

Briefing Note Title:	Update on s106 matters			
Date:	14/08/2023			
Author(s):	Rob Harbour, Assistant Director of Growth & Regeneration			
Intended Audience(s):	Audit & Governance Committee			
Purpose:	Decision	Discussion	Ratification	Information ✓
Purpose:	To provide an update on several s106 related issues raised at the last Audit & Governance Committee			
Recommendation:	To note the update			
Background:	<p>At the last meeting of the Audit & Governance Committee on the 12 June 2023, an Internal Audit Progress Report was received by the Committee from the Chief Internal Auditor. This included an update on s106 monitoring which reported a satisfactory level of assurance.</p> <p>During consideration of the Internal Audit Progress Report, some comments were made by Committee Members regarding the monitoring of s106 agreements and as a consequence, the Chair of the Committee requested this note be brought to the next Committee meeting to provide an update on the matters that were previously raised.</p> <p>This note provides the updates as requested:</p> <p>1. Two s106 obligations with 7 months to expiry</p> <p>The matter was raised with Committee that there are three s106 obligations in the Rothwell area that only have 7 months left until expiry and there were local concerns that these contributions may not be spent before the deadline.</p> <p>The three contributions in question are:</p> <p>i) Brachers Field Allotments - identified improvements to the allotments. s106 sum - £4,287</p> <p>Update: The Developer Contributions Team are in a dialogue with the Rothwell Allotments Association, who have put forward a number of potential uses for this contribution. This matter is therefore progressing to ensure the funds are transferred and used in full before the January 2024 expiry.</p> <p>ii) Well Lane Recreation Ground - drainage enhancement of the football pitch. s106 sum - £11,433</p> <p>Update: This project is proceeding through NNC's governance arrangements. It has been taken to both the Place & Economy Directorate Capital Board</p>			

and Strategic Capital Board. A final decision is to be made by Executive on the 17th August. The Grounds Maintenance Service plan to use this funding for the creation of drainage systems on the football pitch at Well Lane in line with the s106 agreement. Assuming that the money is released in August then the Grounds Maintenance Service are confident that this project will be completed before January 2024.

- iii) Manor Park - Completion of a study commissioned to address the feasibility of restoring the historic features of Manor Park around the old carp pond
S106 sum - £7,146

Update:

Grounds Maintenance officers understand that the ponds were once fed by a river, which no longer runs through the park, and consequently the ponds are gone. If therefore this obligation can no longer be used for its original purpose, NNC will need to approach the developer to confirm they are happy for it to be used for an alternative scheme. Rothwell Town Council have therefore been requested to liaise with the Developer Contributions Team to agree a firm set of proposals as to how they envisage the funds could be used instead which will enable NNC to hold a dialogue with the developer.

The Developer Contributions Team have met with representatives from Rothwell Town Council within the last few weeks and are in a dialogue with them to in relation to the contributions outlined above and other developer obligations relating to the Rothwell area.

2. Sharing of s106 spreadsheet

The audit report is correct in that significant progress has been made with cleansing, updating and reconciling the s106 information inherited from the former North Northamptonshire authorities and compiling this onto a spreadsheet where appropriate to do so. Some data is also held within proprietary planning back office systems and therefore sits separately to the spreadsheet. As such, the work to consolidate all s106 data is not yet fully complete and is linked to the procurement of a single IT system for the Planning Service (including developer contributions), which will ultimately provide the single s106 database that we are working towards as our long term solution.

Whilst it is not feasible to share a single list of s106 data given the list held across North Northamptonshire extends to thousands of records, we can look into specific allocations of interest. In time it will be increasingly easy to interrogate and report on the data. At present, it is not held in a single place, as the report that was received by the Audit & Governance Committee indicates, and it is work in progress to cleanse and validate all the data, as well as migrate it into a single system.

3. Can s106 obligations be re-assigned?

S106 obligations are always negotiated to comply with the relevant legislative requirements. At the current time these are encompassed within the Town & Country Planning Act, the Planning Act and the Community Infrastructure Levy Regulations.

Regulation 122 of the Community Infrastructure Levy Regulations 2010 makes it unlawful for any planning obligation to be taken into account as a reason to grant a planning permission if it does not meet the 3 tests set out in the Regulation. That it is:

- i) necessary to make the development acceptable in planning terms
- ii) directly related to the development
- iii) and fairly and reasonably related in scale and kind to the development

It is essential therefore that when negotiating either a new s106 agreement or considering any variation to an existing agreement, that this regulation is complied with.

s106 agreements can usually only be modified or discharged under s106A of the Town & Country Planning Act.

This section enables modification or discharge of an obligation to be achieved either by an agreement with the local planning authority (which must be executed as a deed), or by an application to the local planning authority.

This means that a developer can seek to vary an obligation by making an application to the local planning authority which must then be determined, or that the local planning authority can seek to vary an obligation but this must be agreed with the developer and executed as a deed of variation. A local planning authority cannot unilaterally vary a s106 agreement.

The time periods within which applications to modify or discharge an obligation can be made, are as follows:

- For obligations entered into on or before 6 April 2010 – an application can be made at any time
- For obligations entered into after 6 April 2010 – an application can be made after 5 years beginning with the date the obligation has been entered into to

Where a developer applies to modify a s106 agreement through a s106A application, if this application is refused by the local planning authority, there is a right of appeal under section 106B if any application is refused.

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