

Management of s106/s278 Agreements – follow up

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Cabinet Member: Cllr John Woodman, Cabinet Member for Highways and Transport Division and Local Member: All

1. Summary / link to the County Plan

- 1.1. The purpose of this report is to provide an update to Audit Committee on management and administration of Section 106 and Section 278 agreements prior to a follow up audit scheduled to commence in February and March 2018.

2. Issues for consideration / recommendations

- 2.1. The Committee is asked to note the latest position in response to the audit findings regarding the management and administration.

3. Background

- 3.1. Section 106 (S106) Agreements or Planning Obligations are an established and valuable mechanism for securing planning matters arising from a development proposal. They are commonly used by Local Authorities to bring development schemes in line with the objectives of sustainable development as articulated through the relevant local, regional and national planning policies.
- 3.2. Planning obligations can be provided by developers "in kind" (where the developer builds or provides directly the matters necessary to fulfil the obligation), by means of a financial payment, or in some cases a combination of both. Planning obligations in the form of financial contributions can be made by developers as a one-off contribution towards the total cost, or as a series of payments phased over time, depending on how the payment schedule has been negotiated. In terms of highways obligations, the provision of traffic calming measures, a new roundabout or other junction improvements are a few examples where such an Agreement would be necessary. Highway works can be secured by other means, such as S278 Agreements, and contributions can also relate to transport matters, such as contributions towards bus services.
- 3.3. Development schemes of a significant size that will impact on existing education provision will require a contribution towards school facilities. These payments are usually calculated using recognised formulae based on an estimated number of pupils for primary, secondary, and sixth form education that are likely to be generated from each house that is built. Other types of contribution can include affordable housing, community infrastructure and open space provision, which are the responsibility of the District Council.
- 3.4. Whilst not directly relevant to the management and coordination of s106 agreements it is relevant to point out that infrastructure delivery can also be funded through the use of Community Infrastructure Levy (CIL). Legislation was introduced in 2010 that allows local councils to set a CIL. CIL is the

Government's preferred method of collecting contributions from developers to fund infrastructure such as roads and schools, flood defences, medical facilities, recreational facilities and open space; and it can also be used for maintenance investment. The process for CIL is that money is obtained from the developer via evidence-based rates expressed in a "charging schedule". CIL is to be charged on buildings. Local Planning Authorities need to draw up a list of required infrastructure projects (or types) to deliver the growth strategy for the area and this is normally contained in the Infrastructure Delivery Plan. The Local Planning Authority must issue a 'Regulation 123' list of all infrastructure projects or types to be financed from CIL income. Charging rates must not jeopardise the viability of developments.

3.5. Following an audit into the management of s106 agreements the key findings for the service were;

- There is no formal policy that documents the agreed approach to agreeing and obtaining S106 contributions from developers.
- There is a lack of co-ordination in the recording and monitoring processes for S106 contributions by different sections of the Council, with highways contributions being added to a database.
- There are no defined minimum standards for data entry of the detail of legal agreements into the systems used for monitoring of contributions.

3.6. In response the summary findings above the service has been addressing these through a number of different actions. The findings and summary action are set out below in the paragraphs below.

3.7. **There is no formal policy that documents the agreed approach to agreeing and obtaining S106 contributions from developers.** The management response to this finding stated that there is no formal Policy (to address highway issues) because legislation and development plan documents adopted by Local Planning Authorities and SCC as Highway Authority set a framework within which we must consider planning applications and any s106 obligations. SCC has adopted DfT Guidance on Transport Assessments as local Policy and there is adopted Travel Plan Guidance.

3.8. It was recognised however that there is a need for clarity on the use and application of commuted sums. Commuted sums are those amounts collected from developers for the ongoing maintenance of certain highway infrastructure assets. Commuted sums have always been held in an interest accruing account. A project was completed in the summer of 2016 to create a 'manageable' commuted sums account which entailed the interrogation of 150 plus agreement files and the accumulation of over 2500 data entries. This 'managed' account is now being utilised by the relevant Asset Managers in determining future funding for maintenance of those assets to which the payments relate. A protocol, 'Committed Sums for Highway Infrastructure', has now been produced for use by developers. For many years Somerset County Council, as highway authority, have secured commuted sums from developers as a financial contribution towards the future maintenance of new highway infrastructure delivered by them in the County and have done so with due regard to prevailing national best practice.

