

## INTERNAL AUDIT REPORT



### Section 106 Agreements 2016/17

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## Section 106 Agreements 2016/17

### EXECUTIVE SUMMARY

#### 1. INTRODUCTION & OVERALL OPINION

Section 106 (s106) planning obligations are legal agreements formed between the Council and developers as part of the planning application process. The agreements provide assurance that a proposed development will contribute to the creation of sustainable communities, particularly through contributions towards community buildings and facilities such as affordable housing and education. The Council's s106 database currently includes 177 live developments and the Council held just under £3.6 million in s106 contributions as at 31<sup>st</sup> December 2016.

Appropriate procedures are in place to ensure that all new planning applications with s106 obligations are entered onto the s106 database in a timely manner. Following last year's audit, it was agreed that the s106 database must be regarded as the single central database to hold details of s106 case management from 'end-to-end'. It was however noted, that the Housing Enabling and Community Infrastructure Officer (HE&CIO) also maintains a record of active development sites, to facilitate the monitoring of priority cases.

Developers are notified of the action that will be taken when a trigger point is met, for example, the amount that will be invoiced or a reminder of the action that is required, such as the provision of affordable housing.

Sample testing identified that appropriate controls had been exercised when trigger points were met, and that s106 income had been collected in a timely manner. Some control issues were identified, in that it was not possible to identify whether trigger points had been met from information held on the s106 database. This information was, however, held on the additional record held by the HE&CIO. In addition, spend expiry dates, or confirmation that an expiry date was not required, had not been recorded in the s106 database for 58% of the relevant contributions.

Following the 2015/16 audit, the governance arrangements for s106 meetings have been reviewed to ensure that they are suitably robust, in order to support the effective monitoring and management of s106 agreements. Monthly s106 and Community Infrastructure Group meetings are attended by all key stakeholders. Review of the meeting agendas and minutes for this financial year identified that relevant matters in relation to s106 monitoring had been detailed.

All income in relation to s106 contributions is recorded separately on the Council's Main Accounting System and an appropriate audit trail exists to mitigate the risk of claw back of income by s106 contributors.

Based on these findings, the framework of controls currently in place provide **Sufficient Assurance** that the identified risks have been appropriately mitigated. Detailed findings are set out in section 2. The assurance opinion is based upon testing of the design of controls to manage the identified risks and testing to confirm the extent of compliance with those controls, as summarised in the table below:

Internal Audit Assurance Opinion	Direction of Travel				
Sufficient Assurance	N/A				
Risk	Design	Comply	Recommendations		
			H	M	L
01 - There is a failure to recover and utilise all contributions secured	Sufficient Assurance	Sufficient Assurance	1	1	0
02 - Claw back of income by S106 contributors	Substantial Assurance	Substantial Assurance	0	0	0
<b>Total Number of Recommendations</b>			<b>1</b>	<b>1</b>	<b>0</b>

## 2. SUMMARY OF FINDINGS

### **Risk 1: There is a failure to recover and utilise all contributions secured**

The Housing Enabling and Community Infrastructure Officer (HE&CIO) is responsible for monitoring the development of sites with s106 agreements and subsequent compliance with the agreement when trigger points are reached, requiring either payments or specific actions. The commencement of developments is identified through various sources, such as the relevant developer, Ward Members or members of the public, completion reports and Building Control records; and Council Tax data provides information in relation to occupations.

The HE&CIO and Neighbourhood and Green Spaces Officer (N&GSO) meet on a monthly basis in order to record all s106 agreements and corresponding information on the s106 database. Following the 2015/16 audit, it was agreed that the s106 database must be regarded as the single central database to hold details of s106 case management from 'end-to-end'. It was however noted during this follow up review, that the HE&CIO also maintains a record of active development sites, to facilitate the monitoring of priority cases.

The HE&CIO maintains good working relationships with developers through regular communications and site visits where appropriate. The relevant developer receives confirmation when a trigger point has been met and is advised of the action that will be taken i.e. invoices to be raised.

Appropriate controls are exercised to ensure that s106 income is collected in a timely manner. The HE&CIO is advised of failure to pay by the Finance Services team, after which, appropriate recovery action is taken in line with the Corporate Debt Policy.

