

**CORPORATE GOVERNANCE COMMITTEE****12 MAY 2014****REPORT OF THE COUNTY SOLICITOR****SECTION 106 DEVELOPER CONTRIBUTIONS****Purpose of Report**

1. At its meeting on 25 November 2013 the Committee considered the high importance recommendations contained in the Quarterly Internal Audit Service Progress Report relating to Developer Contributions (section 106 agreements - referred to in Appendix B to that report), and noted that, although the report stated that these audits had been 'suspended', the Internal Audit Service had begun work to test the new planning data system. Whilst there had been no indication that any income from developer contributions had been lost or that such monies were not being appropriately collected, to provide reassurance members requested that officers provide a more detailed update on this issue at its next meeting.
2. This report is to provide reassurance to members of the Committee that no opportunities have been lost to request, agree, collect or spend section 106 (s106) money as a consequence of the planning data system.

Background

3. The County Council is fully engaged in the process of requesting s106 monies from developments that create a net demand for County Council services.
4. Each request has to be fully justified and meet a set of legal tests if they are to be taken into account by the Local Planning Authority (LPA) in its decision making. These tests are:
 - a. Necessary to make development acceptable in planning terms; **and**
 - b. Directly related to the development; **and**
 - c. Fairly and reasonably related in scale and kind to the development.
5. Occasionally, a developer will claim that the development would be unviable if all the s106 demands were to be met. The LPA in those circumstances will need to decide whether the development would be unsustainable without those contributions or whether the need for the development would be overriding.

6. In cases where the LPA has refused planning permission the County Council normally pursues its requirement through the planning appeal process.
7. For example, in 2013, in the 8 planning appeals that involved County developer contributions, the Planning Inspector endorsed all County Council requests as being justified and meeting the legal tests.
8. Where developers have failed to pay any monies due, then these have been pursued either by negotiation or through formal action. Payments of contributions under s.106 will depend upon the completion of the planning project which is the subject of the agreement or, in some cases, milestones in the development being reached (for example: "on occupation of the 250th house").
9. Some planning permissions are not activated at all for a number of years. In cases where there is a delay, the need for the provision may have diminished; for example, there may now be places available at the local school by virtue of falling rolls or, more recently, the creation of new schools or academies. In these circumstances, s.106 agreements may be varied or may simply not be enforced. It is therefore likely that there will be a shortfall between the amount of developer contributions calculated solely by reference to the contents of s.106 agreements and what actually happens in practice.
10. Officers in the Planning Historic and Natural Environment Team in the Chief Executive's Department are proactive in checking with developers the stages which have been reached in developments and in reminding developers of their obligations.
11. That contributions received by the County Council over the last 6 years are set out below.

Date	Amount (£million)
2008/09	£1.5
2009/10	£2.2
2010/11	£1.7
2011/12	£2.6
2012/13	£2.2
2013/14	£6.4
Total	£16.6

12. A number of issues have emerged over the last few years which have made the s.106 regime more complicated. These are:
 - a. Community Infrastructure Levy (CIL)

Regulations (first introduced in 2010) have paved the way for LPA's to introduce and adopt a CIL, which is a charge on all development likely to have an infrastructure need. The CIL will not replace s106s, but will limit

the extent to which s106s are used. The CIL Regulations have set a date of April 2015 by which CIL should be introduced and after this time, whether or not LPA's have introduced a CIL, s106s will have certain limitations retrospectively applied from 2010. All LPA's in Leicestershire have been considering the introduction of a CIL, but none have embarked on the formal process (although having an adopted development plan is a pre-requisite). Blaby and Oadby & Wigston have decided not to proceed with CIL at the present time.

b. CIL Compliance Legal Tests

The Regulations have formalised the legal compliance tests for s106s (see paragraph 4 above).

c. Schools and Academies

The County Council remains the Authority responsible for ensuring that there are sufficient school places available to meet the educational needs of Leicestershire children. This enables the County Council to make the case for developer contributions towards education provision, but the advent of academy status schools and free schools makes the assessment and identification of provision shortfall more complicated, with some developers and academies seeking to negotiate independently.

d. Major Developments

Major development proposals such as the Sustainable Urban Extensions (SUEs) create particular challenges for s106 contributions given the scale and life span of the schemes (up to 10 -15 years). A balance needs to be struck between surety of delivery and flexibility to adapt to changes in circumstances during the life of the development.

Tracking Contributions

13. The audit undertaken by the Internal Audit Service on developer contributions sought to ensure that the risks to requesting, collecting and spending s106 money were being properly managed. One of the key issues highlighted by the audit was the need to ensure that the system was being properly monitored. Each spending service monitors its spend from s106 money, so there is no issue of lack of data or information. The only outstanding issue is ensuring that the information from services is coordinated and recorded centrally for ease of monitoring, analysis and reporting for which a procedure has been put in place. There are some remaining technical and resource issues with finalising that central coordination, in light of the implementation of a new IT system and the need for compliance with the security requirements of the Public Services Network. However, members can be reassured that practice has improved and there is no evidence of a failure to record spending.

Moving Forward

14. The County Council's adopted policy on developer contributions is a key document that sets out to developers, LPA's and Planning Inspectors the County Council's approach to developer contributions to the services it requires, to make the development sustainable. It is important that the County Council's Developer Contributions Policy is kept up to date, particularly in the light of the changes that have taken place recently. A programme is currently being established to update that policy and it is anticipated that a draft policy will be presented to the Cabinet in June 2014 prior to a formal consultation period.

Resource Implications

15. The implementation and execution of the s106 monitoring system is limited by and contained within existing resources.

Equal Opportunities Implications

16. There are no discernable equal opportunity implications.

Recommendation

17. The Committee is asked to note this report.

Background Papers

Report to the Corporate Governance Committee, 25 November 2013 – Quarterly Internal Audit Progress Report.

Circulation under the Local Issues Alert Procedure

None

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