

**Bolsover District Council**

**Meeting of the Planning Committee on 27<sup>th</sup> November 2024**

**QUARTERLY UPDATE ON SECTION 106 AGREEMENT MONITORING**

**Report of the Assistant Director: Planning & Planning Policy**

|                        |   |
|------------------------|---|
| <b>Classification</b>  | This report is Public   |
| <b>Report By</b>       | Julie-Anne Middleditch<br>Principal Planning Policy Officer   |
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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 legal agreements 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 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. Although the risk is relatively low, 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 an approved procedure for recording and monitoring Section 106 Agreements. The S106 Monitoring Procedure governs the work of the Council's cross-departmental Section 106 Monitoring Group. The latest version of the Procedure is considered elsewhere on this agenda.
- 1.5 Following the quarterly Section 106 Monitoring Group meetings, officers provide a progress report to the Planning Committee in respect of the monitoring of Section 106 Agreements. In line with the approved Procedure the 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.
- 1.6 Accordingly, this report is the quarterly progress report following the meeting of the Section 106 Monitoring Group held on 17<sup>th</sup> October 2024.

## **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 on 4<sup>th</sup> September, eight remaining sums were identified as being within their 24-month deadline as of 18<sup>th</sup> July 2024.
- 2.3 As of the Monitoring Group meeting on 17<sup>th</sup> October 2024 there are seven remaining sums within their 24-month deadlines (details below).

### **Spend Date within 12 months (by 30<sup>th</sup> September 2025)**

| <b>Action Plan</b> | <b>Finance Spreadsheet</b> | <b>Site</b>                     | <b>Infrastructure and amount</b> | <b>Amount remaining</b>                        | <b>Date</b> |
|--------------------|----------------------------|---------------------------------|----------------------------------|--|-------------|
| <b>Item 17</b>     | Line 83                    | Mansfield Road, Tibshelf        | Outdoor Sport (£164,153)         | £415.07<br><br><b>Residual amount to spend</b> | 20.12.24    |
| <b>Item 22</b>     | Line 88                    | Station Road, Langwith Junction | Health (£16,000)                 | £16,000<br><br><b>No change</b>                | 30.1.25     |

- 2.4 Since the quarterly update report presented to September's meeting of the Planning Committee the Outdoor Sports project from the Mansfield Road Tibshelf development has been completed with the funds all but spent. The Health sum from the Station Road development at Langwith Junction remains unspent.

## Spend Date within 2 years (by 30 September 2026)

| 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<br><b>No change</b>                 | 31.3.26 |
| Item 21     | Line 71             | Creswell Road, Clowne                    | Outdoor Sport<br>£26,207  | £26,207<br><b>No change</b>                    | 3.3.26  |
| Item 17     | Line 96             | Land at Thornhill Drive, South Normanton | Art £10,757               | £10,757.25<br><b>No change</b>                 | 24.6.26 |
| Item 18     | Line 97             | Land at Thornhill Drive, South Normanton | Outdoor Sport<br>£22,843  | £17,086.99.<br><b>Reduced by<br/>£5,755.91</b> | 24.6.26 |
| Item 19     | Line 98             | Land at Thornhill Drive, South Normanton | Open Space<br>£30,400     | £30,400.07<br><b>No change</b>                 | 24.6.26 |
| Item 20     | Line 99             | Land at Thornhill Drive, South Normanton | Health<br>£11,784         | £11,784.56<br><b>No change</b>                 | 24.6.26 |

2.5 Since the last Planning Committee, no further sums have come within the 2 years spend threshold. There has been a reduction in the reported spend against the Outdoor Sport allocation from the Thornhill Drive, South Normanton development. At the last meeting the Q1 spend was reported as £7,287.25. The final spend as at Q2 from this sum was £5,755.91. This is due to the fact that the initial entry on the spreadsheet takes commitments into account. Once invoiced the spending was less than that which was committed. The remaining Outdoor Sports sum is therefore £17,086.99 and not £15,555.75 as previously reported.

