

 Finance and Audit Scrutiny Committee: 7 March 2017		Agenda Item No. 7
Title	The Monitoring of Section 106 Contributions	
For further information about this report please contact	Gary Fisher	
Wards of the District directly affected	All Wards	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	30 June 2015: Minute No. 19 2 September 2015: Minute No. 47 8 March 2016: Minute No. 125	
Background Papers		

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	Yes
Equality Impact Assessment Undertaken	N/A

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	23/2/17	Chris Elliott and Bill Hunt
Head of Service	23/2/17	Tracy Darke
CMT		
Section 151 Officer		
Monitoring Officer	23/2/17	Andrew Jones
Finance	23/2/17	Mike Snow
Portfolio Holder(s)	23/2/17	Councillor Cross
Consultation & Community Engagement		
N/A		
Final Decision?	Yes	
Suggested next steps (if not final decision please set out below)		

1. **Summary**

- 1.1 This purpose of this report is to provide a further update on the operation of the Council's section 106 monitoring database.

2. **Recommendation**

- 2.1 That the Committee note the contents of the report.

3. **Reasons for the Recommendation**

- 3.1 The monitoring of Section 106 agreements is continuing on a collaborative basis particularly involving officers within Development Services; Neighbourhood Services; and Housing and Property Services along with colleagues at Warwickshire County Council, particularly their Infrastructure Delivery Manager.
- 3.2 Since this matter was last considered by this committee on 6 March 2016, the ongoing review and development of the Section 106 database which is at the core of that work has continued including in consultation with Councillors Quinney, Rhead and Harrington most specifically at meetings taking place in late March; July and October last year.
- 3.3 The purpose of that approach has been to continue to develop the format of the database, which is publically available on the Council's website in order to make it as user friendly and accessible as possible. In that respect, whilst the database remains an extensive document, revisions have been made to simplify it where possible including in respect of the terminology used. Additional clarity has been provided for example in respect of the date on which financial contributions have been received and the date by which they should be spent. The functionality of the database has also been improved so that it can be interrogated to identify performance in respect of key information such as the level of contributions received but not spent and those which are overdue and being sought.
- 3.4 In parallel with that approach, in order to enable the database to be updated as seamlessly as possible by all key partners, a secure single working version which is held centrally is now accessible to internal and external colleagues. In addition, the Section 106 agreement monitoring working group including those colleagues from both the District and County Council is also now starting to meet regularly to oversee that work.
- 3.5 Whilst the overall database itself includes some 145 agreements, the majority relate to developments which have been completed and in respect of which no further action is required. The key focus of the monitoring work is the 34 currently active agreements in respect of which i. The development in question is currently underway; ii. There are payments which have been received but not yet spent; and/or iii. Payments or commitments remain outstanding and are being sought.
- 3.6 In addition, there are also currently 11 agreements on the database which relate to developments that have not yet commenced.
- 3.7 One of the key purposes of the database is to bring all of the relevant information together in one place in order to ensure that Section 106 commitments come forward to provide the infrastructure associated with the

developments in question. In doing so, it becomes possible to identify specific areas of challenge and risk which in turn are able to be addressed.

- 3.8 For example, a key risk is that financial contributions which are required to fund infrastructure to support a particular development are received but not committed and spent in a timely manner. A key area of risk in that respect is that in most cases, should a defined period – usually either 5 or 7 years - have elapsed without the contribution being spent, the party making that contribution is able to reclaim it.
- 3.9 A significant proportion of the active Section 106 agreements relate to major residential developments which have commenced within the last 2-3 years. In overall terms, the level of contributions included within those agreements is therefore very significant and it is not surprising that the proportion of those contributions which have been received but currently not spent is also significant amounting to some £11 million.
- 3.10 A significant proportion of those contributions are with the County Council in their role as the Highway Authority (£2 million) and the Education Authority (£5 million) relating to planned infrastructure projects which are either in progress or coming forward. A further £1.5 million is attributed to health-related infrastructure provision and £1.3 million in respect of open space and indoor/outdoor sport provisions with lesser sums for affordable housing, footpath and other contributions.
- 3.11 However, it is also important to note that notwithstanding the above, in addition, contributions totalling £12,300,000 have also been received and spent including £1,931,000 towards education provision and £4,234, 000 in respect of traffic and highways matters.
- 3.12 It is also evident that, of the contributions which have been received and are yet to be spent, £358,500 (3% of the total figure) are at potential risk of being reclaimed. Those contributions were received in 2008, 2010 and 2011 and relate to education and highways contributions received prior to the proactive monitoring which is now undertaken and which has identified those risks which the Education and Highways Authorities are working to address.
- 3.13 There is currently considered to be no risk of the more substantive contributions received more recently mainly in respect of major residential schemes being at such risk. Whilst this would be the case for a number of years, the proactive monitoring which is now undertaken is intended to ensure that remains the case.
- 3.14 Another key area of risk is that contributions are not collected and therefore remain outstanding in perpetuity to the detriment of the provision of the infrastructure to which they relate. The monitoring regime which is now in place is designed to ensure that is not the case. Whilst there is currently £2.4 million of contributions which are yet to be paid, the majority arise from circumstances where the relevant trigger – usually expressed as a proportion of a development being completed or occupied - has only recently been reached and where the recipient is in the process of collecting those funds.
- 3.15 Whilst this increasingly pro-active and co-ordinated approach to the monitoring of Section 106 agreements has been in place for less than 2 years, it is considered that the benefits of this revised approach particularly in respect of the accessibility of information; collaborative working and the identification and

