

Section 106 Financial Control Audit Report May 2023

Purpose of Report

1. The purpose of this report is to provide an update to the Audit and Governance Committee about the findings of the May 2023 Section 106 Audit and progress that has been made implementing the recommendations.

Relevance to the council's Business Plan

2. This report directly supports the council's Business plan, specifically Thriving Economy, Resilient Society and Sustainable Environment. The importance of securing development in Wiltshire, and the resulting funding for infrastructure is fundamental in delivering outcomes in these areas and providing sustainable growth in Wiltshire.

Background

3. In early 2023, an audit was undertaken on the risks and controls in place in relation to Section 106 (S106) payments. This included a review of the following:
 - Evaluation of the guidance that defines how and when S106 agreements should be applied.
 - Evaluation of the recording of S106 agreements in the new Arcus planning system.
 - Evaluation of the monitoring of financial triggers and how funding is received, including the timely application of indexations to contributions, and;
 - Evaluation of the reporting produced for management and Members.

Community Infrastructure Levy (CIL) payments were not included in this review.

A previous audit on the collection of S106 money and the CIL conducted in late 2019 gave a 'reasonable' assurance. Most of the areas reviewed were found to be adequately controlled. Generally, risks are well managed, but some systems required the introduction or improvement of internal controls to ensure the achievement of objectives.

In April 2021, the Planning Directorate implemented a new ICT system, called Arcus, to provide back-office support and functionality to the planning, building control and local land charges services. However, the S106 monitoring element was not ready when the Arcus system went live, and subsequently the team have needed to use a manual method to monitoring S106 agreements, at the same time as re-entering S106 data into the Arcus system. At the time of this audit, this work was not completed. As at September 2023, the data on Arcus is backdated to 2015, allowing reporting on commitments on these agreements. This data entry is ongoing, with historical agreements being added.

The timing of this audit was unfortunate given the move to the new ICT system and work required to input data and configure. However, it has been useful to identify ways to configure the system to improvement monitoring overall.

Whilst work is ongoing with the ICT supplier (Arcus) to develop the Section 106 monitoring functionality, there has been significant progress made since the audit, specifically in areas of reporting, dashboards and financial calculations.

The audit reviewed a sample of Section 106 agreements and identified some areas of improvement. The final audit report had 13 actions; two are priority 1; four are priority 2 and seven are priority 3.

Main Considerations

4. This report provides an update which describes how the actions and improvements will be implemented, and progress made already in respect of delivery against the Improvement Plan.

5. Finding 1 – Tracking of S106 Contributions in Arcus

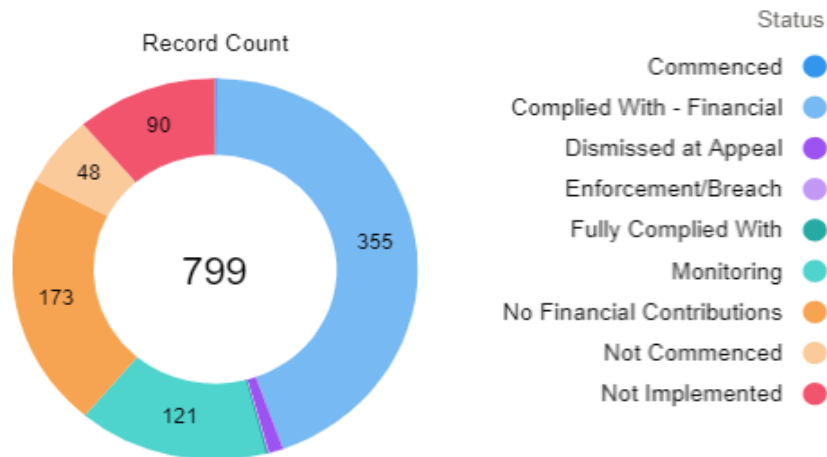
“We will ensure that the data held within Arcus is complete and accurate to allow for appropriate monitoring. We will determine whether all data needs to be filtered through the S106 team or whether service areas are responsible for inputting the data in Arcus”

The following actions have already been implemented:

