



Final Internal Audit Report

S106 Agreements Follow Up Audit

Date: March 2024

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Background and Context

Section 106 (S106) agreements, also known as planning obligations (based on that section of the 1990 Town & Country Planning Act), are private agreements made between local authorities and developers and can be attached to a planning permission to make acceptable developments which would otherwise be unacceptable in planning terms.

S106 agreements are used for three purposes. To:

- prescribe the nature of development (for example, requiring a given portion of housing is affordable).
- compensate for loss or damage created by a development (for example, loss of open space).
- mitigate a development's impact (for example, through increased public transport provision).

An audit assignment was completed in September 2022 on this area receiving a limited assurance rating. This is a follow


up audit to provide assurance that the recommendations from that audit have been implemented and are working efficiently.

Scope

To review the arrangements in place to ensure that East Lindsey District Council (ELDC) meets its obligations for S106 agreements:

- To provide assurance that systems and processes are in place for monitoring and reporting S106 agreements and funds.
- To ensure that systems are robust and that S106 agreements are being effectively delivered.
- To ensure that the Council uses effective processes when applying and managing S106 agreements.
- To ensure that there are effective monitoring and reporting arrangements for S106 and other associated income.

Executive Summary



Adequate Assurance

There is a generally reliable system of governance, risk management and control in place. Some issues of non-compliance or scope for improvement were identified which may put at risk the achievement of objectives in the area audited.

Risk	Rating (R-A-G)	Recommendations			
		Critical	High	Medium	Low
Failure to monitor and report S106 agreements and income	Medium	0	0	0	0
Failure to ensure S106 monies are spent in line with the agreements and legislation	Medium	0	1	0	0
Failure to ensure S106 monies are spent in line with the agreements and legislation	Low	0	0	0	1
TOTAL		0	1	0	1

Key Messages



This follow up audit concentrated on the recommendations raised in the previous audit of this area and the progress that had been made to implement the actions agreed with management. Below is a summary of the five recommendations and the progress made.

1. A process is put into place to notify the policy team when a new agreement has been issued, so they can capture the information required for monitoring. **Implemented but needs time to fully embed.**
2. S106 process training is provided to other staff within the Policy Team, and responsibilities assigned accordingly, to ensure resilience during the S106 officer's absence. **Implemented.**
3. The Council satisfy themselves that the current arrangements are robust to ensure funds are identified and spent in accordance with agreements. **Partly implemented.**
4. A process is put into place to verify the accuracy of the Infrastructure Funding Statement (IFS) against the S106 agreements register. **Implemented - the register & IFS are reconciled as part of the process of completing the IFS.**
5. The Councils S106 officer continues to work with PSPS finance officer to implement financial monitoring of S106 funds. **Implemented**

The audit found that the majority of the recommendations had been implemented and management of S106 had improved since the previous audit. There is improved monitoring of S106 funding and regular reporting on funds nearing the spend deadline is now presented to SLT.

Key Messages



Whilst some key parties are informed of available funds for spending, this process could be strengthened with the introduction of a clear process to inform all interested parties when funds have been received and the spend deadline.

A total of five S106 agreements totalling £136,704 in unspent funding has recently been identified through the improved monitoring process. Any unspent funds must legally be returned to the developers. This results in missed opportunities to use developer contribution monies to improve public infrastructure.

£102,680 related to affordable housing and £34,024 for a combination of off-site drainage, play equipment and a footpath.

Finance services confirmed there have been no other returned monies over the last three years.

A system code has been introduced to the planning software to identify S106 agreements and enable report production. Planning Officers should be reminded regularly to use the new code until this process becomes fully embedded.

The level of resilience in the team has been improved with additional staff being trained in the S106 agreements process in the absence of the S106 Officer.

The S106 register is reconciled monthly to Unit 4 by Public Sector Partnership Services Ltd (PSPSL) finance and the completion of last year's Infrastructure Funding Statement (IFS) is almost complete. Part of the process of completing the IFS involves reconciliation to the S106 register, supporting management overview of regular reconciliation and accuracy.

Executive Summary

Key Messages



Effective budget monitoring of S106 is undertaken quarterly between a PSPS finance officer and the planning policy manager with a report produced to highlight any issues, this is reported to the Assistant Director, Section 151 Officer and the Chief Finance Officer.

Further detail of the recommendations from this audit are listed in the action plan below. We would like to thank the staff who met with us and provided supporting evidence during our review.

Management Response

Management Response



We thank audit for this follow up and are pleased to see that significant progress has and continues to be made in this area with full and regular reconciliation now in place. With these controls in place any risk associated with S106 agreements should be properly managed

SELCP, Deputy Chief Executive - Corporate Development and S151 Officer.





