

North East Derbyshire District Council

Planning Committee

19th October 2021

Section 106 (Legal) Agreements Update

Report No PM/05/21-22/AK of the Planning Manager (Development Management)

This report is public.

Purpose of the Report

- To provide for all elected Members a detailed breakdown of all live section 106 (legal) agreements.
- To enable Members to play a full role in monitoring the making of section 106 agreements and the receipt and spending of money collected through them.

1 Report Details

Section 106 Agreements

- 1.1 Members will recall the most recent report to the Planning Committee on this matter of November 2020 setting out information regarding the community benefits secured through planning consents and associated section 106 (legal) agreements. This report is a further update on this issue for Member information in general accordance with the resolution of Committee in November with the additional information that was requested then.
- 1.2 The attached appendices set out information on all current, live, section 106 agreements. Appendix A provides information in respect of agreements where funding has been secured, Appendix B sets out details of all the agreements where to date payments are due but they have not been received whilst Appendix C sets out the position where no money has been paid to the Council and any updates in respect of requests made for payment.
- 1.3 Whilst the onus/requirement is on the applicant to pay to the Council the money that has been promised/contracted to it, the Council does pursue unpaid money when appropriate. It is most essential, however, that the Council spends any money received within the appropriate time scales set out in the relevant section 106 agreement.
- 1.4 Therefore, Appendix A also sets out when money should be spent and “traffic lights” the level of risk for each payment with red being the colour where money needs to be spent within 2 years, amber within 3 years and green when it is in excess of 3 years. This assists Officers in ensuring money is properly used for the purposes obtained and also this will assist Members in monitoring the use of money within their respective communities.

1.5 There are currently four red records identified.

These relate to recreation/open space provision in the following two cases:

NED/10/01193/FL (Wessington): The use by date of May 2022 is being monitored by Officers and it is anticipated that the money will be used for the stated purpose within the time frame.

NED/14/00147/OL (Wessington): The money should be used by the 28th Feb 2023. There remains a further 18 months for this money to be properly used and it is being monitored by Officers.

To public realm works in the following case:

NED/11/00685/FL (Eckington): The money should be used by the 13th November 2022. Officers are aware of this deadline and will monitor the situation to ensure proper use of the money.

The additional "red" case relates to affordable housing:

NED/15/00551/FL (Clay Cross/Tupton): The money should be allocated and spent by 21st December 2021. Officers are aware of the deadline in this case and are confident the money will be used appropriately.

1.6 It is proposed that a further update on legal agreements will be provided in March/April 2022.

2 Conclusions and Reasons for Recommendation

2.1 The proper monitoring of section 106 agreements and the income arising from them enables the Council to both secure proper community infrastructure funding and ensure it is properly apportioned.

2.2 This report and subsequent ones will enable Members to play an active role in those activities and support Officers in ensuring community priorities are secured.

3 Consultation and Equality Impact

3.1 None

4 Alternative Options and Reasons for Rejection

4.1 A failure to monitor section 106 agreements would leave the Council unable to secure the community infrastructure required to mitigate the impact of granting planning consent for new development. This is not considered a viable alternative.

4.2 More regular reporting on this matter to Planning Committee is possible. However, the making of section 106 agreements, the payments of money and its use can adequately be monitored on an at least half yearly basis.

5 Implications

5.1 Finance and Risk Implications

5.1.1 The monitoring and proper accounting and use of money received through section 106 agreements has been consistently and properly accounted for. There is limited risk of not monitoring the income received as the onus for payment lies with the applicant of any approved scheme rather than the Council. The greatest risk to the Council is a failure to use money received by it within the given time scales. The monitoring that is in place mitigates this risk to a significant level.

5.2 Legal Implications including Data Protection

5.2.1 Section 106 agreements are public documents placed on the planning register. The statute of limitations regarding payments to the Council is 12 years.

5.3 Human Resources Implications

5.3.1 The proper monitoring and enforcing of section 106 agreements carries with it human resource implications. Currently these are being constrained within existing resources but if additional resourcing is required this will be sought through the proper channels.

6 Recommendations

6.1 That the information contained within Appendices A, B and C is noted.

6.2 That the contents of paragraphs 1.1 to 1.6 is noted and endorsed.

6.3 That this matter continues to be reported to Planning Committee on a (approximately) half yearly basis.

7 Decision Information

Is the decision a Key Decision? (A Key Decision is an executive decision which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
District Wards Affected	All
Links to Corporate Plan priorities or Policy Framework	Unlocking development potential, providing good quality social housing, contributing to health and well being, increasing participation in sport and leisure activities,

	developing attractive neighbourhoods, making the best use of assets and demonstrating good governance.
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8 Document Information

Appendix No	Title
A. to follow B. C.	S106 agreements – payments received and spend to date. S106 agreements – payments due and not received. S106 agreements – payments not yet due/received/pending receipt.
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 Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
All section 106 agreements contained on the planning register.	
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