- Additional resources have been allocated to S106 monitoring. Training is being undertaken and additional checks are in place to ensure accuracy.
- Additional monitoring reports have been created including:
 - S106 Money Owed – showing all financial obligations, owed by developers, described by the different types of infrastructure (quarterly)
 - S106 Status Report – showing the status that each S106 agreement has reached i.e. commenced, complied with (quarterly)
 - S106 Monitoring Report - Showing, by service area, the amount of contribution due, the amount paid, the date by which the contribution is to be spent. (quarterly)
 - S106 Clauses – showing where there are S106 agreements in place, but the triggers have not yet been met (quarterly)
 - S106 Not Commenced Report – showing agreements that have not yet had a commencement date. This is cross referenced with Building Control reports on commencements (quarterly)
 - Commencement Notice Report – Showing commencement notices for CIL liable developments received by the council, this is cross checked with S106 agreement as commencement of development triggers some of the S106 contributions. (weekly)
- Below shows an example of the dashboard that is available to view as a live dashboard on Arcus and is updated regularly:

S106 Status Report

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- Developers have been written to, reminding them of their obligation to notify the S106 monitoring team when trigger points have been reached, along with instructions on how to notify us. An email will be sent to each developer on completion of all new S106 agreements.
- The council's Legal services are currently advising on whether the council can invoice a housebuilder in relation to the case identified in the audit with a surcharge for lack of notification.
- Improving communication with the Town and Parish councils on S106 agreements will be beneficial for the community and will assist with the monitoring of agreements. Each new agreement will be shared with the Town and Parish councils, and they will be encouraged to inform the council when trigger points may have been reached.

There are a number of actions which are in the process of being implemented:

- Development of a policy setting out how the council will monitor Section 106 monies. This will detail all reports that are being generated, nominate responsible persons in each service area such as Highways, Education, Housing etc. and set out clear expectations for monitoring across the authority.
- Improved two-way communication with finance and service areas regarding income and spending. This will include producing a quarterly report showing S106 income received. Service areas will also be required to provide a quarterly return setting out S106 spend. This approach is currently being piloted by Education and will be rolled out to all teams by January 2024.
- Undertake a full review of how data is recorded across the authority to achieve 'one version of the truth'. Currently all new S106 agreements are entered into Arcus when they are issued. The information will then be verified by a second member of the team. This will solve any data quality errors. Some service areas also maintain their own records, which was identified as a risk as errors were found, and databases unsupported. Arcus provides an opportunity for this to be used across the authority but there are financial implications for additional licenses. There is also a risk if multiple people have the ability to edit records that errors could be made. Undertaking a full review of how teams are using the information will allow an informed decision to be made over who has access to Arcus and how the data is used. This particular action is also linked to finding 4.

6. Finding 2 – S106 Policies and Guidance Action

“We will review the ‘Wiltshire Council Community Infrastructure Levy, Revised Wiltshire Obligations Supplementary Planning Document’ to ensure it reflects that latest version of the NPPF”

- This area of work is carried out by the council’s Spatial Planning service and the priority over recent months has been completing the draft Local Plan Review and preparing for Regulation 19 consultation in the autumn. There is a commitment to look at the S106 SPD being reviewed alongside the Local Plan Review (i.e. throughout 2024).

“We will coordinate the review / creation of a suite of guidance documents for S106 contributions that reflect the current structure of Wiltshire Council and the latest version of the NPPF. This will also document the process for tracking and monitoring S106 contributions in Arcus. This will require coordination across all service areas and as such timescales will be dependent on service area availability.

- The commitment for when guidance is updated rests with different council services, and this will need to be assessed according to work demands and other considerations. This work will be programmed into the improvement plan, with a completion date of 31 Dec 2024.

7. Finding 3 – Internal Control and Oversight Action

“Review the support provided to the S106 Monitoring Officer to ensure monitoring activity is undertaken in a timely manner, enhance the accuracy of the work and reduce the opportunity for inaccuracies, errors or omissions by re-distributing the administration of monitoring S106 contributions throughout the S106 and CIL Monitoring team.”

The following actions have already been implemented:

- Additional resource (0.5 FTE) has been allocated to Section 106 monitoring and training is being undertaken with all the team to provide resilience and timely monitoring.
- All service areas have been asked to use the team email address (CILandS106@wiltshire.gov.uk) and all responses are sent from this inbox to achieve transparency across the team.
- All S106 invoices have text directing queries to the CILandS106 email address.

There are a number of actions which are in the process of being implemented:

- Review of invoice creation in the new finance system (Oracle) to allow adequate separation of duties for accuracy. Proposed go live is 6th November 2023.
- Regular meetings with Finance to review income, monitoring and service allocation.

