

Cherwell District Council
Budget Planning Committee

29 August 2018

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| Update Report on S106 Monitoring |
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Report of Assistant Director, Planning Policy and Development

This report is public

Purpose of report

The purpose of this report is to inform the Committee of the current position in respect of those Section 106 agreements (S106 agreements) that include either a developer contribution or a schedule of works. This report also provides an update to the committee on the current methods for monitoring S106 agreements.

1.0 Recommendations

The meeting is recommended:

- 1.1 To note the contents of the report and appendices.

2.0 Introduction

- 2.1 S106 agreement monitoring has always been the responsibility of the Development Management function within the Major Developments Team. However a review of the procedures in place for this was carried out early in 2018 and it was agreed that this process would come under the responsibility of the Enforcement Team. This has culminated in the appointment, in April 2018, of a new S106 Development Monitoring Officer.
- 2.2 The S106 Development Monitoring Officer has begun an intensive investigation into the Council's S106 records to establish a comprehensive baseline position. The initial records under review, relate to S106 agreements signed within the last 5 years. This review is extensive and resource intensive and likely to take a minimum of 12 months to obtain all of this information. This review also includes looking at outstanding invoices that are overdue and chasing outstanding S106 obligations that haven't been complied with.

3.0 Report Details

- 3.1 The new process involves the creation of a full list of all current and historic S106 agreements as well as the creation of individual monitoring logs for each Development.

The list of the S106 agreements currently identified is shown at appendix A (Table of Current Legal Agreements being monitored) please note, this table is only partially complete with new S106 agreements being added all the time. A sample of a monitoring log for each individual S106 is shown at appendix B (Oak Farm, Milcombe). The individual monitoring logs include the pertinent data contained within the S106 agreements relating to trigger points for contributions and the financial amounts to be provided.

- 3.2 Attached is also a spreadsheet of current active developments and their occupation numbers as of July 2018. This shows what developments are currently active and need to be prioritised to ensure they are compliant with their Section 106 payments (Occupation by development spreadsheet, Appendix C).
- 3.3 The next stage of the review will be to conduct a full financial review to establish what financial contributions have actually been received and what projects these have been allocated to. This information will be added to the individual agreement logs and presented to the Committee meeting once available. It should be noted that this is a substantial piece of work that will also necessitate involvement from the Corporate Finance Team.
- 3.4 Attached is a spreadsheet to show the monies that have been recovered since the Development Monitoring officer started (£1,446,982.39). This is a considerable amount for the Council (Appendix D, S106 payments received).
- 3.5 It is the intention of officers to add this information about individual S106 agreements to the Council's website upon completion.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The process to review the existing S106 agreements is ongoing. We are using the successful model that has been adopted at South Northamptonshire Council ('SNC') as a guide. It is envisaged that the quality and availability of the data available in relation to S106 agreements across the Council will mirror the exemplar of the SNC model. Going forward the process will be much more proactive working with developers and our Planning Officers to ensure that monies from S106 agreements are invoiced and received in a timely manner.
- 4.2 Any outstanding contributions that are brought to the attention of the Development Monitoring Officer, immediate payment/delivery (including indexation) will be sought.
- 4.3 The current review of S106 agreements is comprehensive and will result in reliable data relating to contributions (the previous method of S106 agreement monitoring was not comprehensive or up to date and the data held could not be totally relied upon). It will then be maintained on an on-going basis, with the information reported regularly to Budget Planning Committee and Development Control Committee.

5.0 Consultation

5.1 None.

6.0 Alternative Options and Reasons for Rejection

6.1 This report sets out the Section 106 Monitoring for Cherwell District Council. This is a report for your information. Currently no further options have been considered however Members may request additional information or give recommendations. No alternative options have been considered, given the recommendation is to note the contents of the report.

7.0 Implications

Financial and Resource Implications

7.1 There are no financial implications arising directly from this report. However there is concern that Developers can in most cases ask to claw back the money that they have paid to the Council, if we cannot prove that the S106 money has been spent for the purpose it was agreed. If there are any outstanding Section 106 contributions or obligations, the Section 106 Monitoring Officer will be actively seeking these from the developers.

Comments checked by: Kelly Watson, Assistant Director Finance and Procurement.
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Legal Implications

7.2 Risk of challenge by and/or clawback from developers should the Council not be able to prove that monies have been spent in accordance with the relevant planning obligations.

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Wards Affected

All

Links to Corporate Plan and Policy Framework

Corporate priorities of preserving what's special and protecting our quality of life.

Lead Councillor

Councillor Colin Clarke

Document Information

| Appendix No | Title |
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| A | Table of current Legal Agreements being monitored |
| B | Oak Farm, Milcombe (Example Monitoring log) |
| C | Occupation by development spreadsheet |
| D | S106 Payments received |
| Background Papers | |
| None | |
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