

FROM: Audit and Risk Manager

SUBJECT: Community Infrastructure
Levy & Section 106
Agreements

TO: Head of Development Services

DATE: 5 January 2021

C.C. Chief Executive
Deputy Chief Executive (BH)
Head of Finance
Manager - Development Services
Business Manager – Policy & Site
Delivery
Portfolio Holder (Cllr Cooke)

1 Introduction

- 1.1 In accordance with the Audit Plan for 2020/21, an examination of the above subject area has recently been completed by Jemma Butler, Internal Auditor, and this report presents the findings and conclusions for information and action where appropriate.
- 1.2 Wherever possible, findings have been discussed with the staff involved in the procedures examined and their views are incorporated, where appropriate, into the report. My thanks are extended to all concerned for the help and cooperation received during the audit.
- 1.3 The audit was undertaken during the COVID-19 pandemic. This has meant a slightly different approach has been taken to complete the audit. Rather than observing staff members and meeting staff face to face, correspondence has been via email, telephone calls or virtually through MSTeams.

2 Background

- 2.1 The Government's Planning Advisory Service highlights that "planning obligations under Section 106 of the Town and Country Planning Act 1990, commonly known as S106 agreements, are a mechanism which makes a development proposal acceptable in planning terms that would not otherwise be acceptable. They are focused on site-specific mitigation of the impact of development."
- 2.2 The Community Infrastructure Levy differs from S106 agreements in that the levy can be applied to more general infrastructure projects where they cannot be linked to a specific development. The revenue from the levy must be used for supporting the development of an area by 'funding the provision, replacement, operation or maintenance of infrastructure'.

2.3 The definition of 'infrastructure' for the purposes of CIL includes:

- Roads and other transport facilities
- Schools and other educational facilities
- Flood defences
- Medical facilities
- Open spaces
- Sports and recreational

3 **Scope and Objectives of the Audit**

3.1 The audit was undertaken to test the management and financial controls in place.

3.2 In terms of scope, the audit covered the following areas:

- Community Infrastructure Levy
- S106 consultation and agreement
- S106 monitoring
- S106 income and expenditure.

3.3 The audit programme identified the expected controls. The control objectives examined were:

- The Council will be able to raise appropriate income from developers towards infrastructure needs
- All relevant elements are appropriately included within the agreements
- Justification is available where S106 agreements are not entered into on viability grounds
- Agreements are enforceable
- Agreements ensure developments fit in with the agreed local plan
- The Council is aware when relevant milestones are reached in relevant development
- The Council receives all income and land due
- Managers and Members are aware of the status of each agreement
- Monies received are accounted for as appropriate
- Communities benefit as intended from the monies received
- The Council is not held responsible for the inappropriate use of contributions by other organisations.

4 **Findings**

4.1 **Recommendations from Previous Report**

4.1.1 The current position in respect of the recommendations from the previous audit, undertaken in December 2018, was also reviewed. The current position is as follows overleaf:

	Recommendation	Management Response	Current Status
1	Consultees should be formally made aware of the outcome of relevant applications including in relation to any contributions that are to be paid to them.	Whilst it is unlikely to be practicable to individually advise all consultees of the outcome of planning applications, consultees are able to follow progress online and will be reminded of this.	Consultees are not formally informed of the outcome but they are reminded to follow the process on the portal as suggested.
2	A formal naming protocol should be introduced for documents stored on IDOX so that all contribution requests can be easily identified.	This is now in place.	This is in place with documents being stored appropriately under codes for 'legal agreements' and 'Section 106 correspondence'.
3	Consideration should be given to investigating whether the S106 agreement can be amended in the relevant case so that the NHS contribution can be secured.	It is not possible to secure this contribution but revised processes whereby heads of terms clauses are included as standard in reports relating to housing sites of over 10 dwellings will prevent this reoccurring.	This is no longer a concern as steps are in place to ensure contributions are requested and secured appropriately.
4	The contribution request from the Police should be included within final S106 agreement in the relevant case.	The Police contribution has now been included in the final agreement.	Police contributions were found to be included in the sample of agreements reviewed.
5	Responsibility should be formally assigned for the updating of the monitoring information, whether this is the spreadsheet or Acolaid once this has been fully implemented.	That responsibility has now be assigned to the Development Monitoring Officer. The spreadsheet will only be used until such time that Acolaid holds all data. New records will be entered direct in to Acolaid with only a short reference being included in the spreadsheet. Associated with this, new processes are being introduced to use Acolaid to ensure all S106	Acolaid holds all of the information regarding S106 agreements. It is not possible to use Acolaid for indexation so very basic details are still entered onto a spreadsheet to perform this.