Action Plan

1.	Risk Description	Current Rating	Target Rating
	Failure to ensure S106 monies are spent in line with agreements and legislation	Medium	Low
Findings			
<p>The records of S106 agreements have been updated and a report on available funding and deadline for spending is now presented to SLT. Regular meetings have been arranged with the NHS to inform them of any available funds that need to be spent but a formal process to notify all interested parties of available funding has not yet been introduced.</p> <p>£136,704 of monies, not allocated by the deadline has recently been reported. Finance confirmed there are no other examples of unspent monies from the last three years.</p>			
Implications			
<p>If interested parties are not given enough notice to spend the funds received by the Council and the deadline for spend is missed the Council could be required to return the funding to the developer. This could result in potential reputational damage if it is made known that the Council have held onto funds rather than allocating them as per the requirements of the S106 agreements.</p>			
Recommendation			
A formal process is introduced to inform the responsible organisation that S106 funding is available and when it needs to be spent by.			High
Agreed Action		Responsibility	Implementation date
A formal process will be introduced within 3 months to ensure that letters are sent out a) when a new S106 is received, and funding is available b) prior to funding expiring (at an interval of 12 month and then 6 months to enable time to spend.		Planning Policy Service Manager	04/06/2024

Action Plan

2.	Risk Description	Current Rating	Target Rating
	There is no reporting or management oversight on S106 monies.	Low	Low
Findings			
<p>A new process has been introduced to help identify all S106 agreements. When entering onto the system the planning officer should now allocate a code. The officer reviewing the decision should also be checking the code has been allocated. Through our testing we found there were 2 S106 agreements in January 2024 but only 1 had been coded.</p>			
Implications			
<p>Failure to code S106 agreements could result in ineffective monitoring, leading to non-compliance with legal obligations to identify and report on the funds. The Council may not obtain all the income that is due resulting in infrastructure improvements not being completed.</p>			
Recommendation			
<p>Planning officers should be regularly reminded to allocate the new code to all S106 agreements on the system until this new process becomes embedded.</p>			Low
Agreed Action		Responsibility	Implementation date
<p>The new system will be monitored for 6 months to ensure it is embedded. There is also a second check by the Planning Manager to ensure that the Officer has added the codes. Reminders will be sent if needed.</p>		<p>Planning Policy Service Manager</p>	<p>Already implemented. Will continue for 6 months.</p>

Appendix 1 - Assurance Definitions

Substantial	Adequate
<p>A reliable system of governance, risk management and control exists, with internal controls operating effectively and being consistently applied to support the achievement of objectives in the area audited.</p> 	<p>There is a generally reliable system of governance, risk management and control in place. Some issues non-compliance or scope for improvement were identified which may put at risk the achievement of objectives in the area audited.</p> 
Limited	No
<p>Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks in the achievement of objectives in the area audited.</p> 	<p>Immediate action is required to address fundamental gaps, weaknesses or non-compliance identified. The system of governance, risk management and control is inadequate to effectively manage risks in the achievement of the objectives for the area audited.</p> 

Appendix 1 - Assurance Definitions

Risk Ratings	
Current	Reflects the residual risk after assessing the controls in place.
Target	<p>Represents what level risk an organisation may wish to take, or what level of risk is considered acceptable. Where risk ratings are not at target levels, then recommendations will be given within the report to help achieve the expected risk rating.</p> <p>In some areas the target risk rating may not be “Low,” and we may be willing to accept a “Medium” target risk rating. These situations could be found where:</p> <ul style="list-style-type: none"> • An organisation wishes to realise potential opportunities and as a result has a higher risk appetite. • The area under review is so inherently risky that we accept that risk mitigation strategies are unable to achieve a “Low” target risk rating.

Appendix 1 - Assurance Definitions

Action Priority	
Critical	Fundamental breakdown in internal control; significant risk of fraud, irregularity, impropriety. These must be addressed as a matter of urgency.
High	Significant weakness in internal control; non-compliance with regulations/legislation; material loss or public criticism. These actions must be completed within a short time period
Medium	Weakness that undermines systems of internal control. These risks should be completed within a medium time frame and can have various milestone to be adhered to over the project duration.
Low	Best Practice. These will make the function as good as possible and should be implemented over the course of 9-12 months.

Appendix 2 – Distribution List

Distribution List



Rob Barlow – Chief Executive

Christine Marshall - Deputy Chief Executive &
S151 Officer

Simon Milson – Planning Policy & Research
Service Manager

Councillor Tom Ashton – Portfolio Holder for
Planning, ELDC

Disclaimer

The matters raised in this report are only those which came to our attention during our internal audit work. Our quality assurance processes ensure that our work is conducted in conformance with the UK Public Sector Internal Audit Standards and that the information contained in this report is as accurate as possible – we do not provide absolute assurance that material errors, fraud or loss do not exist.

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