

North East Derbyshire District Council

Planning Committee

4 June 2019

Section 106 (Legal) Agreements Update

Report No PM/3/19-20/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.
- For Members to endorse a proposal to continue reporting on this issue on an approximate half yearly basis.

1 Report Details

Section 106 Agreements

- 1.1 Members may recall the most recent report to the Planning Committee on this matter of October 2018 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.
- 1.2 As previously reported the attached appendices set out information in respect of all current, live, section 106 agreements. Appendix A provides information in respect of agreements where funding has been secured whilst Appendix B sets out details of all the agreements where to date no money has been paid to the Council.
- 1.3 Whilst the onus is on the applicant to pay to the Council the money that has been promised/contracted to it, the Council does proactively pursue unpaid money but it is essential 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 is currently two red records identified as follows:

- A. Application NED/14/01293 for 25 houses at Tupton, and,
- B. Application NED/ 08/00679/FL for housing at Eckington.

- 1.6 These both relate to the provision of play areas and/or associated facilities and the Council's Streetscene team are aware of the need to utilise these funds. Therefore, the appropriate mitigation to ensure they are spent properly is in place.

Reporting

- 1.7 Previously reports have been brought to Planning Committee on a quarterly basis. However, a recent audit report has suggested moving to a six monthly reporting timetable. Therefore, it is recommended this is implemented as it is considered this provides sufficient safeguards to ensure that funds are properly collected and spent and it accords with Officer update meetings that also take place.

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 at least a six monthly basis. Members may need to consider if any agreed interval remains appropriate or whether an alternative timescale for reporting is preferable.

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 and B is noted.

6.2 That the contents of paragraphs 1.1 to 1.10 is noted and endorsed.

6.3 That this issue continues to be reported to Planning Committee on a (approximately) six monthly 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.

8 Document Information

Appendix No	Title
A. B.	S106 agreements – payments received and spend to date S106 agreements – payments not yet due/received.
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)	
None	
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