

Report of the Head of Economic Regeneration & Planning

Audit Committee – 18 August 2015

S106 AGREEMENTS AUDIT - ACTION PLAN

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| Purpose: | To provide an update on the implementation of the recommendations of the Section 106 Agreements Audit – March 2015 |
| Policy Framework: | City and County of Swansea Unitary Development Plan (November 2008) |
| Reason for Decision: | For information. |
| Consultation: | Legal, Finance and Access to Services |
| Recommendation(s): | It is recommended that: 1) The content of the report be noted. |
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| Legal Officer: | Tracey Meredith |
| Access to Services Officer: | Sherill Hopkins |

1. Introduction

- 1.1 An internal audit of the Planning Control Section was carried out in 2014/15 to assess the procedures and controls associated with Section 106 Agreements (Planning Obligations) within the Authority.
- 1.2 The final report published by the Internal Audit Section in March 2015 identified a “Limited” level of assurance mainly due to the absence of a robust monitoring system to ensure that all income due from Section 106 Agreements is collected and is spent in accordance with the terms of the Agreement.
- 1.3 The issue was highlighted at Audit Committee on 16th June 2015 and subsequently the Chair of Audit Committee wrote to the Cabinet Member for Enterprise, Development and Regeneration requesting an update at this meeting on the implementation of the recommendations of the Internal Audit Section.

- 1.4 This report, therefore, provides further background for Members together with an update on current progress in this respect with specific reference to the action plan which is reproduced as Appendix 1.

2. Background

- 2.1 A mechanism for the receipt and payment of Section 106 contributions has been in place for many years and there is no evidence to indicate that this system has failed or that contributions have not been collected or spent in accordance with the terms of the relevant Agreements or otherwise accounted for.
- 2.2 Since May 2008 a total of 51 S106 agreements have been signed, 29 of which involve financial contributions to the sum of £4,835,136. To-date £2,877,558 has been paid to the Authority with £1,957,578 outstanding as trigger points have not been met or there are outstanding issues to be addressed.
- 2.3 This process, however, involves action at various stages from Planning Services, Legal Services, Finance and the relevant service area in receipt of the contribution be it Housing, Highways, Parks etc. At the time of the audit and in recognition of the need to secure a more robust monitoring process a central Housing Land Availability/Section106 (HLA/S106) Database had already been procured by Planning Services and was in the process of being populated.
- 2.4 This database has now been populated with data relating to all S106 Agreements secured since May 2008 and is in the process of being verified and tested. Moving forward this database includes robust mechanisms to monitor relevant S106 Agreements via completion rates agreed as part of the Joint Housing Land Availability Studies (JHLAS) carried out in accordance with the requirements of Welsh Government guidance provided in TAN1.

3. General Issues

- 3.1 An action plan has been agreed with the Internal Audit Section and is reproduced at Appendix A detailing action to-date in terms of addressing the recommendations of the audit report. Commentary on each recommendation is provided below:

Section 106 Register

- 3.2 The action plan recommended that a public register of Section 106 Agreements should be made available as soon as possible.
- 3.3 In this respect it should be recognised that all S106 Agreements are registered as local land charges and are already available for public inspection in accordance with the requirements of Welsh Office Circular 13/97.

- 3.4 Whilst there does not appear to be a statutory requirement to maintain a separate register, in line with best practice at a number of Local Planning Authorities in Wales a register of Section 106 Agreements signed since 2008 has been placed on the Planning Services element of the Council's public web site. It is recommended that this is updated on a quarterly basis.

Case Files

- 3.5 At the time of the audit inspection it was not possible to locate one manual paper file and it was noted that there appeared to be no mechanism in place to record the movement of files.
- 3.6 Since the introduction of the Idox Documents Management System in September 2013 all documents associated with new applications have been held electronically. Planning applications received since 2008 together with decision notices are also held electronically with all associated documents also held in paper format. Approximately 50,000 historic paper files are held in archived storage with a combination of paper and microfiche for applications received between 1987 and 1948.
- 3.7 Whilst historic files are in the process of being back scanned this is resource intensive and will require a significant commitment to complete given the volume held.
- 3.8 All files are, however, currently retrieved from and returned to archive by staff in the Business Support Team and held by the relevant case officer. An Excel based system has, however, been set up and is in the process of being trialed to ensure that the location of historic archive files is recorded.

Database Records

- 3.9 As detailed above the HLA/S106 data base has been populated for applications dating back to May 2008. A procedure has been drafted and the system is being trialed to ensure details are entered onto the database upon issue of the relevant planning permission following completion of the S106 Agreement and notification by Legal Services.
- 3.10 As part of the proposed procedure an independent check of the details will also be carried out on a quarterly basis when the online S106 Register is updated.

Financial Contributions and Trigger Points

- 3.11 Many financial contributions are made at different stages in the course of a development with trigger points identified in the relevant S106 Agreement. These are recorded within the HLA/S106 Database and in this respect the auditor found that all contributions in the sample tested could be satisfactorily traced.

- 3.12 It was noted, however, that there was no unique reference number to link the HLA/S106 Database to the General Ledger. This issue has been discussed with finance colleagues and a mechanism to include the planning application number within the General Ledger identified. This will be trialed upon receipt of the next S106 payment.
- 3.13 An independent reconciliation will also be carried out on a quarterly basis when the online S106 Register is updated in line with the recommendations of the Internal Audit Section.

Monitoring of Agreements

- 3.14 As stated above a mechanism for the receipt and payment of S106 contributions has been in place for many years, however, in recognition of the need to secure a more robust monitoring process a central HLA/S106 Database has been procured by Planning Services and has been populated with data relating to all S106 Agreement signed since 2008.
- 3.15 Against this background a process for the receipt and payment of contributions has been drafted and will be trialed upon receipt of the next S106 payment to monitor agreements. On this basis S106 contributions will be received by Planning Services, entered onto the S106 database with finance, legal and the relevant Service Area being notified. All requests for payment to Service Areas will be authorised by Planning Services, and entered onto the database and finance and legal notified.
- 3.16 Whilst Finance have previously operated a system to record the receipt and payment of S106 contributions the above process will, it is considered, provide a robust mechanism to monitor this process via the HLA/S106 Database.

Completion Reports

- 3.17 The HLA/S106 Database has the capacity to facilitate the generation of completion report, which will be produced on a quarterly basis when the S106 Register is updated. In addition annual reports on the performance of the Planning Service are already presented to Planning Committee and will in future include an update for members on S106 issues.

IT Controls

- 3.18 Whilst there is no mechanism to prevent amendments to the system the HLA/S106 Database is backed up as part of the Authority's corporate backup routines and is password protected, restricting access to authorised personnel only.

Community Infrastructure Levy (CIL)

3.19 The introduction of the CIL will likely follow the adoption of the Local Development Plan post 2017. The Authority does not (under current legislation) have to produce a CIL Schedule although work is ongoing in this respect by the Authority's LDP Team. The HLA/S106 database does, however, have the capacity to monitor S106 Agreements and the CIL. It is anticipated, however, that additional resources will be required to monitor CIL contributions and S106 Agreements should a CIL Schedule be adopted by the Authority.

4.0 Equality and Engagement Implications

4.1 There are no direct equality implications arising from this report.

5. Financial Implications

5.1 There are no financial implications associated with this report.

6. Legal Implications

6.1 There are no legal implications associated with this report.

Background Papers:

City & County of Swansea Final Audit Report – Economic Regeneration & Planning: Section 106 Agreements 2014/15.

Appendices:

Appendix A – Section 106 Agreements Management Action Plan 2014/15.