

Appendix 3

**Bolsover, Chesterfield and North East Derbyshire District
Councils'**

Internal Audit Consortium

Authority:	North East Derbyshire District Council
Subject:	Section 106 Agreements Report Reference: N010
Date of Issue:	20th December 2021
Assurance Level	Reasonable
Report Distribution:	Planning Manager (Development Control), Assistant Director – Planning, Assistant Director - Finance (S151), Managing Director. C.c. Head of Service – Governance & Monitoring Officer.



INTERNAL AUDIT REPORT
DEVELOPMENT MANAGEMENT
SECTION 106 AGREEMENTS (S106)

Introduction

In accordance with the 2021/22 annual audit plan a review of the processes and controls in respect of Section 106 Agreements (S106) has been undertaken.

The previous audit was finalised in April 2019, resulting in an overall audit opinion of 'Reasonable' assurance with 4 recommendations made for improvement.

Scope and Objectives

To ensure that:

- Previous audit recommendations have been addressed
- Comprehensive records of all agreements exist and are well maintained
- Adequate monitoring of agreements, monies and conditions is undertaken
- Payments are made in line with agreements on a timely basis
- Funding is appropriately and timely spent in line with agreements
- Budget monitoring procedures are robust
- Effective reporting mechanisms are in place.

Conclusion

The conclusion of the audit was that the reliability of the controls was assessed as giving '**Reasonable**' assurance. The majority of controls are in place and operating effectively, although some control improvements are required. The system should achieve its objectives. Risks are generally well managed. (*See Appendix A for audit assurance definitions*).

Some process controls require improvement to ensure that future S106 contributions can be identified and collected promptly. It is important to note that at the point of testing, there are no contributions held which are at immediate risk of repayment to developers through lack of action by the Council.

The onus is on the developer to pay over contributions due at agreed points which they covenant to do; however, in some cases payments are not forthcoming and as a result, the Planning and Legal teams, on behalf of the Council also have a responsibility to chase any outstanding payments due.

A back log of site monitoring visits delayed due to the Covid pandemic requires progressing and the process of collecting sums due requires formalising to ensure that prompt action can be taken where appropriate.

Significant improvements to the control and monitoring of contributions, once received, have been evidenced through the creation of a joint monitoring group ensuring that the risk of repayments to developers through lack of prompt action is low.

The assistance of Planning, Finance and Legal teams was appreciated during the course of the audit.

Findings and Recommendations

Previous Recommendations

1. Of the 4 recommendations made during the previous audit review, 1 has been confirmed as implemented. This was in relation to ensuring a member of the Legal team regularly attends the S106 monitoring group meetings.
2. Two recommendations in relation to site monitoring visits and the issuing of reminder letters to developers have been re-stated with an update noted within the relevant sections of this report. (New recommendations 2 and 3).
3. The remaining recommendation in respect of providing Planning Committee with 6 monthly updates has now been superseded. At the Planning Committee of October 2021, a request was made by Elected Members to provide quarterly S106 updates.

Central Records

4. Once sealed, S106 agreements are held centrally by the Councils Legal team. Copy agreements are also available to the public accessible via the online planning portal.
5. Comprehensive spreadsheets are in use for the recording and monitoring of S106 agreements including; associated trigger points for contributions due from developers as well as progress updates and expiry dates for the use of contributions received.
6. Checks of a sample of 10 S106 agreements published on the Planning Portal found that details had been accurately transferred to the central monitoring spreadsheet.
7. Unilateral agreements (also section 106 but agreements submitted by the applicant and not otherwise “agreed” with the Council are also retained by the Legal team, copies are provided for public access on the online planning portal and the nature of the agreements are recorded on the Uniform system.
8. The last 3 Unilateral Agreements raised were examined and it was confirmed that the controls in place to ensure related land charges had been applied to the register, were operating well.

Monitoring Arrangements

9. Written procedures are in place; however, these are in need of review to ensure that revised processes are included and all relevant parties adopt a consistent approach to the S106 process.

As necessary, and when payments aren't delivered as agreed by the developer, Planning Officers will visit the site in question and assess if the relevant trigger points

have been reached. Current procedures state that sites will be visited on a 6 monthly basis.

