

Bolsover District Council

Meeting of the Planning Committee on 27th November 2024

SECTION 106 AUDIT REPORT (OCTOBER 2024)

Report of the Assistant Director: Planning & Planning Policy

Classification	This report is Public
Report By	Julie-Anne Middleditch Principle Planning Policy Officer
Contact Details	01246 242286 julie-anne.middleditch@bolsover.gov.uk

PURPOSE / SUMMARY OF REPORT

- To report on the Internal Audit of the Council's Section 106 Agreement Monitoring Procedure and recommended revisions to the Procedure in the light of the Audit.

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 Implementation of 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 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 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 risk the Council has an approved Procedure for recording and monitoring Section 106 Agreements. This governs the work of the Council's cross-departmental Section 106 Monitoring Group. The Procedure is kept under review and updated from time to time. It was most recently updated following the recommendations of an Internal Audit in May 2022. The amended Procedure was approved by Planning Committee in September 2022.

2. Details of Proposal or Information

- 2.1 A further Internal Audit review of the Council's S106 Agreement monitoring processes and controls has been undertaken. It commenced in June and was completed October 2024. The Audit Report is attached as Appendix A.
- 2.2 This recent Audit Report confirms that all previous recommendations from the previous Audit in 2022 have been implemented. In this latest Audit, the reliability of the controls or managing risk is assessed as **Reasonable**. This is a level of assurance where the majority of controls are considered to be in place and operating effectively. However, although risks are generally well managed, the assessment indicates that there are some improvements needed.
- 2.3 Consequently, the Audit puts forward four recommendations relating to areas of risk where action is required. The areas of risk cover four aspects of the monitoring procedure: the S106 Agreements, the central record of Agreements and monitoring of Agreements, the notification of triggers being met and the effective allocation and spend of S106 contributions.

Section 106 Legal Agreements

- 2.4 Audit finding: On examining those S106 Agreements published on the Council's website, the more recent S106 Agreements examined by the auditor had been redacted to black out the signatories of Council officers and of other parties. However, there were some older agreements where this had not taken place. As the Council's website allows public access to its planning database for planning applications all non-sensitive and non-confidential information and correspondence is disclosed, including a copy of the S106 Agreement. Signatures constitute personal data so should not be published plus signatures can be reproduced in an unauthorised or fraudulent way. Classified as Low Risk.
- 2.5 Recommendation (R1): A review of S106 agreements on the planning database for public access, is undertaken to ensure signatures are redacted.
- 2.6 **Response/Action taken:** A review of those S106 cases identified by the auditor has been undertaken and signatures redacted. Within the next month Development Management are to look at all of the historic S106's and Deed of Variations that the Council has signed up to, to make sure that all signatures are redacted. This is a significant body of work that is anticipated will be completed by mid-November. Section 1 (i) c of the S106 Procedure has

been amended to include a reference to the need to redact signatures and personal information on publishing an electronic copy of the legal agreement on Public Access.

Central Record of S106 Agreements & Monitoring of Agreements

- 2.7 Audit finding: Collectively there is a good understanding of the position on each development. However, there is the opportunity to make the processes more efficient by consolidating the information into fewer documents, so that information is updated only once. Classified as Medium Risk
- 2.8 Recommendation (R2): Planning Managers review areas of duplication in respect of recording S106 contribution triggers and monitoring how these are met, with a view to consolidating information into one or fewer documents to record amounts once and provide effective management information.
- 2.9 **Response/Action taken:** A streamlining of the current approach is underway. This comprises a new S106 monitoring spreadsheet which will automatically notify officers that a trigger for payment has been met once the quarterly Completion figures from the survey of S106 sites are input. The new spreadsheet will work alongside the use of existing development management systems. If payment is not received from the developer on the trigger being met an Enforcement Case will be created. The details of the case will be captured like any other enforcement complaints in the Development Management Uniform system. This is accessed daily whereby the list of active cases and ongoing progress will be visible. It is proposed that the enforcement actions taken will also be recorded on the S106 monitoring spreadsheet. This new approach is planned to be fully operational by the end of the 2024.

Notification of Triggers being met.