Sample testing of five active developments identified that in all but one case, appropriate action had been taken when trigger points were met and s106 income had been collected in a timely manner. Sample testing did however, identify the following control issues:

- It was not possible to identify whether trigger points had been met via the s106 database, as development commencement dates and / or information in relation to occupations had not been detailed for any of the developments included in the test sample. This information was obtained via the HE&CIO's separate monitoring record;
- An invoice and / or receipt had not been recorded in the s106 database in all cases, and in one case, a receipt had not been recorded accurately (under by £30.48);
- Indexation had not been detailed in the s106 database in all cases; and
- Spend expiry dates, or confirmation that an expiry date was not required, had not been recorded in the s106 database for 58% of the relevant contributions.

In addition, the s106 database does not include a field for trigger points in relation to Harborough District Council (HDC) or Leicestershire County Council (LCC) monitoring costs. Officers have suggested that this information could be recorded within the 'Details of Agreement' section in future. **Recommendation 1** addresses these findings.

Following last year's audit, the governance arrangements for s106 meetings have been improved to ensure that they are suitably robust, in order to support the effective monitoring and management of s106 agreements. Monthly s106 and Community Infrastructure Group meetings are attended by all key stakeholders and review of the meeting agendas and minutes for this financial year identified that relevant matters in relation to s106 monitoring had been detailed. It was however noted, that an audit trail did not exist to confirm whether actions arising from meetings had been completed or carried forward.

It was confirmed during audit testing that a sample of these issues had been addressed but without a log reviewed at each meeting there is an increased risk of overlooking outstanding actions. **Recommendation 2** addresses this finding.

s106 contribution expiry dates are reviewed and discussed during the monthly s106 and Community Infrastructure Group meetings. If an expiry date is identified as approaching, the relevant development is provided with a red 'RAG' rating on the s106 database. The Corporate Management Team (CMT) is provided with a quarterly update in order to make them aware of such issues. If a contribution expiry date is fast approaching, an extension may be sought. This would include appropriate communications with all key stakeholders in order to achieve the best possible outcome prior to the legal variation being drawn up.

Appropriate guidance in relation to s106 funding is available via the internet and Terms and Conditions state that HDC reserves the right to require repayment of the whole grant, or part of the grant, should the relevant Parish Council fail to comply with any of the conditions detailed, including completion of the project by the agreed timescale. In the event that a developer will not renegotiate with regards to unspent contributions for a particular obligation, the developer will raise an invoice, which the Council is liable to pay.

Review of s106 contributions with detailed spend by dates identified a balance of £49,806 which had expired on 17<sup>th</sup> January 2015. This balance was also identified during last year's audit, and it was reported that an extension was being sought. The Council are currently awaiting a formal response from the developer with regards to their agreement of the extension.

Based upon these findings, the assurance rating for the controls in respect of this risk is **Sufficient Assurance**.

#### **Risk 2: Claw back of income by s106 contributors**

All income in relation to s106 contributions is recorded separately on the Council's Main Accounting System. An appropriate audit trail exists to provide assurance that s106 contributions have been spent in line with the planning obligation requirements. The Business Partner – Finance completes quarterly reconciliations of the amounts recorded on the general ledger and issues capital monitoring reports to ensure that responsible officers are aware of s106 balances.

The Business Partner – Finance has been notified of one potential claw back for this financial year, however, the same contribution was highlighted during last year's review, and as such, no recommendation will be made.

Based upon these findings, the assurance rating for the controls in respect of this risk is **Substantial Assurance**.

### **3. ACTION PLAN**

The following Action Plan provides two recommendations to address the findings identified by the audit. If accepted and implemented, these should positively improve the control environment and aid the Council in effectively managing its risks.

### **4. LIMITATIONS TO THE SCOPE OF THE AUDIT**

This is an assurance piece of work and an opinion is provided on the effectiveness of arrangements for managing only the risks specified in the Audit Planning Record. The audit was carried out in accordance with the agreed Audit Planning Record (APR), which outlined the scope, terms and limitations to the audit.

The Auditor's work does not provide any guarantee against material errors, loss or fraud. It does not provide absolute assurance that material error, loss or fraud does not exist.