addressing of risks and challenges will continue to make a significant contribution to the delivery of development across the District in accordance with the objectives of the emerging Local Plan.

4. **Policy Framework**

- 4.1 **Fit for the Future** – The delivery of Section 106 contributions and requirements including, for example the infrastructure necessary to support major development schemes across the District will assist in ensuring that such infrastructure comes forward in the right manner and at the right time to support that development and will therefore contribute to the vision of making Warwick District a great place to live, work and visit as set out in the Sustainable Community Strategy and be consistent with the Fit for the Future programme.

Service: To Maintain and Improve Services – continued proactive monitoring enables the Council and its partners to work collaboratively in providing a service to ensure the delivery of good development as set out in the paragraph above.

Money: Achieve and maintain a sustainable balanced budget – Section 106 agreements for major residential developments include a contribution towards the cost of monitoring the agreement which assists in minimizing the cost to the council of continuing to do so.

People: Engaged and Empowered Staff – the current collaborative approach to monitoring agreements ensures that colleagues both internal and external are in place and appropriately supported and engaged to deliver the service.

- 4.2 **Impact Assessments** - It is anticipated that the continued proactive monitoring approach will assist with the delivery of infrastructure to support new development which will benefit all sections of the community.

5. **Budgetary Framework**

- 5.1 This monitoring work is being undertaken within existing budgetary frameworks and is also supported by financial contributions towards the cost of monitoring specific types of development which are identified within appropriate section 106 agreements.

6. **Risks**

- 6.1 In view of the nature and scale of the development proposals that are being delivered across the District within the emerging Local Plan period, it is the absence of a robust and proactive monitoring regime, such as that which is now in place, that has been identified as the key risk.
- 6.2 Without such a regime, the risk of essential requirements and contributions not being provided, or of contributions that have been received remaining unspent and liable for repayment is increased.

7. **Alternative Option(s) considered**

- 7.1 For the reasons identified in paragraph 6.1 and 6.2 above, the option of not continuing with an appropriate monitoring regime has been discounted.

8. Background

- 8.1 As Members are aware, in order to ensure that the requirements and financial contributions identified in legal agreements which have been completed in connection with specific grants of planning permission are undertaken, Officers have developed a detailed monitoring spread sheet.
- 8.2 That spread sheet comprises of an individual entry for each requirement or contribution in order that it's undertaking or payment can be tracked, and in the case of financial contributions to ensure that the funding is spent on the project for which it was required within an appropriate timescale.
- 8.3 Key benefits of the development of this spread sheet include:-
- Transparency in the identification and handling of the contributions and other undertakings which are required in relation to specific developments.
 - Clarity in the identification of trigger points to ensure that contributions and undertakings are received/implemented at the appropriate stage of the development.
 - The ability to ensure that contributions are spent for the purposes identified within the Section 106 agreement within the required timescale and that there is no risk of contributions remaining unspent and therefore at risk of being clawed back.
 - To enable service areas and other partners to plan their budgets particularly linked to capital projects arising from or related to specific developments.
 - To enable Town and Parish Councils to identify the availability of potential funding.
 - To enable members of the public to track the implementation of section 106 agreements in relation to developments that are of interest to them.