

North East Derbyshire District Council

Audit and Corporate Governance Scrutiny Committee

27 July 2022

S106 Processes

Report of the Assistant Director of Planning

Classification: This report is public.

Report By: Richard Purcell

Contact Officer: Richard Purcell

PURPOSE / SUMMARY

To review the process of collecting and spending money collected through S106 Agreements attached to planning applications.

RECOMMENDATIONS

1. That the Committee note the report
 2. That the procedural improvements already initiated and outlined in 3.4 and 3.5 be supported.
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IMPLICATIONS

Finance and Risk: Yes No

Details:

The report focusses on S106 monitoring and collection for community infrastructure. It introduces no financial risks but sets out how the matter is managed to reduce risks.

On Behalf of the Section 151 Officer

Legal (including Data Protection): Yes No

Details:

There are no data protection issues or legal implications being raised in this report

On Behalf of the Solicitor to the Council

Staffing: Yes No

Details:

No staffing implications raised in this report

On behalf of the Head of Paid Service

DECISION INFORMATION

| Decision Information | |
|---|------|
| Is the decision a Key Decision? A Key Decision is a 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: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i> | No |
| Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In) | No |
| District Wards Significantly Affected | None |
| Consultation: Leader / Deputy Leader <input checked="" type="checkbox"/> Cabinet <input type="checkbox"/> SMT <input checked="" type="checkbox"/> Relevant Service Manager <input type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/> | |

| Links to Council Plan priorities or Policy Framework including Climate Change, Equalities, and Economics and Health implications. |
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| Enhancing our resident's quality of life. Providing value for money for our residents, businesses and visitors |
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REPORT DETAILS

1 Background to Report

- 1.1 At its meeting in March the Audit Committee considered the matter of monitoring section 106 money including the processes surrounding collection from developers and spending on community infrastructure.
- 1.2 Members requested that a report be brought back to its July Committee that explored options on how the Council could tighten up its procedures to

minimise potential non-payment of S106 agreements and potentially secure more funds. The Planning Manager, who reported verbally to the meeting, agreed to discuss with colleagues at Derbyshire County Council and other local authorities to see what could be done differently at the Council.

- 1.3 Members asked that the report outline the law currently surrounding S106, what the Council currently does, an explanation of how payments were collected, how other council's currently operated and an overview of best practice.

2. Background to S106

- 2.1 Section 106 of the Town and Country Planning Act 1990 is an agreement between a developer and a local planning authority about measures that the developer must take to reduce the impact of its development on the community. A section 106 agreement is designed to make a development possible that would otherwise not be possible, by obtaining concessions and contributions from the developer.

- 2.2 A section 106 agreement must be necessary, relevant and reasonable. This means that it must be –

- necessary to make the development acceptable in planning terms,
- directly related to the development in question, and
- fair in terms of scale and type when compared with the development.

Beyond these rules, viability plays a role in determining the scope and scale of a 106 agreement.

- 2.3 The current Levelling Up and Regeneration Bill includes proposals to replace most S106 agreements with an Infrastructure Levy system. There is not a great deal of detail about this yet. It will require secondary legislation and is not an imminent prospect to fetter consideration of the matters addressed in this report.

- 2.4 In NE Derbyshire the main areas where we require S106 funding is for the delivery of –

- off-site public open space (POS) when it is not possible or is preferable to have some or all POS off-site instead of on-site;
- a contribution towards the delivery of new or extended educational facilities commensurate with the needs of children expected to be living in a new housing development;
- a contribution towards the delivery of new or extended medical facilities commensurate with the needs of those expected to be living in a new housing development;
- on-site affordable housing or contributions to off-site affordable housing to a percentage of the proposed housing.

Other areas could include off-site flood mitigation work, highway work, contributions to libraries or other aspects of community infrastructure that would make an otherwise unacceptable development acceptable while fulfilling the criteria in 2.2 above.

3 Operations within NEDDC

- 3.1 When consultation responses or other information has been received and it is identified that a development could only be acceptable if it delivered certain requirements through a S106 agreement, the heads of terms for the agreement are then worked up and discussed. Usually this will include the sums of money needed for particular pieces of off-site community infrastructure and/or the number and type of affordable housing units to be delivered on site.
- 3.2 Often the viability of the project plays a large influence in whether all the S106 requests can be delivered. This can play out in a number of ways depending on the specifics of the development, its impacts, local priorities and finance.
- 3.3 The timing for the delivery of the obligations are also negotiated for inclusion in the final agreement. This is a balance between development cash flow and infrastructure need. Although we have a silent objective to trigger payments as early as possible, it is an objective process that must reflect the practicalities of these two influences of cash flow and need. Payments are usually triggered by completion or occupation of a particular number of homes or other clearly recognisable milestone.
- 3.4 Having reviewed how monitoring and collection is done the following (in 3.4 and 3.5) includes tightening up measures recently introduced. Sites are visited by planning officers while on their other planning application site visits. They will observe when development has started and, if sites have progressed, closer inspection made if possible, to check visually for completions or occupancy. This is then reported back to the Senior Planning Support Officer who, if necessary, will check with the notifications received for wheelie bins from Street Scene, and assuming sufficient confidence exists that triggers have been hit, will instruct the corporate debtors' team to issue an invoice for payment to the developer. Until recently the planning team issued a request for payment to the developer, but this responsibility has now been transferred to the corporate debtors' team allowing use of its well-established collection and recovery processes. The Senior Planning Support Officer will update the central monitoring spreadsheet with the information they collect and instructions they give. This spreadsheet is available to view by members and officers on request and is periodically presented to Planning Committee.
- 3.5 Invoices are raised through the corporate sundry debtors system. This recovery route for S106 payments introduces more robust processes. Payment is due within 2 working days of invoice dispatch. If payment is not received then a reminder is issued after 2 days, followed by a 2nd reminder 10 days after the invoice is issued. If payment isn't received 2 days after the second reminder is issued then the matter is referred to the Legal team to take court action. When it is referred to Legal, a letter before action is sent prior to issuing proceedings.

- 3.6 The Planning Manager has raised the matter of S106 monitoring and collection with his Peers across Derbyshire. The consensus was that what we do here at NEDDC is comparable with practices across Derbyshire and the discussions identified no meaningful improvements that could be made to processes at NEDDC.
- 3.7 Specific community infrastructure projects identified in the agreement have five years from collection of the money to be delivered and funding spent. Failure to do this raises the risk of returning the money to the developer. Therefore, when first identified at the time of the planning application, projects should be well thought through with a delivery programme flexible enough to work with the agreement.
- 3.8 The importance of properly managing and monitoring S106 process is recognised among Cabinet and Officers as being very important in securing the delivery of necessary community infrastructure. It has been a subject of discussion for over a year and will continue to be monitored.

4 Reasons for Recommendation

- 4.1 The report is to assist the Committee in understanding the processes followed for monitoring and collecting S106 money.
- 4.2 Improvements to the monitoring and collection process have been reported in 3.4 and 3.5 above and are for endorsement.

5 Alternative Options and Reasons for Rejection

- 5.1 Recommending the creation of a dedicated S106 Monitoring Officer has been considered but deemed to be unnecessary currently. This will need to be reviewed if an increase in frequency, monitoring and comprehensive reporting of S106 information is deemed necessary.

DOCUMENT INFORMATION

| Appendix No | Title |
|---|--------------|
| None | None |
| 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 you must provide copies of the background papers) | |
| None | |