- 2.10 Audit finding: The S106 Procedure does not specify the timeframe required between being notified of the trigger being met and sending the first, second and subsequent requests for payment to the developer. There is a risk therefore that recovery processes may be inconsistently applied, or the time taken to recover amounts due may be unnecessarily extended. Classified as Medium Risk.
- 2.11 Recommendation (R3): Timeframes should be established between each stage of recovery. These should be defined in the Procedure notes and effectively applied. If such requests for payment are not made via the Sundry debtor system, any alternative system should include these details and summary information available to management.
- 2.12 **Response/Action taken:** The suggested timeframes for recovery are (1) an initial letter to the developer once the payment trigger is reached. Thereafter if no response is received within 28 days (2) an invoice will be issued for the amount owing (with a follow up late payment invoice (3), if needed). (4) Legal action will follow if no response is received, or the obligation is not discharged. Section 3 (i) b of the S106 Procedure has been amended accordingly.

Effective Allocation and Spend of S106 Contributions

- 2.13 Audit finding: There are some S106 obligations which do not include a timeframe for the delivery of the associated infrastructure. S106 obligations that are not subject to clawback usually comprise those infrastructure obligations that are not in the way of a financial contribution but are instead delivered by the developer. Such items can include Affordable Housing, Artwork and Open Space including the provision of play equipment. Sums for the ongoing maintenance of open space are also not subject to clawback. As the Council would still require delivery of projects within a reasonable timeframe, an annual review of progress for those projects should be reviewed. Classified as a Low Risk.
- 2.14 Recommendation (R4): An annual review of projects allocated S106 contributions that do not have a timeframe for spend (for example maintenance), take place to seek assurance on delivery.
- 2.15 **Response/Action taken:** Annual spend on maintenance is included under Section (i) the Annual Infrastructure Statement (AIFS) which sets out the annual spend during the reported year identifying the individual sites. This will be formalised within a new Section 6 in the Procedure.
- 2.16 In terms of those obligations that are delivered by the developer, Section (d) of the AIFS requires summary details of any non-monetary contributions to be provided under planning obligations which were entered into during the reported year. However, Section (d) is framed around affordable housing, school places and biodiversity. It does not include artwork, open space or play equipment infrastructure. Critically there is no follow up question that monitors the delivery of such obligations that were entered into in previous years.
- 2.17 There is quarterly monitoring of non-monetary contributions at the meeting of the S106 Monitoring Group although this is not consistent across all sites. It is proposed that this is extended to encompass the quarterly monitoring of non-monetary obligations on all active development sites. Accordingly, the new section 6 formalises and extends the Quarterly Reporting of progress to the S106 Monitoring Group.

Summary of Proposed Revisions to S106 Monitoring Procedure

- 2.18 In summary, in the light of the Audit findings and recommendations, officers have reviewed the Section 106 Agreement Monitoring Procedure and drafted the following revisions. The headings and section references are those of the Procedure.
- 2.19 Proposed Revisions:
- i) Throughout the Procedure the information recorded and maintained by the Planning Department is referred to as the 'Planning Spreadsheet' as distinct from the information recorded and maintained by the Finance Department known in the Procedure as the 'Finance Spreadsheet'. It is proposed that throughout the S106 Monitoring Procedure the Planning Spreadsheet is

renamed, 'S106 Planning Monitoring Spreadsheet' to properly identify its function. Similarly, references to the Finance Spreadsheet to be changed to S106 Finance Monitoring Spreadsheet to correspond to how it is referred to outside of the Procedure.

1. Planning Permission Issued
ii) Section 1 (i) c. Revised in response to R1.

2. Trigger Points
iii) Section 3(i) b. As above

6. S106 Contributions not subject to Clawback
iv) New Section added

2.20 The Section 106 Agreement Monitoring Procedure has been revised as above and 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.

4 Alternative Options and Reasons for Rejection

4.1 The alternative option would be to not implement the recommendations of the S106 Audit. This would undermine the aim of the S106 Procedure to guide efficiency and effectiveness in the Council's management of S106 infrastructure delivery.

RECOMMENDATION(S)

That Planning Committee notes the Section 106 Audit Report (October 2024); and

That Planning Committee approves 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

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 checked="" type="checkbox"/></p>	<p>Yes</p> <p>Details: Chair of Planning Committee</p>

<p>Links to Council Ambition: Customers, Economy, Environment and Housing.</p>	
<ul style="list-style-type: none"> • Ensuring all area, neighbourhoods and streets in the district, irrespective of housing tenure or type, are places where people want to live, feel safe, and are proud to live; • Enabling housing growth by increasing the supply, quality, and range of housing to meet the needs of the growing population. 	

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>	