

Section 106 agreements

City of York Council

Internal Audit Report 2015/16

Business Unit: City and Environmental Services

Responsible Officer: Assistant Director – Development Services, Planning & Regeneration

Service Manager: Head of Development & Regeneration

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Status: Final

Reference: 10510/003

	P1	P2	P3
Actions	0	4	0
Overall Audit Opinion	Reasonable Assurance		

Summary and Overall Conclusions

Introduction

Section 106 of the Town and Country Planning Act 1990 relates to agreements regulating the development or use of land.

Agreements under Section 106 are legally-binding and require that provisions be made at the landowner's expense for schools, community centres, open spaces or civil engineering works in connection with the granting of planning permission for development of any size or type.

Upon receipt of the agreed fee from the landowner, the responsible department is notified of the income and is obligated to spend this as detailed within the agreement. With increasing scrutiny on corporate transparency it is becoming ever more important that the council is able to demonstrate the appropriateness of its expenditure.

Objectives and Scope of the Audit

The purpose of this audit was to provide assurance to management that procedures and controls within the system ensure that:

- Section 106 agreements are drawn up as per the heads of terms contained within either the planning officer's report to Committee/Committee minute or the report for a delegated decision
- Accounting records are maintained and retained to support all transactions
- Section 106 funds are only used for the purposes outlined within the agreements

The audit included a review of Section 106 agreements in place since 2012. Arrangements for the monitoring of payments and repayments were not reviewed during this audit. This will now be covered in the 2015-16 Development Management audit which commenced in March 2016.

Key Findings

The main emphasis of audit testing was on ensuring that the final legal deeds drawn up by the council reflected the contributions agreed as part of the planning decision. Only immaterial errors were observed and these occurred in the supporting documents concerning the preparation of the Section 106 agreements. There were no instances in which these errors affected the deeds themselves, in which case there would be reason to suspect that the council has not shown due diligence in their preparation. Other minor errors observed related to the availability of updated documents that would have clarified the financial contributions within the final agreement.

As Section 106 agreements require cross-directorate involvement, it is essential that all parties are kept informed of the progress and status of the agreements. No clear framework was found during the audit to provide assurance that the final deed, as sealed by the council, reflects the specific requirements of all departments involved.

Audit testing of the suitability of accounting records maintained by the council revealed that there is not a central register of all Section 106 agreements entered into by the council. Finance does, however, maintain a monitoring spreadsheet for all Section 106 financial contributions. This spreadsheet was found to be complete, with receipt of all contributions from developers recorded having been recently reconciled to the financial ledger. Maintaining and updating this spreadsheet relies on information being received from Development Management.

No issues were found with the appropriateness of expenditure within the receiving departments. The monitors within departments that were available recorded receipt of monies and matched, in most cases, the central Finance spreadsheet. Whilst discrepancies were found there was nothing to suggest that there is a systematic issue with transferral of contributions to departments and the recognition of receipt of income. However, consideration should be given to the fact that covenants tend towards greater specificity in the more recent agreements (particularly for contributions to transport) and a lack of ongoing monitoring may result in difficulties when accounting for expenditure.

Overall Conclusions

It was found that the arrangements for managing risk were satisfactory with a number of weaknesses identified. An acceptable control environment is in operation but there are a number of improvements that could be made. Our overall opinion of the controls within the system at the time of the audit was that they provided Reasonable Assurance.

1 Framework for monitoring Section 106 agreement progress

Issue/Control Weakness

There is no framework to ensure that the progress of Section 106 agreements is monitored.

Risk

Section 106 agreements are finalised without containing all contributions required by departments.

Unnecessary delays in the preparation and finalisation of the deed.

Findings

Preparation of the deed requires effective communication across directorates. Key stages in this communication involve departments providing instruction to Legal Services on the contributions required as part of the agreement and obtaining subsequent approval of the deed from these departments before it is finalised.

While reviewing documentation on Uniform to ensure that Section 106 agreements are drawn up as per the contributions contained within the planning decision it was noted that there was no framework in place to facilitate monitoring of the progress of each agreement. For older agreements, a pro forma checklist had been completed (though not fully) in some cases but this had not been used to monitor progress for more recent agreements.