	Recommendation	Management Response	Current Status
		contributions requested are captured and recorded by case officers.	
6	The monitoring spreadsheet should be kept up to date and should include all relevant information.	The main monitoring spreadsheet will be updated to ensure that the contributions are being accurately recorded prior to the Acolaid system being employed for this process.	Acolaid is used for this process.
7	The process of calculating the contribution invoices should be amended so that the figures can be verified.	The process for calculating the invoices (including indexation) will be set out on each invoice as a way allowing the figures to be checked. Invoices will then be associated with the Acolaid record. Further advice will be sought from Internal Audit to ensure that the process is appropriate going forward.	Invoices clearly show the calculation and break down of contributions. Invoices are linked to the record on Acolaid.

	Recommendation	Management Response	Current Status
8	Formal monitoring should be undertaken to ensure that monies are being spent as stipulated in the S106 agreements.	This has been done in relation to 3 rd party contributions (SWFT, Police, CCG) where formal legal agreements are now used to ensure money is spent correctly. Similar arrangements need to be put in place for internal contributions. The process for this needs to be agreed through SMT.	Heads of Service sign a spending agreement for CIL contributions. Legal agreements are not appropriate for internal departments as each department is not a legal entity in its own right. The Infrastructure Funding Statement is new for 2020 and must be submitted by the end of December 2020. All spending of S106 contributions has to be reported as part of the statement. This will help to ensure that departments are spending in line with the relevant agreement.

4.2 **Community Infrastructure Levy**

- 4.2.1 The Council's position of CIL is readily available on the Council's website for developers to see. CIL is calculated based on a number of factors (including floor space) and is only payable for certain types of development. This is all set out within the charging schedule available on the Council's website. The charging schedule was adopted on the 15th November 2017 at Executive Committee and is reviewed as appropriate.
- 4.2.2 All planning applications are checked manually to ensure developments that are liable for CIL are identified. When case officers receive applications and upload them to Crystal (planning software) they tick a box to show that CIL applies to the development. As the tick box is a new addition, the CIL Officer carries out an additional check on applications to ensure that all liable developments are identified.
- 4.2.3 The developer must complete 'form 1', available through the planning portal, so the case officer can validate their planning application. Once the case officer has confirmed that a proposal is potentially CIL liable, 'form 1' would be assessed by a CIL officer and if found to be liable a 'form 2' is requested. At this point, in certain circumstances, the developer can complete an exemption form to reduce or remove the contribution.

- 4.2.4 The liability for the CIL contribution is assigned to the developer and a liability notice is issued with the amount calculated using the adopted charging schedule. When notice of commencement is received from the developer, a demand notice is issued giving the developer 60 days to pay their contribution unless an instalment plan has been agreed following the instalment policy in place (adopted 18th December 2017).
- 4.2.5 Where contributions are to be shared with Local, Parish or Town Councils, the CIL Officer sets up the transaction and sends the relevant documents to the external parties. Legislation states that these Councils are free to decide the timing of the funding payments, however in the absence of an agreement the payments are to be paid to them by the 28th of April or the 28th of October for CIL payments received from the developer during the previous six months. Payments are authorised appropriately via the Business Manager – Policy & Site Delivery, the Head of Development Services and the Head of Finance.
- 4.2.6 When a property is sold the liability for CIL can be transferred. There is a form available for the transfer of liability which must be signed by both parties. There are currently two cases where the transfer of CIL has not been completed and the CIL Officer is liaising with the parties involved to ensure the transfer form is completed and signed. As CIL is registered as a land charge it will show up on searches if unpaid when a property is sold.
- 4.2.7 Monitoring and reporting of CIL is carried out using a spreadsheet. All of the information is recorded on Acolaid but the system does not have the ability to isolate the CIL data to create the reports needed. CIL spending is monitored by the Head of Development Services and the Principal Accountant.

4.3 **S106 Consultation and Agreement**

- 4.3.1 When a relevant planning application is received, consultation responses are sought from various external and internal parties to enable them to request a S106 contribution if required. This can include external responses from the police, NHS, Warwickshire County Council and internal teams such as Green Spaces. If responses have not been received by the time the consultation closes, Principal Planning Officers will chase the various parties to ensure all responses are recorded, even where a party has no comments or requests. Various staff members within Development Services work together to ensure that the contributions requested are in line with the local plan and the CIL compliance policy.
- 4.3.2 The local plan outlines the basic requirements for CIL and S106 contributions. It also informs the developer of the procedure to follow should they feel that the requested contributions are not viable. In these instances, the developer completes a viability assessment. These assessments are reviewed by a Council-approved independent provider with the fees for this service being paid by the developer.

