

OPEN

Environment and Communities Committee

9 November 2023

S106 Audit Report Update

Report of: Peter Skates Acting Executive Director of Place

Report Reference No: EC/23/23-24

Purpose of Report

- 1 To update Committee following the recent Internal Audit review of arrangements for the management and monitoring of Section 106 (S106) agreements, to provide an update on progress since that report was received and to set out draft terms of reference for the Members Working Group relating to S106.
- 2 The report will also set out for clarity, the roles of the respective committees who have some oversight of the process and decision making relating to S106.

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 as part of a Modernisation Plan for the service. An update on the progress made with that review is reported elsewhere on this agenda. This report is presented in the context of that wider review and supports the work programme underway in the planning service.
- 4 Internal Audit have completed an extensive review of the council's arrangements for the management and monitoring of Section 106 agreements.
- 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 has been subject to consideration by the council’s Audit and Governance committee and the Finance Sub Committee. Since the audit report was received, the service has already started to implement many of the actions that have been agreed as part of the outcomes from the audit.

RECOMMENDATIONS

The Environment and Communities Committee is recommended to:

1. Note the findings of the internal audit report and the progress made to date implementing the recommendations.
2. Agree the Terms of Reference for the Members working group relating to S106

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 as case officer to use their knowledge and professional experience to review individual applications and apply relevant policies and the above tests when forming a recommendation on applications. 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 Internal Audit carried out a review of the policies, systems and procedures in place to provide assurance that key risks were managed effectively. 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. Each of the recommended actions has been agreed and accepted by the service. 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.
- 12 The full report submitted to Audit and Governance Committee in September can be found [S106 Audit Report to Audit & Governance Committee](#).
- 13 Following receipt of the audit report the service responded immediately to consider the findings and recommendations through the submission of a detailed management response – this committed to various actions and allocated resources and timescales to the actions needed. This report had provided the detail needed to move forward and implement change in this part of the service (and beyond, in various other council departments) as part of the modernisation plan work programme. Good progress has already been made implementing recommendations including;
 - Recruitment to one vacant S106 post to add capacity and some resilience to the resource in the team. Advert for this post closed at the end of October.

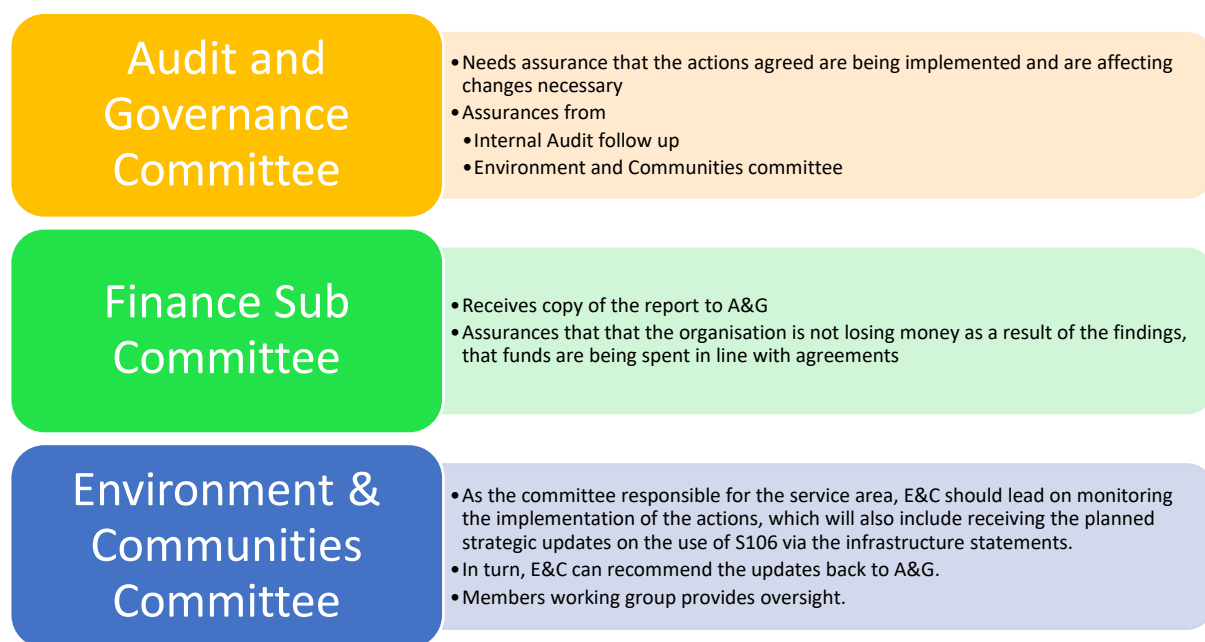
- Contract secured with the Obligations Office to update and complete outstanding records in Exacom (back office system)
- Reconciliation of received funds to correct agreements/data cleansing.
- Reviewed priorities of Section 106 Monitoring Officer role to ensure efficient use of time to progress audit recommendations.
- Officer workshop completed; led by Acting Executive Director of Place and Interim Director of Planning Services to bring all relevant services together to begin process and governance review. Identifying new ways of working, achieving consistent approaches across different services and providing challenge to identify opportunities for change and improvement.
- Process mapping of current processes underway – to be replaced with new process maps and updated governance model.
- Follow up detailed discussion sessions, led by Interim Director of Planning Services, with all consultee teams to refine process and build in new ways of working – teams include planning, legal, finance, greenspace, highways, education, NHS, Public Rights of Way, and regeneration.
- Joint meeting held of Chairs and Vice Chairs of Audit and Governance, Finance Sub and Environment and Communities committees to clarify the different responsibilities of the three committees and to ensure appropriate oversight moving forward.
- Drafted terms of reference for S106 Members Working Group
- Initial Planning Officer training on Exacom scheduled for early November.

Members Working Group – Draft Terms of Reference

- 14 Following agreement of the membership of the S106 members working group draft terms of reference are suggested;
- To oversee delivery of the recommended actions arising from the S106 audit – including providing guidance and challenge to new processes and governance being developed.
 - To ensure the actions arising from the audit compliment and assist delivery of the wider modernisation plan for planning services

- To co opt Chairs and/or Vice Chairs of the Audit and Governance Committee and Finance Sub Committee to the working group as may be necessary to facilitate wider oversight of implementation of the findings of the audit.

15 It is also considered useful for clarity to set out the respective responsibilities of the three committees in relation to this work. The diagram below clarifies the different roles of the three committees so that their remits are understood and work programmes can be informed.



Consultation and Engagement

16 No formal consultation and engagement has taken place however this report is being widely reported for openness and transparency. In addition, engagement across different Council departments is underway, and will continue, in order to deliver the recommendations of the audit review.

Reasons for Recommendations

17 To ensure committee is aware of the issues arising from the audit, the response to it and the steps already taken to address issues raised. It is important to agree the terms of reference for the members working group so that their remit is clear and maximum benefit is achieved from their involvement.

Other Options Considered

18 No other options were considered.

Implications and Comments

Monitoring Officer/Legal

19 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

20 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

21 The Environment and Communities Committee receives reports and recommendations which support the corporate objective of being an open and enabling organisation.

Equality, Diversity and Inclusion

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

Human Resources

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

Risk Management

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

Rural Communities

- 25 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)

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

Public Health

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

Climate Change

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

Access to Information	
Contact Officer:	Jane Gowing Jane.gowing@cheshireeast.gov.uk
Appendices:	None.
Background Papers:	Report to Audit and Governance Committee 28 th September 2023 – link within this report