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

**Acronyms:** DMLCM = Development Management and Land Charges Manager; CADO = Community Arts Development Officer; = Leisure Facilities Planning & Development Manager; PPPO = Principal Planning Policy Officer; CLE = Chartered Legal Executive; SDLPPSG&H = Senior Devolution Lead for Planning Policy, Strategic Growth and Housing; PPDM = Principal Planner Development Management; PA= Principal Accountant; HOL = Head of Leisure; DMCO = Development Management Case Officer; P&SM = Partnership and Strategy Manager

| Item      | Development site, relevant S106 sum and spend by date   | Responsible officer |
|-----------|---|---------------------|
| <b>8</b>  | <b>Mansfield Road, Tibshelf – Outdoor Sport<br/>£164,153 (20.12.24)</b>   | LSPDM               |
|           | <u>Action from previous quarterly meeting</u><br>Report to next meeting.  | LSPDM               |
|           | <u>Update between July and October meeting.</u><br>Contractors on site as of the end of July. Works progressed well throughout August, despite a minor delay due to vandalism. By mid-October facility was open with an ‘official’ opening on Saturday (12 October) featured on Bolsover TV. Payments made; two invoices totalling £142,278.01 and another on 15.10.24 for £16,272.01 for payment giving a total of £159,041. Of the remaining £5,112 most is to be used for play equipment repair on another site in Tibshelf with the remaining £415.07 to be used to pay for a new litter bin on the site. | LSPDM               |
|           | <u>October meeting update</u><br>Chasing BDC Street Scene bin, confirmation that a roundabout at Lincoln Street Play Area is to be repaired with the remaining monies (works now complete)  | LSPDM               |
|           | <u>Agreed Action</u><br>Remove from Action Plan   | ALL                 |
| <b>11</b> | <b>Station Road, Langwith Junction – Health<br/>£16,000 (30.01.25)</b>  | PPPO                |
|           | <u>Action from Previous Quarterly Meeting</u><br>Report to next meeting.  | PPPO                |
|           | <u>Update between July and October meetings.</u><br>A meeting with Integrated Care Board (ICB) 26 <sup>th</sup> September. Confirmation from ICB of ongoing work with the Doctor’s practice on a scheme to convert a meeting room into a clinical room and looking at   | PPPO                |

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|                 | <p>potentially what else could be done to further increase access.</p> <p>That the surgery is a new building (2019) is presenting difficulties. There can be work done to convert one of the meeting rooms to a clinical space. This is likely to come to £7,000 which leaves £9,000 of the contribution remaining. The S106 has been tightly drawn so the funds cannot be used elsewhere.</p> <p>Update from the ICB in mid-October stating that progress and communication with Practice ongoing. Still aiming to spend the £16,000 by the given deadline of January 2025. ICB asked if equipment can be funded. PPPO and PPDM stated to ICB that S106 monies are to be used for capital works only.</p> <p><u>October meeting update</u><br/>Discussions around improvements to the Health Practice being the only eligible works under the S106 and that the building is relatively new.</p> <p><u>Agreed Action</u><br/>To investigate the circumstances of the existing Health Centre.</p> <p>Discuss with Legal Services if under the terms of the S106 if there is the opportunity for the Council to have a legally binding agreement with the ICB as non-signatories, in order that they can draw down remainder of funds to use at a later date on capital works.</p> | <p>PPPO</p> <p>PPPO</p> <p>PPPO/CLE</p>                          |
| <p><b>4</b></p> | <p><b>Spa Croft, Tibshelf – Art £10,176.20 (31.03.26)</b></p> <p><u>Action from previous quarterly meeting</u><br/>Developer to be notified of need for Planning Permission and DCC Highways to be made aware of proposal.</p> <p>Monthly updates</p> <p><u>Update between July and October Meeting</u><br/>Six artists have shown interest in considering the commission. Request For Quote (RFQ) submitted to procurement team. Legal require a full contract to be included as part of the RFQ. This has been done and RFQ is back with them pending a decision. The main change to the timetable will likely be a 3-month delay in completion to take into</p>   | <p><b>CADO</b></p> <p>PPPO/DMCO</p> <p>CADO/PPPO</p> <p>CADO</p> |

