

REPORT TO AUDIT AND RISK ASSURANCE COMMITTEE

21 March 2019

Subject:	Monitoring the Use of Section 106 Monies
Director:	Executive Director – Resources – Darren Carter
Contribution towards Vision 2030:	
Contact Officer(s):	<p>Peter Farrow Audit Services and Risk Management Manager peter_farrow@sandwell.gov.uk</p> <p>John Baker Development Management and Regulatory Services Manager john_baker@sandwell.gov.uk</p>

DECISION RECOMMENDATIONS

That Audit and Risk Assurance Committee:

1. Note following a recent request, how the use of Section 106 monies is monitored by the council.

1 PURPOSE OF THE REPORT

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At the Audit and Risk Assurance Committee meeting on 8 November 2018, the Committee requested that a separate report be submitted to a future meeting on how the use of Section 106 monies is monitored by the council.

2 IMPLICATIONS FOR SANDWELL'S VISION

- 2.1 The Audit and Risk Assurance Committee helps strengthen the risk, governance and internal control environment.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 Planning Obligations are requested from developers where it can be demonstrated that there is a need to supplement or enhance the community infrastructure as a result of development such as open space, schools, or sports provisions, or where they are needed to mitigate the impact of the development. In many cases, these contributions are gained from housing developments, but other types of development could also be requested to provide funding to enhance facilities where they are affected by a scheme. Planning obligation contributions have historically been in the form of s106 Agreements. However, in 2015 Sandwell adopted the Community Infrastructure Levy (CIL) which has now largely superseded but not totally replaced s106 Agreements.

3.2 National Planning Guidance

Circular 05/2005 sets out the general principles of when Planning Obligation agreements could be used to ensure a development proposal is approved to meet the current planning policy. The use of planning obligations can only be used where they meet the five tests as set out in the Circular which are:

- Relevant to Planning;
- Necessary to make the proposed development acceptable in planning terms;
- Directly related to the proposed development;
- Fairly and reasonably related in scale and kind to the proposed development; and
- Reasonable in all other respects.

3.3 Section 106 Agreements

s106 agreements were requested for three main areas:

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Open Space and Play Space—housing developments of 10 units or more. The commuted sum was calculated using figures supplied by the Parks and Countryside Service and monies are used towards enhancement of existing provision close to the residential development or providing new open space where appropriate.

Affordable Housing – required on developments of 15 dwellings or more where a negotiated amount of affordable housing is provided on site with details of type and tenure being informed by the Housing Needs Survey. In certain circumstances a commuted sum has been accepted instead of on site provision.

Education – calculated using a formula based on the number of children generated by a residential development. The sum is then directed to Education to find additional educational provision in the locality.

Others – obligations are sometimes required to mitigate traffic impacts as part of the development scheme and these are generally dealt with through consultation with the Highways Authority.

3.4 The s106 Collection Process

Contributions are achieved through a condition on the planning permission. The s106 Agreement will allow up to 10 years for the sum to be spent. The payment of the commuted sum may be defined in the agreement at one or more trigger points such as:

- On signing the agreement;
- Starting the development on site;
- Completion or occupation of a certain number of units; and/ or
- Completion of the scheme.

s106 Agreements will set out exactly when each of the payments is due. The trigger points will be agreed prior to completion of the agreement. The agreements also clearly detail what the contribution can be spent on and in what particular location. Any deviation from this requires the developers agreement and a legal process to be undertaken culminating in the signing of a Deed of Variation with the council.

3.5 Monitoring

Monitoring of s106 Agreements is required in order to ensure that obligations entered into are complied with in the agreed timescales; that any monies due under the Agreement are received at the correct stage; that they are spent on the appropriate projects or programmes; and that

they are spent within the agreed period. The monitoring is carried out by the Council's Planning Obligations Officer.

The schemes are monitored closely with the relevant budget holders in both Housing and Communities and Regeneration and Growth on a monthly basis, and reported to Cabinet on a quarterly basis. Expenditure against each s106 is scrutinised closely by a Planning Obligation Officer to ensure that the expenditure incurred is in line with the original s106 legal agreement.

3.6 Current s106 Contributions

A breakdown of s106 monies the council currently has is attached but a summary on a town by town basis of the number of 'live' Agreements and monies still to be spent is as follows;

Tipton – 15 Agreements totalling **£1,171,978**. Spend sites include Jubilee Park, land off Alexandra Road and The Cracker.

Wednesbury – 6 Agreements totalling **£273,337**. Spend sites include Wednesbury Town Centre, Willingsworth Linear Park and Hill Top Park.

West Bromwich – 15 Agreements totalling **£1,405,365**. Spend sites include West Bromwich town centre, Farley Park and Kendrick Park.

Smethwick – 7 Agreements totalling **£346,533**. Spend sites include West Smethwick Park and Victoria Park.

Oldbury – 9 Agreements totalling **£792,573**. Spend sites include Brades Green Open Space and Barnford Hill Park.

Rowley Regis – 8 Agreements totalling **£717,040**. Spend sites include Bury Hill Park and Mary Macarthur Gardens.

3.7 The s106 Spend Process

When s106 contributions are received the Planning Obligations Officer notifies Finance and the 'benefitting' department (i.e. Parks, Housing, Highways etc.) of the amount, what it can be spent on, target site and deadline for spend. Finance then create a cost centre which the benefitting department spend against. When the benefitting department has spent some or all of the contribution, spend release documents and evidence of spend (invoices etc.) are submitted to the Planning Obligations Officer to check, in conjunction with a Senior Manager, that the spend has been in accordance with the s106 Agreement. If all is

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acceptable, the spend release is approved and Finance transfer the required monies from the s106 account to the relevant cost centre.

3.8 Future Spend

Work is on-going within the Neighbourhoods directorate to produce schemes to ensure that monies within the s106 Agreements are spent in accordance with the terms of the Agreement and within the required timescales. It is envisaged that these schemes can be put together with engagement involving Ward Councillors as well.

4 THE CURRENT POSITION

- 4.1 The report does not require a decision and therefore, no position analysis is necessary.

5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

- 5.1 This report has been discussed with the relevant stakeholders and reported to the respective Director.

6 ALTERNATIVE OPTIONS

- 6.1 The report does not require a decision and therefore, alternative options do not need to be considered.

7 STRATEGIC RESOURCE IMPLICATIONS

- 7.1 There are no direct financial and resource implications arising from this report.

8 LEGAL AND GOVERNANCE CONSIDERATIONS

- 8.1 The council is not obliged by law to appoint an Audit Committee, but this course of action has been taken in line with guidance from CIPFA.

9 EQUALITY IMPACT ASSESSMENT

- 9.1 It was not necessary to undertake an Equality Impact Assessment.

10 DATA PROTECTION IMPACT ASSESSMENT

- 10.1 It was not necessary to undertake a Data Protection Impact Assessment. Data gathered during audit reviews is used and retained in accordance with current legislative requirements.

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11 CRIME AND DISORDER AND RISK ASSESSMENT

11.1 There are no direct risk implications arising from this report.

12 SUSTAINABILITY OF PROPOSALS

12.1 There are no direct sustainability issues arising from this report.

13 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)

13.1 There are no direct health and wellbeing implications from this report.

14 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND

14.1 There is no direct impact on any council managed property or land from this report.

15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

15.1 The purpose of the report is to inform the Audit and Risk Assurance Committee of how the use of Section 106 monies is monitored by the council. As such, no decision is required.

16 BACKGROUND PAPERS

16.1 None.

17 APPENDICES:

17.1 None

Darren Carter, Executive Director – Resources