4.3.3 A sample of applications approved at Planning Committee within the last twelve months was reviewed. All of the sample had the relevant documents available to view publically in the planning section of the Council's website. This included comments and consultation responses regarding S106 contributions (and CIL where applicable). The majority of S106 agreements were not easily identified as they had been saved under the description of 'unilateral undertakings', thus making them difficult to find when searching for S106 legal agreements. This issue should be resolved over time as the various staff involved in uploading documents to the system have agreed to save S106 agreements as appropriate under the relevant dropdown options of 'legal agreements' or 'Section 106 correspondence' and with an appropriate description.

4.3.4 The legal agreements in place were reviewed for the above sample. In all cases, consultation responses were reflected accurately within the final agreements, including where there had been any negotiations. All of the agreements followed a standard format, referenced the relevant legislation and were signed.

4.4 **S106 Monitoring**

4.4.1 All planning application details are input into Acolaid, including all documents and details regarding both CIL and S106. The case officer is responsible for ensuring the documents are uploaded to the correct case and updated accordingly. Any stipulations in place regarding the application and triggers for S106 payments are also noted to the case.

4.4.2 Monitoring of S106 agreements is carried out by the Development Monitoring Officer (DMO). By monitoring the progress of the developments through site visits and communication with the developers themselves, the DMO is aware of when triggers have been hit and when payments are due. The current pandemic has meant a different approach has had to be taken as site visits are not possible. Instead, where appropriate, road side visits have been carried out and remote data from Building Control has been relied upon.

4.4.3 Once triggers have been met an invoice is issued to the developer, following the terms set out in the S106 agreement. The invoice sets out a date the payment is due by and reminders are sent accordingly. If payment is not received, the standard Council debt collection process is followed, although this has not yet been needed.

4.4.4 Various reports are prepared regularly. This includes quarterly monitoring reports, the authority monitoring report and the infrastructure funding statement. These are covered in detail below. Reports are prepared using the information input into Acolaid and extracted using the reporting function on Crystal. Only a handful of staff can run the reports on Crystal but they can be made available to a wider range of officers through Ripplestone (software that links to Crystal enabling additional users to view the reports).

4.4.5 Quarterly monitoring reports show the S106 contributions and developments which have hit triggers. These are shared with the relevant Council services and external third parties who have an interest in the development. They are

also published on the Council's website, available through the planning pages.

- 4.4.6 Both CIL and S106 are recorded in the authority monitoring report (AMR). Published annually on the Council's website, this report is used to measure the performance against the local plan objectives, covering the monitoring undertaken on both housing and employment land as well as a range of other related topics.
- 4.4.7 A new report for 2020 is the infrastructure funding statement which must be published annually by December 31st each year. The 2019/20 statement has been published and is available on the Council's website. The statement must set out various reports relating to CIL and S106 planning obligations for the previous financial year. The reports include how the funds have been used and how the Council intends to use the levy towards future projects and infrastructure. Other service areas are relied on to keep accurate and complete records for the contributions received in order for the information provided in the reports to be accurate. The infrastructure funding statement should give communities a better understanding of how developer contributions have been used to deliver infrastructure within their area.

4.5 **S106 Income and Expenditure**

- 4.5.1 From the previous sample, where developers have paid invoices, the payments could be identified on Total along with the transfers to other departments and third-party organisations. The amounts paid to other organisations could be identified to the corresponding S106 agreement and the amounts matched those on the agreement.
- 4.5.2 The legal agreements in place with the developers set out the sums and the triggers for invoices to be issued or conditions to be met for both CIL and S106. There are also agreements in place for the third-party organisations, detailing the sums due, triggers and any conditions on how the funds can be used.
- 4.5.3 It is not possible to have legal agreements in place for internal departments. This is because the Council is one legal entity and not lots of separate ones. Internal agreements are signed by Heads of Service ensuring they understand the spending requirements and take accountability for it. The spending is also kept under review by SMT.
- 4.5.4 As discussed above (4.4.7) the income and expenditure will be published in detail in the infrastructure funding statement. Internal services need to provide accurate records which are readily available to the Development Services team when they are producing the annual statement. The obligation to produce the infrastructure funding statement potentially negates the need for an internal agreement.

5 **Summary & Conclusion**

- 5.1 Following our review, we are able to give a SUBSTANTIAL degree of assurance that the systems and controls that are currently in place in

respect of Community Infrastructure Levy & Section 106 Agreements are appropriate and are working effectively.

5.2 The assurance bands are shown below:

Level of Assurance	Definition
Substantial Assurance	There is a sound system of control in place and compliance with the key controls.
Moderate Assurance	Whilst the system of control is broadly satisfactory, some controls are weak or non-existent and there is non-compliance with several controls.
Limited Assurance	The system of control is generally weak and there is non-compliance with controls that do exist.

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