## ACTION PLAN

Rec No.	ISSUE	RECOMMENDATION	Management Comments	Priority	Officer Responsible	Due date
1	<p>During sample testing some information was not found on the s106 database, which should now be the single central record, this included:</p> <ul style="list-style-type: none"> <li>■ Development commencement dates and information in relation to occupations which are required to confirm trigger points were not consistently held on the database. This information was obtained from the HE&amp;CIO's monitoring record;</li> <li>■ An invoice and / or receipt had not been recorded in the s106 database in all cases, and in one case, a receipt had not been recorded accurately;</li> <li>■ Indexation had not been detailed in the s106 database in all cases; and</li> <li>■ Spend expiry dates had not been recorded in the s106 database for 58% of the relevant contributions.</li> </ul> <p>There is a risk that the Council may fail to recover and utilise all s106 contributions if appropriate monitoring records are not maintained.</p>	<p>In order to ensure consistency and that all relevant officers have access to the latest information on each agreement, the s106 database must be populated with all relevant details, updates and actions taken.</p> <p>Omissions and errors detailed in the findings should be investigated and resolved.</p>	<p>We will undertake to review and update all relevant data ref commencements and occupations. This will continue once all updates are concluded.</p> <p>Discrepancy reviewed and corrected 18.04.17.</p> <p>Indexation data will be reviewed and updated if required.</p> <p>Spend by dates will be reviewed and input <u>if</u> required. If not applicable need to always make sure this is clear in database records.</p>	High	Head of Planning and Regeneration	<p>Improvements relating to this are ongoing: need to ensure complete accuracy and consistency.</p> <p>Review this at end September 2017.</p> <p>Actioned completed 18<sup>th</sup> April 2017.</p> <p>Improvements relating to this are ongoing and will be reviewed at end October 2017.</p>



	<p>If the information is held in separate records, rather than the central database, there is a risk of lack of access to information in the case of staff absence and out of date information on the central record. Also there is potential for inefficiencies and duplication of effort in record keeping.</p>		<p>Going forward it has been established that there will be one central record only held in one master database – This will be updated at the same set time each week at same time. If a further private record is required in addition all information must still be held on the central master database at all times. All operatives need to ensure they are sufficiently database literate to enable this.</p>		<p>Where spend by dates are available in the S106 agreement they will always be added to information held on the central master database – going forward this will be kept under view and progress reviewed at end September 2017.</p>
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Rec No.	ISSUE	RECOMMENDATION	Management Comments	Priority	Officer Responsible	Due date
2	<p>The agenda for each meeting of the s106 and Community Infrastructure Group did not include reviewing actions taken to address matters from the last meeting.</p> <p>Without a sufficient audit trail, there may be a lack of accountability and an increased risk of failure to take timely action.</p>	<p>Updates on actions agreed at the last meeting should be a standing agenda item at each of these meetings.</p>	<p>Matter to be addressed for all meeting minutes and notes commencing 20.04.17 CIL Group meeting – Continual and ongoing.</p>	Medium	Head of Planning and Regeneration	Completed 20 <sup>th</sup> April 2017 and ongoing.



## GLOSSARY

### The Auditor’s Opinion

The Auditor’s Opinion for the assignment is based on the fieldwork carried out to evaluate the design of the controls upon which management rely and to establish the extent to which controls are being complied with. The table below explains what the opinions mean.

Level	Design of Control Framework	Compliance with Controls
<b>SUBSTANTIAL</b>	There is a robust framework of controls making it likely that service objectives will be delivered.	Controls are applied continuously and consistently with only infrequent minor lapses.
<b>SUFFICIENT</b>	The control framework includes key controls that promote the delivery of service objectives.	Controls are applied but there are lapses and/or inconsistencies.
<b>LIMITED</b>	There is a risk that objectives will not be achieved due to the absence of key internal controls.	There have been significant and extensive breakdowns in the application of key controls.
<b>NO</b>	There is an absence of basic controls which results in inability to deliver service objectives.	The fundamental controls are not being operated or complied with.

### Category of Recommendations

The Auditor prioritises recommendations to give management an indication of their importance and how urgent it is that they be implemented. By implementing recommendations made managers can mitigate risks to the achievement of service objectives for the area(s) covered by the assignment.

Priority	Impact & Timescale
<b>HIGH</b>	Management action is imperative to ensure that the objectives for the area under review are met.
<b>MEDIUM</b>	Management action is required to avoid significant risks to the achievement of objectives.
<b>LOW</b>	Management action will enhance controls or improve operational efficiency.