“In response to this audit, we have started a review of S106 contributions; we will complete the review of S106 contributions and the details of Appendix 2 and take action to invoice any outstanding contributions”

The following actions have already been implemented:

- A quarterly 'trigger met' report has been developed which ensures that invoices are raised on time. This has been in place since July 2023 and financial payments relating to all S106 agreements are now invoiced where appropriate.
- The council's Legal services are currently advising on whether an invoice can be issued to a housebuilder for the case identified in the audit with a surcharge for lack of notification (17/08959/FUL).

8. Finding 4 – Data Security and Training Action

“We will use Arcus for the tracking of S106 contributions across the council. Where management determine that they wish to continue using spreadsheets to track these payments, we will coordinate a review of access to spreadsheets and databases to enable varying levels of access, such as ‘view-only’ or ‘edit’, to ensure that only those with the appropriate authorisation can access or edit the data.”

- This action is linked to finding 1. A full review will be undertaken of all the data sources used across the council. The aim is for Arcus to be the primary source of information, with other services either using the system, or providing the S106 monitoring team with data and regular reports being issued.

9. Finding 5 – Evidence of Spend in Line with S106 Agreement Action

“We will coordinate with the service areas to determine the level of confirmation of spend required to evidence completed projects / works. For example, where Waste S106 contributions specify a particular outcome, create a memo or delivery note and store this in Arcus to evidence that the outcome stipulated in the S106 agreement has occurred (eg X number of bins were installed at X location on X date).”

There are a number of actions which are in the process of being implemented:

- A review will be undertaken to determine how to gather evidence to demonstrate completed works. This is an unusual recommendation as most other local authorities do not have a procedure in place to check that works have been completed, other than where works are required to the council's land or property (e.g. roads or schools). Beyond this, discussions will be held with service areas over what completion monitoring is reasonable and proportionate. This will be linked to the review of data sources discussed above in findings 1 and 4.

10. Finding 6 – Responsibility for S106 Contributions Action

“We will review the current S106 monitoring, management and spend within service areas. We will undertake a cost-benefit analysis of the following options:

- *Ensuring the management of S106 contributions sits within the most appropriate service area; where service areas are identified as receiving S106 contributions, an officer will be assigned responsibility for the management of these contributions, with the expectations of the role clearly defined; and*
- *Creation of a central S106 team responsible for monitoring and management of S106 contributions, including monitoring of spend.”*

There are a number of actions which are in the process of being implemented:

- A review will be undertaken of all the data sources used across council services. Working with each service area, an agreed approach will be adopted to ensure consistent monitoring and recording is in place. The aim is for Arcus to be the primary source, with services either using the system, or providing the S106 monitoring team with data and regular reports being issued.
- The adoption of a policy setting out how the council will monitor Section 106 monies will enable a transparent process with clear expectations for monitoring.

11. Finding 7 – Indexation Action

“We will introduce a system of peer review to check the indexation calculations prior to sending to the developer and ensure this is recorded in Arcus. Appropriate records of the indexation calculations and developer correspondence will be maintained.”

- Completed. A new indexation spreadsheet/calculator has been created. All indexation calculations for each developer contribution are sent to the developer and saved in Arcus. Peer review is undertaken prior to calculations being forwarded to developers.

12. Finding 8 – Correspondence via Central S106 Email Address Action

“We will direct all enquiries on invoices to the S106 and CIL central email address to enable all team members to access emails, promoting transparency and resilience within the team.”

- Completed. All service areas have been asked to use the team email address (CILandS106@wiltshire.gov.uk) and all responses are sent from this inbox to achieve transparency across the team.

13. Finding 9 – Claiming for Lack of Notification of Triggers Action

“We will liaise with Legal to determine if the £1000 failure to notify of a trigger clause should be included in every S106 agreement. We will review all S106 agreements that contain this clause to ensure claims are made where developers have not notified Wiltshire Council of triggers being met in a timely manner and create a system of monitoring, with service areas, going forwards.”

- Completed. Legal services have confirmed that this clause is routinely added to all agreements and that the penalty would be a maximum of £1000 per time (i.e. per trigger missed). In the case highlighted in the audit, legal advice is being sought on the justification to charge and the appropriate fee to recover costs.