Agreed Action 1.1

The Section 106 agreement checklist will be revised as necessary to ensure that obligations sought comply with the CIL Regulations and the checklist will be used to monitor the progress of all Section 106 agreements across departments.

The Planning officer will inform the Economic Development Intelligence Hub of the facilities/contributions being sought to enable it to also seek, wherever possible, to leverage funding from bodies such as Local Enterprise Partnerships in order to maximise the economic benefit of the development.

The new arrangement will also make provision for closer monitoring of the delivery of projects funded through Section 106 contributions to ensure that all expenditure is in accordance with the provisions of the Section 106 agreement.

Priority

2

Responsible Officer

Director of City and Environmental Services

Timescale

31 October 2016

Agreed Action 1.2

Once the appropriate and CIL compliant contributions have been identified by the Planning officer, the Economic Development Intelligence Hub will assess the viability of development schemes in cases where viability is an issue. Where an assessment has to be made as to whether priority should be given to one requirement over another, whether the requirements are scaled down, or whether Planning permission should be refused, this will be made by the Planning department taking into account the particular circumstances of the case and relevant planning policy/guidance.

Priority

2

Responsible Officer

Director of City and Environmental Services

Timescale

31 May 2017

Agreed Action 1.3

A full review of the implementation of this new process in the negotiation and monitoring of Section 106 agreements will be undertaken to establish progress made and lessons to be learned.

Priority

2

Responsible Officer

Director of City and Environmental Services

Timescale

31 November 2017

2 Register of Section 106 agreements

Issue/Control Weakness

There is no definitive list of all Section 106 agreements that the council has entered into.

Risk

At any point in time the council cannot confirm the number of Section 106 agreements it has entered into, leading to a lack of transparency.

The spreadsheet maintained by Finance records only those agreements with financial obligations meaning that non-financial obligations are not actively monitored.

Findings

During audit testing it was found that no overall record of all Section 106 agreements (i.e. those with financial and only non-financial obligations) entered into by the council is maintained. Finance does update and maintain a central spreadsheet of all financial contributions but it does not include those Section 106 agreements which contain only non-financial obligations. Audit testing was, therefore, limited to those agreements requiring financial contributions. Uniform should have the capacity to report this information but the auditor was advised that it is not possible to retrieve a complete list of agreements processed by the system.

Currently, the Finance spreadsheet acts as the central agreement register. However, this record should be provided by – or at least reconciled to – the source application to ensure that all Section 106 agreements are captured and so that the completeness and accuracy of the Finance spreadsheet can be independently validated.

Agreed Action 2.1

As part of the new processes to be introduced in the negotiation and monitoring of Section 106 agreements, a central register of the agreements will be maintained of all financial and non-financial agreements.

Priority

2

Responsible Officer

Head of Development & Regeneration

Timescale

31 October 2016

Audit Opinions and Priorities for Actions

Audit Opinions

Audit work is based on sampling transactions to test the operation of systems. It cannot guarantee the elimination of fraud or error. Our opinion is based on the risks we identify at the time of the audit.

Our overall audit opinion is based on 5 grades of opinion, as set out below.

Opinion	Assessment of internal control
High Assurance	Overall, very good management of risk. An effective control environment appears to be in operation.
Substantial Assurance	Overall, good management of risk with few weaknesses identified. An effective control environment is in operation but there is scope for further improvement in the areas identified.
Reasonable Assurance	Overall, satisfactory management of risk with a number of weaknesses identified. An acceptable control environment is in operation but there are a number of improvements that could be made.
Limited Assurance	Overall, poor management of risk with significant control weaknesses in key areas and major improvements required before an effective control environment will be in operation.
No Assurance	Overall, there is a fundamental failure in control and risks are not being effectively managed. A number of key areas require substantial improvement to protect the system from error and abuse.

Priorities for Actions

Priority 1	A fundamental system weakness, which presents unacceptable risk to the system objectives and requires urgent attention by management.
Priority 2	A significant system weakness, whose impact or frequency presents risks to the system objectives, which needs to be addressed by management.
Priority 3	The system objectives are not exposed to significant risk, but the issue merits attention by management.

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