <p>ALL</p>
<p>16</p>	<p>High Ash Farm, Clowne – Open Space £10,184.39 (19.03.25)</p> <p><u>Action from Previous Quarterly Meeting</u> LSPO to provide monthly updates on progress to PPPO</p>	<p>LSPO</p> <p>LSPO</p>

	<p><u>Updates between and at meeting</u> At the last meeting it was reported that LSPO was meeting with Clowne Parish Council to discuss potential projects that week. Since the last meeting a number of options were discussed with the Parish Clerk including land off North Road adjacent to Dominos/Ashgate Hospice Shop and the Villa Park play area.</p> <p>Also looking at the possibility of replacing a bridge on Clowne Linear Park which is now life expired. However, local members and the Parish Council favour the improvement of the grassed area in front of Dominoes/Ashgate Café, so still under discussion.</p> <p><u>Action going forward</u> Monthly update</p>	<p>LSPO</p> <p>LSPO/PPPO</p>
17	<p>Station Road, Langwith Junction – Health £16,000 (30.01.25)</p> <p><u>Action from Previous Quarterly Meeting</u> PPHSM / PPPO to chase progress from the ICB.</p> <p><u>Updates between and at meeting</u> PPHSM advised that the Integrated Care Board (ICB) have been in contact about this allocation on 25th September 2023 to advise that they were in discussions with the Langwith Medical Centre to develop a suitable scheme to deliver this obligation. On this basis, the ICB confirmed that they will be able to spend the £16,000 well before the January 2025 deadline.</p> <p><u>Action going forward</u> Report to the next meeting</p>	<p>PPHSM</p> <p>PPHSM</p> <p>PPHSM</p> <p>PPHSM</p>

- 2.7 These updates demonstrate the monitoring carried out by Planning Officers and the progress being made by Spending Officers 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.
- 2.8 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 1 (30th June 2023), the following 'summary of sums' can be provided for years three, four and five.

Infrastructure type	Amounts in later years		
	Year 3	Year 4	Year 5 and beyond
Art	£10,757.25	£12,695.12	£1,477.46 (no clawback)
Outdoor Sport	£64,089.90	£48,723.75	£183,483.02 (of which, no clawback against £36,076.02)
Informal Open Space	£30,399.98	£116,794.50	£36,916.00
Health	£11,784.56	£0	£60,316.90 (of which, no clawback against £12,277.20)
Highways	£0	£0	£569,000.00 (no clawback)
Biodiversity	£0	£0	£8,029.96
	£117,031.69	£178,213.37	£859,223.34

2.9 The spend profiles remain the same as for the previous financial quarter. There are no new contributions. The only change this quarter is a movement in Year 3 between Outdoor Sport and Open Space due to one being categorised incorrectly.

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>	