- 3.9. Further guidance from The Association of Directors of Environment, Economy, Planning and Transport ADEPT in September 2014 reported that ‘when authorities followed the process and principles (in their 2009 guidance document) and added local supplementary guidance, a robust, auditable methodology had been demonstrated’. Their summary recommendations to authorities were therefore to both adopt their 2009 guidance as best practice but to also consider producing a supplementary guidance document outlining local policy and/or procedures. Whilst Somerset County Council’s current approach to commuted sums is closely aligned to ADEPT’s ‘accepted national standard,’ the recognition of the benefits to all parties of introducing local guidance form the catalyst for a County specific guidance document.
- 3.10. As such the document aims to provide a transparent and consistent approach to the seeking of and calculation of Commuted Sums for developer funded highway assets in Somerset. The guidance outlines the clarity of approach in order to:
- Remove uncertainty and risk for developers at an early stage in the process
 - Provide greater scrutiny to support highway maintenance budgets
 - Enable developments to progress with much more certainty about the overall requirements and commitments for all parties involved
 - Provide a more flexible approach to the adoption of new and alternative ‘non-standard’ layouts without stifling innovation and the desire to create better places to live.
- 3.11. **There is a lack of co-ordination in the recording and monitoring processes for S106 contributions by different sections of the Council, with highways contributions being added to a database, and, there are no defined minimum standards for data entry of the detail of legal agreements into the systems used for monitoring of contributions.** Since the audit a new software system has been procured that enables the better recording of contributions expected and received from Legal Agreements. It was originally envisaged that this system would have been implemented by the end the summer 2017. The new database, MasterGov, provided and hosted by DEF Software, is now reaching the final stages of implementation and will ‘go live’ in January 2018. Data migration issues from the old Atrium System have been hampered by the lack of support and information from Trimble, who purchased the Atrium database software from AtriumSoft. The lack of support from the provider Trimble has delayed the data migration process as SCC officers have had to work through the systems to provide data field mapping so that the data held in Atrium could be migrated to the new MasterGov System. Data migration of information held on the Atrium system was completed and the data was subject to user testing in December 2017. The data transferred appears to be an accurate duplication of the information held on Atrium.
- 3.12. AtriumSoft system was complicated and not particularly user friendly. Any changes to the way information is stored or reported on, including minimum data requirements, requires intervention from the software provider and incurs costs. The new system is much more user friendly and minimum details required for creating datasets can be controlled more easily and by suitably trained SCC

officers. The new system has introduced a list of requirements and minimum standards will be provided for every entry. The MasterGov database suite is the replacement for Atrium. The database suite has been developed by DEF Software as a product for local planning authorities to record and monitor Planning Applications, Highways Consultation Responses, Road Adoptions (S38 and S278) and S106 Legal Agreements.

- 3.13.** The software will be used by Somerset County Council Development Control, Highways Development Control, Estate Roads and Development Implementation teams to record all aspects of the process from Application through delivery to adoption. MasterGov will be used to record data that will be reported on as part of performance indicators applicable to each team and the Service as a whole. There are designated Mandatory Fields within the system, that will have to be completed before records can be saved. This is to ensure that we have sufficient data within the database to provide accurate reports and audits. (Migrated data, from Atrium to MasterGov, may not have all the mandatory fields completed. These will need to be updated and completed as and when new information is added to the record).
- 3.14.** The main aims of MasterGov database suite are to:
- Record all aspects of County Planning Applications; give the ability to provide the statutorily required public and consultee access to all planning applications in an online facility. The system has been developed to provide a full life cycle, workflow driven solution for Minerals and Waste applications as well as County Council developments.
 - Record details of Enforcements and Site Monitoring as well as Appeals details. Past and future visit information can be recorded and reports can be run detailing visit history.
 - The Legal Agreements module has been designed to ensure that we have the capability to manage the obligations and financial implications of S106 and S278 Legal Agreements. From preliminary discussions through to the completed project. We are able to track and govern every aspect of the process ensuring that all work is complete, finances received and allocated and all obligations met.
 - The Road Adoptions module is designed to manage the transition, processes and intricacies of S38 and S278 Adoptions and Advanced Payment Code procedures. It is a logical system that automates processes and enables effective, analytical reporting whilst ensuring milestones are met.
 - The Application Response module is used to handle the planning requests made to Highways as statutory consultees. With automated processes, requests can be forwarded electronically to an allocating officer who then assigns the cases to individual officers. All correspondence regarding a consultation request can be returned electronically the system ensuring records are kept up to date automatically and providing an easy reporting and auditing process.
 - Within the database suite is a Management Dashboard. This will be used to track and manage workloads as well as provide real time reporting to

front line personnel and managers.

- 3.15.** A follow up audit has been requested by the service to consider whether the actions undertaken have addressed the risks identified, provide further guidance to the Service and to inform any future service improvement plans.

4. Consultations undertaken

- 4.1.** Not applicable

5. Implications

- 5.1.** The audit report identified that if management actions were not put in place there was a risk that contributions due to the County Council via legal agreements are not received or the actions from developers do not materialise.
- 5.2.** The actions of the service are designed to address this risk and ensure that the actions recommended by the South West Audit Partnership are addressed.

6. Background papers

- 6.1.** SWAP Section 106 Agreements – final audit report. November 2016.

Note: For sight of individual background papers please contact the report author.