

OPEN

Audit and Governance Committee

28 September 2023

Section 106 Key Findings – Internal Audit Report

**Report of: David Brown, Director of Governance and Compliance
(Monitoring Officer)**

Report Reference No: AG

Ward(s) Affected: All

Purpose of Report

- 1 To provide the Committee with the key findings from Internal Audit's review of arrangements for the management and monitoring of Section 106 (S106) agreements. (Appendix 1).
- 2 Officers with responsibility for the implementation of the recommended actions will be in attendance at the meeting to assist the committee with any questions Members may wish to raise; whilst this report and appendix are not restricted, if members wish to discuss particular schemes or proposals the committee may need to sit in private as this may impact on the business and commercial interests of the Council.

Executive Summary

- 3 The planning service has undertaken a wide-ranging review and has previously reported to Environment and Communities Committee on the work being undertaken. This report supports that wider review.
- 4 Internal Audit have completed an extensive review of the council's arrangements for the management and monitoring of Section 106 agreements. The key findings of the review are shared in Appendix 1.
- 5 The overall assurance opinion for this review is "No Assurance". This reflects that there are currently significant areas of risk which are not being managed effectively in relation to the effective and efficient use of

S106 agreements and contributions. This audit report findings relate to operational processes, governance, and a lack of strategic oversight in place for senior officers and service committees. “No Assurance” opinion reports are considered for inclusion in the council’s Annual Governance Statement.

- 6 The outcome of this review will also be subject to consideration by the council’s Finance Sub Committee and the Environment and Communities Committee.

RECOMMENDATIONS

The Audit and Governance Committee is recommended to:

1. Receive the findings of the internal audit review on the arrangements for the management and monitoring of Section 106 funds and note the “No Assurance” opinion with an initial progress report being provided to the Committee in March 2024, and a further update on the implementation of actions to be reported to this Committee in 12 months time.
2. Consider the item for inclusion in the final Annual Governance Statement which will be brought to the Committee in due course.
3. Determine whether, based on the identified improvement actions, and the arrangements for the oversight of their implementation described, there are further actions to be taken.

Background

- 7 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as S106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. Each 106 agreement is a specific deed attached to an individual planning permission. They are usually place and purpose specific.
- 8 Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary. They must be:
 - necessary to make the development acceptable in planning terms,
 - directly related to the development; and

- fairly and reasonably related in scale and kind to the development.
- 9 These tests are set out as statutory tests in regulation 122 (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework. These tests apply whether or not there is a Community Infrastructure Levy charging schedule for the area. They are focused on site specific mitigation of the impact of development. S106 agreements are often referred to as 'developer contributions' along with the Community Infrastructure Levy.
 - 10 It is the role of the Planning Officer to use their knowledge and experience to review individual applications and apply the above tests in practice. This involves taking into account the relevant legislation and council policies, specifically the adopted Local Plan and other planning policies in order to identify and engage with the relevant consultees and ensure that all consultation responses are appropriately considered.
 - 11 The council (as Local Planning Authority) undertakes consultation with services on planning developments; statutory consultees include various internal Services, including but not limited to, Housing, Highways, Education and Green Spaces, as well as external organisations such as the NHS via the Integrated Care Board (ICB).
 - 12 S106 was first reviewed by Internal Audit during 2011. A review of S106 management was then undertaken in 2017 and identified several key findings to be addressed. These findings were followed up in detail by Internal Audit in 2019 with all actions found to still be in progress. The follow up work identified that the completion of outstanding actions was reliant on the successful implementation of the S106 database system (Exacom) and subsequent migration of data to ensure that it was operational.
 - 13 The system went live during 2019 and further follow up work to monitor progress against actions was planned for 2020/21. Unfortunately, the reallocation of internal audit resources in response to the Covid-19 pandemic from March 2020 prevented this work from being undertaken at that point, but the area of S106 and the Community Infrastructure Levy were both included in the 2021/22 Audit Plan; the internal audit of S106 was deferred to 2022/23 to allow the project to complete the migration of data into the S106 database.
 - 14 Work began on the review of the Community Infrastructure Levy (CIL) in 2021/22, and the report draft was finished earlier in 2022/23; as this review was showing similar findings to those emerging in the S106 review, we agreed with management to “hold” that report whilst the S106 review progressed further. Whilst there are similar findings arising from the CIL review, a “Limited” assurance opinion was given; the

actions to be undertaken to respond to findings on CIL are aligned to those in the s106 management actions, and that report has been issued as Final. A number of the CIL management actions have been implemented.

- 15 Internal Audit carried out a review of the policies, systems and procedures in place to provide assurance that the following key risks were managed effectively:
- Risk 1: Arrangements to ensure that appropriate S106 agreements are secured, in place and monitored to activate trigger points in a timely manner are ineffective, resulting in failure to identify and collect amounts due, limiting improvements to the local community and failure to meet obligations imposed during the planning process.
 - Risk 2: Limited strategic oversight and senior decision making in the process leads to reduced benefits/outcomes due to low levels of innovation and options appraisal against achievement of the council's corporate aims.
 - Risk 3: Ineffective monitoring and accountability arrangements may result in a failure to implement schemes within agreed timescales, resulting in potential repayments to developers, unspent monies being unallocated and remaining on the council's balance sheet, and planning obligations remaining unmet or becoming the responsibility of the council.
 - Risk 4: Ineffective governance and monitoring arrangements leading to a lack of transparency around the level and status of S106 monies held by the council, resulting in difficulties in managing the financial position of the service, a lack of strategic oversight by senior officers and Members, and reputational damage to the council.
 - Risk 5: Recommendations made previously have not been implemented, resulting in continuation of poor practice.
- 16 The review concluded that there is a lack of strategic oversight of the management of S106 internally within planning and across other relevant service areas, as well as by the Environment and Communities Committee.
- 17 Consultees and service users of the S106 contributions require greater understanding of their roles and responsibilities, and more structure in terms of ensuring the timely response and implementation of spend, in turn achieving greater outcomes for residents through more effective use of the S106 contribution.

