



COTSWOLD DISTRICT COUNCIL

Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	OVERVIEW AND SCRUTINY COMMITTEE - 3 DECEMBER 2019
Report Number	AGENDA ITEM 11
Subject	IMPROVEMENTS TO THE SECTION 106 PLANNING AGREEMENT AND PROCESS
Wards affected	ALL
Accountable member	Cllr Clive Webster E-mail: clive.webster@cotswold.gov.uk
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Summary/Purpose	To advise members of the outcomes of the recent Section 106 Audit and of the proposed new working arrangements that seek to address the audit recommendations and improve the process generally.
Annexes	Annex A S106 Operational Process Annex B S106 Consultation Sheet Annex C Standard Legal Instruction Memorandum
Recommendation/s	<i>To note the report</i>
Corporate priorities	
Key Decision	NO
Exempt	NO
Consultees/ Consultation	Internal consultation with the relevant Planning and Legal team members and key internal consultees

1. BACKGROUND

- 1.1.** In June 2019 separate audits for Cotswold (CDC), West Oxfordshire (WODC) and Forest of Dean District (FODDC) Councils were undertaken by the Internal Audit Service of the processes carried out for consulting upon, negotiating, securing by way of a legal agreement, monitoring and reporting upon the funds delivered by way of negotiations undertaken pursuant to section 106 of the Town and Country Planning Act (S106).

- 1.2.** These S106 agreements are secured as part of the planning process and are the means whereby the harms arising from development can be mitigated in order to render the scheme acceptable in planning terms. The scope for requiring the imposition of such agreements is prescribed by law and they are intended to sit alongside the Community Infrastructure Levy (CIL) where that is charged, as the means to secure community benefits from development. At present CIL is charged at CDC, is intended to be imposed next year in WODC and is not proposed to be introduced at present in FODDC.

2. MAIN POINTS

- 2.1.** Key Findings
 - 2.1.1.** Unsurprisingly, given the statutory basis of the ability to collect funds by way of S106, many of the conclusions were common across all three councils. However, there were some site specific issues that were raised.
 - 2.1.2.** Mindful that the process of instructing S106 was all directed at the Councils' shared legal team and that with the imposition of CIL there was likely to be a substantially greater level of monitoring of agreements and funding required, it was decided to build on the work already started at the three councils as regards financial monitoring of S106. Additionally, over the summer of 2019, the Government introduced further requirements setting out that the collection and spending of monies collected via S106 should be much more explicit/reported upon. This would have staffing and resource implications if undertaken separately by each Council; but economies of scale and benefits, in terms of resilience, will arise from adopting common processes and procedures across the three Councils.
 - 2.1.3.** It was therefore decided to review all three Audits to ascertain the common and specific learning points, to design a new process that seeks to address the key recommendations (see below) and ensure that the process is fit for purpose as the increased demands of CIL and the new reporting requirements are brought into place. Cross Council working has thus been undertaken to design the new process.

2.1.4. Key Audit Recommendations drawn from all three reports – NB some of these applied to a greater or lesser extent dependent upon which Council was being audited:

- Existing processes generally worked well but monitoring was weak;
- There is a risk that some developers may be able to avoid having to make the required contributions;
- There is little oversight of the process;
- Sometimes consultees perceived that they were not consulted upon their requirements and so were missing out on funds;
- When planning officers decided that for viability or legal reasons the monies could not be requested this was not always adequately communicated back to the consultee;
- Legal agreements were largely prepared as bespoke documents rather than using standard templates;
- Summaries of signed S106 to aid officers and the public were not in place;
- Charging structures for drafting S106 should reflect the work done;
- There is no easy facility to monitor triggers and payments;
- There is no consistent process to ensure invoicing, payments to third parties, etc.;
- Members should have more oversight of the process by way of regular reporting;
- Consider introducing a monitoring fee to cover the increased cost of monitoring CIL and S106 agreements;
- Reporting and monitoring could be improved with a named officer responsible;
- Signed S106 should always be uploaded to the public system; and
- Evidence that third parties would spend the contributions as required should be sought before monies were transferred to them.

2.1.5. These issues either related to process or cultural differences between the three Councils. In general terms, FODDC had fewer S106 agreements than the other two teams. CDC was better resourced to undertake monitoring work as a result of its implementation of CIL, albeit prior to 1 April 2019 there was no identified resource. CDC also tended to be fairly conservative in what was sought from developers and in aiding third tier Councils to secure funding. WODC monitoring was less well-resourced but the scope and extent of funding secured was much greater and assistance was given by planning and other specialist officers to Town and Parish Councils in both negotiating and securing funding on their behalf.

2.2. The New Process

- 2.2.1.** The operational process set out at Annex A has been agreed by officers and consultees as the means to address the Audit issues raised and ensure that the process is fit for purpose in the coming years as the demands upon it are increased through greater CIL/S106 funds. The measures have all been agreed and are either implemented or ready for implementation - albeit with the uncertainties around Brexit there has been a falloff in schemes where a S106 is required so there may be a transition period whilst the economy returns to normal until the benefits of the revised model are fully realised. Copies of the new standardised consultation sheet and Instruction memorandum are at Annexes B and C

3. FINANCIAL IMPLICATIONS

- 3.1.** Seeking to ensure that all the harms arising from development are adequately mitigated, subject to the development remaining viable, will reduce the need for public authorities to step in and provide, or finance, that infrastructure.

4. LEGAL IMPLICATIONS

- 4.1.** The CIL and S106 processes are tightly regulated and any decision where it is considered the scale and nature of the offer goes beyond that which is necessary to make the development acceptable in planning terms is liable to legal challenge.

5. RISK ASSESSMENT

The process needs to be followed correctly, the risks are associated to the procedures not being followed properly.

6. EQUALITIES IMPACT (IF REQUIRED)

- 6.1.** None arising from this report.

7. CLIMATE CHANGE IMPLICATIONS

- 7.1.** A number of the impacts of development such as impacts upon habitat, sustainable transport patterns, efficient use of land, dealing with waste, etc. will in turn affect the causes and effect of climate change but can be mitigated by requiring contributions to help offset the harms arising.

8. ALTERNATIVE OPTIONS

- 8.1.** None.

9. BACKGROUND PAPERS

- 9.1.** CDC Audit report dated June 6th 2019.