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|           | <p>account a 'defects period' but CADO still aiming for completion in spring 2025.</p> <p><u>October meeting update</u><br/>Awaiting approval from Legal Services. Questions around Construction Design Management and Health and Safety, so also sent to Health &amp; Safety with the question of what is required for them. LSPDM mentioned that Minor Works Contract may be a way forward.</p> <p><u>Agreed Action</u><br/>To take project through Procurement process before the next meeting.</p>   | <p>CADO</p> <p>CADO</p>                             |
| <b>16</b> | <p><b>Creswell Road, Clowne – Outdoor Sport (SP)</b><br/><b>Planning Ref: 14/00603/FUL</b><br/><b>£26,207 (3.3.26)</b></p> <p><u>Previous Action</u><br/>Report to next meeting.</p> <p><u>October meeting update</u><br/>LSPDM has been working with the Parish Council. The project has gone through procurement and a potential contractor has been identified.</p> <p>However, the Parish Council want to undertake a public consultation to see if a skatepark is what the community want. The PC are aware of the deadline of 18 months within which to spend the money. Next summer would be the time to install/build the infrastructure. An alternative scheme (additional play equipment) has been suggested should the skatepark not proceed.</p> <p><u>Agreed Action</u><br/>Report to next meeting.</p> | <p>LSPDM</p> <p>LSPDM</p> <p>LSPDM</p> <p>LSPDM</p> |
| <b>17</b> | <p><b>Land at Thornhill Drive, South Normanton – Art</b><br/><b>17/00148/OUT</b><br/><b>£10,757 (24.6.26)</b></p> <p><u>Previous Action</u><br/>Report to next meeting.</p> <p><u>October meeting update</u><br/>On paying the sum for art, the developer is of the view that they have no further involvement and that the Council can use the contribution for art anywhere in the district.</p>   | <p>CADO</p> <p>CADO</p> <p>CADO</p>                 |

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|    | <p>However, the S106 requires that the artwork is related to the site. The site accommodates 16 houses and there is no obvious space for any artwork on it, aside from a one metre strip of land at the end. Discussion in the group of where there may be an appropriate space, including the adjacent original housing site to which this smaller site forms an extension.</p> <p>The S106 mentions other forms of art that can be considered i.e. photography, so it could fund a community artwork. CADO to look at potential projects be they physical or community based.</p> <p><u>Agreed Action</u><br/>Report to next meeting.</p>  | CADO  |
| 18 | <p><b>Land at Thornhill Drive, South Normanton – Open Space 17/00148/OUT £30,400 (24.6.26)</b></p> <p><u>Previous Action</u><br/>Report to next meeting.</p> <p><u>Update between July and October meeting</u><br/>LSPDM set out that the open space monies are the ‘South Street Recreation Ground Contribution’. South Street Recreation Ground also has outdoor sports facilities that are in need of enhancement / improvement / refurbishment including the BMX track and the skatepark, so it should be possible to combine the amounts for both Open Space and Outdoor Sports under the terms of the Agreement. However, it would be worthwhile revisiting the terms of the S106.</p> <p>Communication between PPPO/CLE/PPDM concerning terms of the Agreement and whether the proposed use for the money conforms with the S106 and with planning policy, which has changed since the S106 was agreed.</p> <p><u>Update at October meeting</u><br/>There are various projects that the Parish Council have highlighted for the Recreation Ground. Need to confirm that Open Space monies can be used for these projects alongside the Outdoor Sports moneys.</p> | <p>LSPDM</p> <p>LSPDM</p> <p>LSPDM</p> <p>LSPDM</p> |