- 18 The review of the processes, administration and monitoring of S106 concluded that this is currently not effective, with a significant level of inconsistency in the recording and monitoring of S106 Agreements and financial contributions across various systems. As such, the Council is currently unable to efficiently identify key financial information with respect to these obligations, for example commitments, actual expenditure and any balances or refunds that may be required to developers.
- 19 The internal audit review has provided a “No Assurance” opinion, based on the testing completed. Internal Audit use a standard set of opinions, and a “No Assurance” means that.
 - (a) There is an absence of controls to mitigate against the risks identified in the terms of reference. The majority of recommendations made are high priority, and key risks are not being properly managed. Urgent attention is required by management to improve the control environment.
 - (b) This area may be considered for inclusion in the organisation’s Annual Governance Statement. It may also be appropriate for this area to be included in the sections/directorate Risk Register, and for the action plan to address these fundamental weaknesses to become part of the Service Delivery Plan.
- 20 Each of the recommended actions has been agreed and accepted by the relevant service area. The internal audit process has been supported positively by planning and finance services, and recognition and support for the changes needed have been endorsed by the Corporate Leadership Team. There are actions in place to respond to each of the findings, with responsibilities and expected timescales for their implementation set out.
- 21 The implementation of these actions will be closely followed up by Internal Audit and these will be reported back to the Audit and Governance Committee as set out in the recommendations of this report. In addition, further member oversight of the issues raised by the report, and the implementation of the required actions will be provided by reports to the Finance Sub Committee and the Environment and Communities Committee.
- 22 The Finance Sub Committee will receive the key findings on the 2nd November, with a view to understanding the financial implications of the review, and how the planned changes should drive more effective recording, use, and timely spend of the contributions, whilst having regard to the legal restrictions that apply to these contributions.

- 23 The Local Planning Authority Review, which is monitored by the Environment and Communities Committee, had identified the area of S106 for inclusion in the Modernisation Plan, pending completion of the internal audit report, and resolved that a Member/Officer working group would be established on completion of the internal audit work to explore the process of Section 106 planning obligations as part of the wider Modernisation Plan.
- 24 Members have already been nominated for this group and it will now be established to oversee the implementation of the findings of the review and help to inform how information can be more pro-actively shared with members regarding section 106 contributions. This will be discussed at the 6th November meeting of this committee.

Consultation and Engagement

- 25 The terms of reference for the assurance work were drafted with input from the relevant senior officers, including the Council's Section 151 officer, and the Executive Director, Place.

Reasons for Recommendations

- 26 One of the key roles of the Audit and Governance Committee is to receive reports and assurances from across the organisation, and in doing so, consider the effectiveness of the arrangements described, identifying further information needed, and or making recommendations for improvements and additional action required.
- 27 The Committee are asked to consider the assurances provided by the key findings, the assurances provided by way of management responses, follow up by Internal Audit and the further oversight which will be provided by the Finance Sub Committee and Environment and Communities Committee and determine if anything further is required at this point.

Other Options Considered

- 28 No other options considered.

Implications and Comments

Monitoring Officer/Legal

- 29 This report is provided to ensure transparency and compliance with good audit practice. Although there are no direct legal implications arising from the recommendations of this report ongoing support will be provided.

Section 151 Officer/Finance

- 30 There are no direct financial implications arising from the recommendations of this report; Internal Audit resource had already been allocated within the 2022/23 and 2023/24 plans for this work. Any further resource to implement the actions arising from the report would be subject to the relevant decision making and approval processes.

Policy

- 31 The Audit and Governance Committee receiving reports and assurances supports the corporate objective of being an open and enabling organisation.

Equality, Diversity and Inclusion

- 32 There are no direct implications for equality, diversity and inclusion arising from the recommendations of this report.

Human Resources

- 33 There are no direct implications for human resources arising from the recommendations of this report.

Risk Management

- 34 Considering the recommendations of arising from this report and maintaining oversight of the effective implementation of the actions required will contribute to the improvement of the organisations use of S106 contributions, managing the risks set out in the internal audit review.

Rural Communities

- 35 There are no direct implications for rural communities arising from the recommendations of this report.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 36 There are no direct implications for children and young people arising from the recommendations of this report.

Public Health

- 37 There are no direct implications for public health arising from the recommendations of this report.

Climate Change

38 There are no direct implications for climate change arising from the recommendations of this report.

Access to Information	
Contact Officer:	Josie Griffiths josie.griffiths@cheshireeast.gov.uk
Appendices:	Appendix 1 – S106 Key Findings
Background Papers:	n/a