10. Checks of the central monitoring spreadsheet and the October 2021 report to Planning Committee highlighted a number of developments which have not been visited in recent times; some of which were noted as last visited in April 2019. In one instance, it has been noted that Committee were informed of a site visit in April 2019; however the spreadsheet was noted as last visited in April 2021.
11. Information received suggests that the Covid pandemic has played a part in the reduction of site visits undertaken, as has the current workload of the team. Although the reintroduction of site visits is now progressing, a consistent approach, in particular to recording and reporting site visits should be applied.
12. The previous audit recommendation '*to ensure that S106 contributions due can be collected promptly, a consistent approach to recording when Planning Officer site monitoring visits have been undertaken should be introduced*' has been re-stated, albeit updated for current relevance.
13. At the point a trigger has been reached, instruction is given to the Development Management Administration team to pursue the sums due. It should be noted that more recently generated agreements now place the onus on the developer to pay 3rd party beneficiaries such as Derbyshire County Council, directly; in effect reducing NEDDC administrative time.
14. A standard 'reminder' letter has been devised, advising the developer that a payment is required. A follow up letter in the same format as the first reminder is also in place. Failure to pay results in a referral to the Council's Legal team for further action.
15. Normal procedure includes the issuing of a follow up reminder approximately 8 weeks after the first. However, checks found that this timescale isn't always applied.
16. It was also identified that referrals to and action by the Legal team were not always prompt.
17. It would therefore be beneficial to review the process of issuing reminders; a suggested approach would be to issue only 1 reminder, setting out a date payment is expected and where it is not forthcoming, immediate referral for enforcement action to the Legal team takes place.
18. The previous audit recommendation '*the Legal and Planning teams should formalise a consistent approach to the process of issuing reminders and / or carrying out legal enforcement to applicants who have not paid over S106 contributions due. A structured timetable should be introduced into S106 procedures for clarity*' has been re-stated.

19. In some instances, a developer may ask that a sundry debtor invoice is raised prior to payment being raised. Recovery of sums due will then fall in line with normal Sundry Debtor Recovery Procedure; however, it is important to stress that the Development Management Administrative Team should liaise with the Debtors team to ensure that the reminder process is not extended or delayed and to ensure that there is a prompt referral to the Legal team should payment not be forthcoming.
20. It was identified that a sundry debtor invoice had been raised in June 2021 for a contribution of £302,100. This was recorded on the central monitoring spreadsheet as payment received, prior to actual receipt of the sums due. It should be pointed out that this is also used to support final accounts and associated working papers and therefore has to comply with CIPFA Accountancy practice.
21. As a result, this contribution was not reported as outstanding to Planning Committee in October 2021. It should be noted for reference that this contribution has since been received (12th November 2021). Future contributions to be collected via the sundry debtor process should still be reported as outstanding until the total amount due has been credited to the Council's bank account.
22. A S106 monitoring group comprising of Planning, Financial Services, Legal, Housing and Streetscene team members have been meeting on a 6 monthly basis to keep abreast of S106 activity. A representative from Derbyshire County Council also attends.
23. Monitoring meetings ensure that the S106 obligations and timescales for the use of contributions are appropriately met, this ensures the Council remains at low risk of repayments to developers through lack of prompt action.
24. Monitoring meetings should be minuted to ensure progress, decisions and responsibilities are clear to all parties involved. Minutes for the October 2020 meeting have not been located; however April 2021 minutes have been confirmed as in place. The minutes of the latest meeting (November 2021) have not yet been produced.
25. It is clear that team members from other services areas, in particular Strategic Housing and Streetscene, are invited to attend when the responsibility for utilising the contributions received dictates.
26. Income and expenditure as reported through General Ledger (GL) codes B397-9257 and B397-4699 were traced to the central monitoring spreadsheet satisfactorily; related procedures have been confirmed as operating well.

