

Report of the Portfolio Holder for Economic Development and Asset Management

S106 AGREEMENT (PLANNING OBLIGATIONS) MONITORING PROCESS

1. Purpose of Report

To note the s106 (Planning Obligations) monitoring process.

2. Recommendation

Cabinet is asked to NOTE the s106 monitoring process.

3. Detail

This report has been produced to demonstrate how opportunities for s106 Agreements are effectively identified, existing s106 Agreements are recorded and monitored; and the utilisation of funds available through s106 Agreements are in accordance with the relevant agreement(s) and required time limit.

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. This can be via a planning agreement entered into under section 106 of the Town and Country Planning Act 1990 by a person with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land without the local planning authority.

Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. Planning obligations must only be sought where they meet all of the following tests:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

These tests are set out as statutory tests in regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended) and as policy tests in the National Planning Policy Framework (paragraph 57).

The following local planning policies ensure any s106 opportunities are identified when assessing planning applications:

- Policy 19: Developer Contributions of the Broxtowe Part 1 Aligned Core Strategy (2014); and
- Policy 32: Developer Contributions of the Broxtowe Part 2 Local Plan (2019)

Details of a step by step process for identifying opportunities for s106 Agreements and how existing s106 Agreements are recorded and monitored has been provided in appendix 1 and a flow chart in appendix 2.

4. Financial Implications

The comments from the Head of Finance Services were as follows:

There are no direct financial implications arising from this noting report

5. Legal Implications

The comments from the Monitoring Officer / Head of Legal Services were as follows:

Regulation 10 of the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 states that such monitoring fees can be sought where:

- the sum to be paid fairly and reasonably relates in scale and kind to the development; and
- the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development.

There are two aspects to monitoring Section 106 legal agreements:

- 1) Financial monitoring and management of the monies associated with receiving developer contributions towards local infrastructure and mitigation measures; and
- 2) Physical monitoring of compliance with the terms of the agreement, e.g regarding buildings and infrastructure.

Monitoring fees for Section 106 agreements should be secured by way of a contractual covenant in the Section 106 agreement itself and in addition to the legal charge for drafting and checking the obligation. Fees should be payable at the same time as any legal costs or on execution of the legal agreement. A transparent overview of fees should also be made available to the public

6. Human Resources Implications

The comments from the Human Resources Manager were as follow:

Not applicable.

7. Union Comments

The Union comments were as follows:

Not applicable.

8. Data Protection Compliance Implications

Not applicable.

9. Equality Impact Assessment

Not applicable.

10. Background Papers

Nil.

APPENDIX 1**Monitoring process – step by step****Identifying Opportunities:**

1. Prior to submitting a planning application local validation requirements available on the Councils website advise that a statement of the proposed Heads of Terms should be submitted with all major applications.
2. When assessing a planning application local policies 16 of the ACS (2014) and Policy 32 of the P2LP are used to assess if planning obligations may be required.
3. During the consultation period of a planning application the relevant bodies are consulted to help inform what planning obligations may be required. Subject to the nature of proposal, bodies consulted may include: Nottinghamshire County Council, NHS Local Integrated Care Board and Broxtowe Housing and Open Space.
4. Team meetings are held with Planning Officers and Senior Management to discuss potential s106 requirements for major applications.

Recording and Monitoring S106 Agreements:

1. After completion, s106 Agreements are recorded in data storage systems: information@work, Uniform and uploaded to the Councils website for public access.
2. The Councils s106 Officer reports the key information into a spreadsheet relating to agreed financial contributions, payment triggers, what the funds are to be spent on and the time limit for spending s106 funds received.
3. The spreadsheet is maintained by the s106 Officer and the s106 monitoring Officer over time and is used as a tool to monitor the progress of s106 Agreements.
4. Using the s106 spreadsheet, data is collected to inform whether any financial contributions are outstanding. To assist data collection, the s106 monitoring Officer visits development sites within the Borough to record the progress of development sites to help identify whether any s106 triggers have been breached.
5. The s106 Officer contacts the relevant developer in relation to the agreed financial contributions that are due. The Councils s106 Officer is responsible for consulting the Council's finance team to arrange for s106 financial contributions to be calculated in accordance with the agreed indexation. An invoice is prepared by the s106 Officer and sent to the developer.

6. Following payment of the s106 financial contributions the s106 Officer records the date of payment in the s106 spreadsheet and any completed s106 Agreements is recorded. Data storage system Uniform is updated in relation to the date of when payment was received. Information@work is updated including copies of the invoice and calculations to ensure the Council maintains a clear record of when and how s106 financial contributions were prepared.
7. The Council publishes the Infrastructure Funding Statement annually which includes s106 monies agreed, spent and received (as well as non-monetary contributions including on-site affordable housing provision).

Utilisation of funds available:

1. The terms of all s106 Agreements are recorded in the s106 spreadsheet which includes specifically what s106 funds should be spent on and the time limit for s106 funds to be spent.
2. On receipt of s106 funds received the relevant teams within the Council including Broxtowe Housing and Open Space are notified of what funds are available and the terms of the s106 agreement.
3. Time limits for s106 financial contributions vary historically, however 5 years is most consistent with Agreements of recent years.
4. The s106 Officer communicates with Broxtowe Housing and Open Space to ensure funds are spent in accordance with the relevant s106 Agreements.
5. To assist the monitoring of s106 funds a monthly working group meets to discuss monies received or development sites that are close to completion.

Monitoring for the future:

1. To avoid a single point of failure as a result of any potential future staff changes the s106 Officer, s106 monitoring Officer and senior planning Officers are trained to manage s106 matters.
2. The s106 spreadsheet has open access to all planning Officers and management to record and monitor s106 Agreements. A 'How to Guide' has been created to support Officers to manage the s106 spreadsheet and any associated processes including preparation of s106 invoices should the s106 Officer or s106 monitoring Officer be absent.
3. A working group is held monthly to discuss the progress of s106 Agreements and development sites. The working group provides the opportunity for Officers to discuss ways to improve the effectiveness s106 processes internally. The working group has also been set up consider ways the Local Planning Authority can enhance the advice available on the Council's website regarding the S106 process and likely planning obligations expected.

Flow Chart

APPENDIX 2