“We will identify the potential sources of data held within the council that will enable us to monitor the trigger points in the most efficient manner, for example, by using PowerBI to collate and analyse pertinent data.”

- This will form part of the data source review mentioned above.

14. Finding 10 - Reporting Action

“We will discuss the frequency of reporting on the collection and spending of S106 monies with members and SMT to determine a more regular reporting pattern. To facilitate this, we will ensure all relevant information is stored in Arcus to allow S106

and Community Infrastructure Levy Monitoring Officer to update the RAG spreadsheet in a timely and efficient manner.”

- Reports can be requested at any time. The below shows an example of the data that is proposed to be shared with councillors on request. Arcus has the ability to produce a lot of data in different ways. This can also be provided at a parish level and will be communicated to the town and parish councils at the next training/awareness session.

Planning Obligation: Planning Application	Planning Obligation: Planning Address	Planning Obligation: Planning Proposal	Full Amount	Planning Obligation: Date Signed	Description	Planning Obligation: Total Amount Paid	Progress
19/05898/OUT	Land off Park Road, Malmesbury, SN16 0QW	Outline application for up to 50 residential units, internal road, parking, open space and associated works, with all matters reserved other than access.	£238	21/07/2022	The Owner shall pay the Air Quality contribution prior to CoD		Trigger Not Met
19/05898/OUT	Land off Park Road, Malmesbury, SN16 0QW	Outline application for up to 50 residential units, internal road, parking, open space and associated works, with all matters reserved other than access.	£70,088	21/07/2022	The owner shall pay the Early Years contribution prior to CoD		Trigger Not Met
19/05898/OUT	Land off Park Road, Malmesbury, SN16 0QW	Outline application for up to 50 residential units, internal road, parking, open space and associated works, with all matters reserved other than access.	£7,200	21/07/2022	The Owner shall pay the Open Space & Play contribution prior to CoD		Trigger Not Met
19/05898/OUT	Land off Park Road, Malmesbury, SN16 0QW	Outline application for up to 50 residential units, internal road, parking, open space and associated works, with all matters reserved other than access.	£206,338	21/07/2022	The Owner shall pay the primary Education contribution prior to CoD		Trigger Not Met
19/05898/OUT	Land off Park Road, Malmesbury, SN16 0QW	Outline application for up to 50 residential units, internal road, parking, open space and associated works, with all matters reserved other than access.	£183,520	21/07/2022	The owner shall pay the Secondary Education contribution prior to CoD		Trigger Not Met

Overview and Scrutiny Engagement

15. No engagement has taken place in with overview and scrutiny.

Safeguarding Implications

16. There are no safeguarding implications.

Public Health Implications

17. The built and natural environment is a key environmental determinant of health and wellbeing. Therefore, planning for sustainable development to meet the employment, housing and infrastructure needs of communities helps foster their well-being. Well planned development and good place shaping supports the health and wellbeing of local communities. The design of a neighbourhood can contribute to the health and well-being of the people living there.

Creating a more unified and resilient planning service will positively contribute to good place shaping decisions.

Procurement Implications

18. There are no procurement implications.

Equalities Impact of the Proposal

19. There are no known equalities impacts arising direction from this report. As changes are made to the service, any equalities impacts will be assessed and mitigated.

Environmental and Climate Change Considerations

20. This report has no direct implications for energy consumption, carbon emissions or associated environmental risk management. As changes are made to the service, any environmental implications impacts will be considered and mitigated.

Workforce Implications

21. The purpose of this report is to update the Audit and Governance Committee on the progress made following the Section 106 Audit May 2023. Additional resource has been allocated from within the existing structure and will be considered as a permanent change in the forthcoming restructure of the wider planning service. Any future changes made to the service will be made in accordance with the council's established policies and procedures having regard to HR advice.

Risks that may arise if the proposed decision and related work is not taken

22. This report is to update and therefore there is no decision required.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

23. This report is to update and therefore there is no decision required.

Financial Implications

24. All money collected by Section 106 agreement is allocated to specific projects based on planning policy. Failure to collect Section 106 monies or spend in accordance with the agreed timescale could result in a loss of infrastructure in Wiltshire.

Legal Implications

25. There are no legal implications.

Options Considered

26. There are no proposals as result of this paper as it provides an update from the Commercial and Procurement Team to the Audit and Governance Committee.

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Background Papers

Section 106 Financial Control Final Report May 2023