Recommendations	
R1	Written S106 procedures should be updated and circulated to relevant parties to ensure that a consistent approach is taken by all throughout. (Priority: Low)
R2	Re-statement To ensure that S106 contributions due can be collected promptly, a consistent approach to undertaking and recording when Planning Officer site monitoring visits have been undertaken should be introduced. Records should be verified to ensure that accurate information is provided to the Planning Committee. (Priority: Medium)
R3	Re-statement The Legal and Planning teams should formalise a consistent approach to the process of issuing reminders and / or carrying out legal enforcement to applicants who have not paid over S106 contributions due. A structured timetable should be introduced into S106 procedures for clarity. (Priority: Medium)
R4	To ensure that the process of collecting sums due via the Sundry Debtor process does not extend or delay the recovery process, the DM Admin. team should liaise with the Sundry Debtor team to arrange prompt referral to the Council's Legal team for further action. Financial contributions pursued through the Sundry Debtor process should continue to be reported to the S106 Monitoring Group and Planning Committee as outstanding until the payment has been credited to the Council's bank account. (Priority: Medium)

Governance & Reporting

27. It was noted in the previous audit report that S106 reporting over the previous year had shown little movement in cases for examination by Elected Members. It was therefore recommended that consideration should be given to reducing the reporting process to twice yearly, subject to the option of reporting ad-hoc issues when required and subject to Elected Member approval.

28. There were no progress reports submitted to Planning Committee between November 2020 and October 2021 for various reasons including the capacity of the Planning Committee during the pandemic to receive reports and the cancellation of meetings.

29. During the Planning Committee of October 2021, Elected Members requested quarterly S106 updates to be provided and as such, the previous audit recommendation has now been superseded.
30. The report pack submitted to the October 2021 Planning Committee has been examined and is shown to be comprehensive; included within the pack are details in respect of ongoing case monitoring (last site visits noted), payments due but not collected (with any action taken noted) and sums collected which are due to be spent.
31. The accuracy of these reports should be verified prior to submission, in particular relating to contributions due, but not paid. Implementation of recommendation 4 above will ensure this control is reintroduced.

Appendix A

Assurance Level	Definition
Substantial Assurance	There is a sound system of controls in place, designed to achieve the system objectives. Controls are being consistently applied and risks well managed.
Reasonable Assurance	The majority of controls are in place and operating effectively, although some control improvements are required. The system should achieve its objectives. Risks are generally well managed.
Limited Assurance	Certain important controls are either not in place or not operating effectively. There is a risk that the system may not achieve its objectives. Some key risks were not well managed.
Inadequate Assurance	There are fundamental control weaknesses, leaving the system/service open to material errors or abuse and exposes the Council to significant risk. There is little assurance of achieving the desired objectives.

Internal Audit Report – Implementation Schedule

Report Title:	Section 106 Agreements	Report Date:	20th December 2021
		Response Due By Date:	26th January 22

	Recommendations	Priority (High, Medium, Low)	Agreed	To be Implemented By:		Disagreed	Further Discussion Required	Comments
				Officer	Date			
R1	Written S106 procedures should be updated and circulated to relevant parties to ensure that a consistent approach is taken by all throughout.	Low						
R2	Re-statement To ensure that S106 contributions due can be collected promptly, a consistent approach to recording when Planning Officer site monitoring visits have been undertaken should be introduced. Records should be verified to ensure that accurate information is provided to the Planning Committee.	Medium						

Recommendations		Priority (High, Medium, Low)	Agreed	To be Implemented By:		Disagreed	Further Discussion Required	Comments
				Officer	Date			
R3	Re-statement The Legal and Planning teams should formalise a consistent approach to the process of issuing reminders and / or carrying out legal enforcement to applicants who have not paid over S106 contributions due. A structured timetable should be introduced into S106 procedures for clarity.	Medium						
R4	To ensure that the process of collecting sums due via the Sundry Debtor process does not extend or delay the recovery process, the DM Admin. team should liaise with the Sundry Debtor team to arrange prompt referral to the Council's Legal team for further action. Financial contributions pursued through the Sundry Debtor process should continue to be reported to the S106 Monitoring Group and Planning Committee as outstanding until the payment has been credited to the Council's bank account.	Medium						

Please tick the appropriate response (✓) and give comments for all recommendations not agreed.

Signed Head of Service:		Date:	
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Note: In respect of any High priority recommendations please forward evidence of their implementation to the Internal Audit team as soon as possible.