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|           | <p><u>Agreed Action</u><br/>To revisit S106 and Planning Policy basis for spending the sum.</p>  | PPPO/PPDM   |
| <b>19</b> | <p><b>Land at Thornhill Drive, South Normanton – Outdoor Sport 17/00148/OUT £17,086.99 remaining (24.6.26)</b></p> <p><u>Previous Action</u><br/>Report to next meeting.</p> <p><u>October meeting update</u><br/>The Parish Council would like to upgrade the skatepark with the remaining funds as insufficient moneys to replace it altogether notwithstanding the potential use of Open Space monies. LSPDM in discussions with the Parish Council. Tied in to sums from Lees Lane development which may not be received for another 2 months.</p> <p><u>Agreed Action</u><br/>Report to next meeting.</p>   | <p>LSPDM</p> <p>LSPDM</p> <p>LSPDM</p> <p>LSPDM</p> |
| <b>20</b> | <p><b>Land at Thornhill Drive, South Normanton – Health 17/00148/OUT £11,784.56 (24.6.26)</b></p> <p><u>Update between July and October meeting</u><br/>PPPO contacted ICB in July sending extracts from the Action Plan of the 2 Health contributions that are within the 2-year spending threshold. Mid-October email integrated Care Board (ICB) to PPPO stating nothing to report against this contribution.</p> <p><u>October meeting update</u><br/>Dealing with a number of queries received from the ICB across a range of sites and ICB have no update to report on this.</p> <p><u>Agreed Action</u><br/>To follow up on the request for an update on this S106 contribution with a request for more information from the ICB.</p> | <p>PPPO</p> <p>PPPO</p> <p>PPPO</p> <p>PPPO</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 (30<sup>th</sup> June 2024), 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 and beyond  |
| Affordable Housing  | £0.00                 | £0.00             | £195,418.36  |
| Art                 | £0.00                 | £12,695.12        | £99,805.57<br>(no clawback on £477.46)                   |
| Outdoor Sport       | £48,723.75            | £39,675.00        | £250,345.25<br>(no clawback on £32,867.69)               |
| Informal Open Space | £116,794.50           | £36,916.00        | £221,455.75<br>(no clawback on £10,000.77)               |
| Health              | £0.00                 | £0                | £60,316.90<br>(of which, no clawback against £12,277.20) |
| Highways            | £0                    | £0                | £569,000.00<br>(no clawback)                             |
| Biodiversity        | £0                    | £0                | £8,029.96  |
|                     | <b>£165,518.25</b>    | <b>£89,286.12</b> | <b>£1,404,371.79</b>                                     |

2.9 In Q2 of 2024/25 the obligation due against development at Broad Lane Hodthorpe for Affordable Housing was invoiced and received and is included in the sums for year 5 and beyond.

2.10 Since the last meeting there has been no change in the profile of the Art, Open Spaces, Health, Highways and Biodiversity sums across the 3 years. The Outdoor Sport sums remain the same for Year 3. In year 4 of the Outdoor Sports sums there has been spend from the contributions from two developments, Land Off Oxcroft Lane and Land South of Oxcroft Lane towards Bolsover Skate Park and for a cricket scoreboard and a mesh screen at Bolsover Cricket Ground off Villas Road respectively. In year 5 of the Outdoor Sports sums the increase of £87,430.56 follows an invoice being raised against the outstanding Outdoor Sport obligation Chesterfield Rd, Barlborough. This money has yet to be received.

2.11 Of the monies held by the Council, over one third £569,000 is a S106 contribution from the development at Meadow Lane, Shirebrook. The contribution is primarily towards transport infrastructure. Under the terms of the S106, the difference between the amount required for off-site highway works and the maximum amount of the development contribution, is to be spent as a commuted sum towards the expansion of the Shires GP practice and/or a commuted sum to incentivise the establishment of a bus service through the site. There are various considerations that need to be discussed in order that a commitment on the transport infrastructure can be made. It is proposed that the Meadow Lane, Shirebrook S106 is subject to a further detailed report to this Committee.

### **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.

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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

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| <p><b>Is the decision a Key Decision?</b><br/>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><b>Revenue - £75,000</b> <input type="checkbox"/> <b>Capital - £150,000</b> <input type="checkbox"/><br/><input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p> | No |
| <p><b>Is the decision subject to Call-In?</b><br/><i>(Only Key Decisions are subject to Call-In)</i></p>   | No |

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| <p><b>District Wards Significantly Affected</b></p>  | All |
| <p><b>Consultation:</b><br/>Leader / Deputy Leader <input checked="" type="checkbox"/> Executive <input type="checkbox"/><br/>SLT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/><br/>Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/></p> | No  |

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| <p><b>Links to Council Ambition: Customers, Economy, Environment and Housing.</b></p>  |  |
| <ul style="list-style-type: none"> <li>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;</li> </ul> |  |

**Links to Council Ambition: Customers, Economy, Environment and Housing.**

- Enabling housing growth by increasing the supply, quality, and range of housing to meet the needs of the growing population.

**DOCUMENT INFORMATION**

| <b>Appendix No</b> | <b>Title</b> |
|--------------------|--------------|
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**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).*