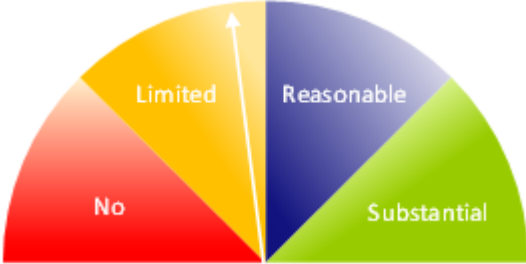


S106/CIL Compliance

Final Report

Issue Date: 7 December 2020

Executive Summary

| Assurance Opinion | | Recommendation Summary | |
|---|---|------------------------|----------|
|  | <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 to the achievement of objectives in the area audited.</p> | Priority | Number |
| | | Priority 1 | 0 |
| | | Priority 2 | 2 |
| | | Priority 3 | 2 |
| | | Total | 4 |

Audit Conclusion

The objective of the audit was to ensure that appropriate arrangements are in place to manage the receipt and expenditure of S106 and CIL contributions. We originally had scheduled to undertake the audit in Quarter 4 however was brought forward to quarter 2 at the request of Members. A number of weaknesses were already known to the service at point of testing, such as the Exacom system not being up to date however work was ongoing to ensure that the system was brought up to date before the end of 2020/21. However, at point of testing these issues were still outstanding and have contributed to a Limited Assurance opinion being offered in relation to the audit objective.

The S106 spend and collection process is monitored and managed by a single S106 Officer with support on community consultation and engagement from the Community Engagement Officer. Although the S106 Officer is very experienced and knowledgeable it is a multi-faceted role with a significant workload. The implementation of Exacom has made administering and managing the process more efficient but it did take a considerable time to set up and the S106 Officer spent almost 12 months populating the system when it was first introduced back in late 2018/19, with the assistance of two temporary officers. This has caused a delay in progressing some of the S106 spend. In addition, during the Covid-19 pandemic, the S106 Officer was redeployed again to assist in the Community Hub. During this time, no S106 demands were raised and there was no community engagement or consultation as the Community Engagement Officer was also redeployed. This has resulted in Exacom not being up-to-date and reports showed that there were actions outstanding back to 2018. In addition, S106 demands have not been raised on a timely basis and there are also demands that require chasing but due to Exacom not being up to date we are unable to confirm the total outstanding. We therefore suggest that the resources required should be reviewed to assess the requirement to manage the backlog and resilience and that the S106 Monitoring/CIL Administrative fund be used to finance any requirements. Once the any additional resource has been agreed, Exacom should also be utilised further to aid in the recovery process. It is important to understand that none of these issues or delays have resulted in having to pay the developers back any unspent S106 contribution.

The Participatory Budget Guide used by Town and Parish Councils is on the EDDC website and provides the process for obtaining funding for Sport, Play and Open Space provision. It requires reviewing and updating to include the whole process until the project is complete. A flow chart of the process would make it easier to follow.

Finally, once Exacom is updated, the Public Facing Exacom should be rolled out as soon as possible. This will allow Parish and Town Councils and other interested stakeholders to access current information on the S106 spend received and due.

Background

This audit was originally planned for quarter 4 however we were asked to bring it forward at the request of the Council Leader to assess the quality of management information and the level of community engagement.

The purpose of the audit is to ensure that EDDC have comprehensive controls to ensure that all planning contributions are collected and then spent in accordance with the agreements in place.

To address the impacts of development Councils seeks contributions from developers in the form of facilities, infrastructure, or financial contributions. Contributions were historically collected through Section 106 Agreements' (after Section 106 of the Town and Country Planning Act 1990). The Government has now introduced the Community Infrastructure Levy (CIL) which allows Councils to raise funds from developers undertaking new building projects in their area, to be used to fund a wide range of infrastructure that is needed as a result of development. The Levy operates alongside traditional Section 106 Agreements as a means of collecting developer contributions.

The EDDC Operational Risk Register has the following low risk relating to the impact of not receiving the contributions due:

The Council does not receive grants and contributions to which it is entitled to meet, or help meet, its expenses having a negative impact on the Council's budget.

The control is stated as Receipt of Section 106 funds and that there is an S106 Officer in post who ensures funds that are due to the Council are charged and that checks are made by accountancy to ensure monies received tied back to agreements.

EDDC use a participatory budgeting process to distribute the S106 funds for sport, play and open space provision. Therefore, the Town and Parish Councils and residents of East Devon are able to actively contribute in their development. We were unable to find any other Council that uses participatory budgeting in this way.

Financial Information

The Project Dashboard in Exacom shows the following data on S106/CIL:

| Type | Potential | Due | Collected | Allocated | Spent | Available |
|------|-------------|------------|-------------|------------|------------|-------------|
| CIL | £5,231,143 | £2,989,570 | £5,397,903 | £3,001,448 | £86,880 | £2,309,574 |
| S106 | £40,570,240 | £575,002 | £20,695,685 | £3,080,790 | £6,460,062 | £11,158,104 |

For CIL, the amounts allocated to the Neighbourhood CIL are as follows:

| Type | Potential | Due | Collected | Allocated | Spent | Available |
|-------------------|-----------|----------|-----------|-----------|-------|-----------|
| Neighbourhood CIL | £924,817 | £548,359 | £861,553 | £788,912 | 0 | £72,642 |

15% of CIL receipts that arise from development in the parish area are allocated to the Neighbourhood CIL. For those Councils with a Neighbourhood Development Plan 25% of CIL receipts will be paid.

The CIL Regulations state that a Town/Parish Council must use CIL receipts passed to it in accordance with Regulation 59A or 59B to support the development of the local council's area, or any part of that area, by funding:

- (a) the provision, improvement, replacement, operation or maintenance of infrastructure; or
- (b) anything else that is concerned with addressing the demands that development places on an area.

For S106, the amounts that are allocated directly to the Parish and Town Councils for Play, Sport and Open space only. The figures are as follows:

| Type | Potential | Due | Collected | Allocated | Spent | Available |
|--------------|-------------------|-----------------|-------------------|-------------------|-------------------|-------------------|
| Sport | £556,453 | 0 | £528,896 | £394,785 | £48,326 | £75,785 |
| Open Space | £2,257,914 | £397,546 | £4,354,148 | £1,838,518 | £1,570,944 | £944,686 |
| Play | £859,721 | £5,428 | £777,939 | £88,653 | £387,402 | £301,884 |
| Total | £3,674,088 | £402,974 | £5,660,984 | £2,321,956 | £2,006,673 | £1,332,355 |

This means that only 35% of S106 collections for sport, open space and play have been spent leaving 41% allocated but not yet spent and 24% available to be spent. £135,855 of these collections have been received up to 10 years ago. There is also £463,626 relating to 74 agreements which have passed their spend deadline. It is important to note that the spend deadline is not written into the agreement and therefore is only an internal target.

The Council charges 5% of the CIL receipts to fund the costs of the administration which currently has £123,535 available. There is also a S106 Monitoring Pot which has £46,124 available. This is used to fund the Planning Obligations Officer and the CIL Officer but there are funds remaining after these have been allocated.

Corporate Risk Assessment

Objective

To ensure that appropriate arrangements are in place to manage the receipt and expenditure of S106 and CIL contributions.

| Risk | Inherent Risk Assessment | Manager's Initial Assessment | Auditor's Assessment |
|---|--------------------------|------------------------------|----------------------|
| 1. S106/CIL contributions are not received by the Council or obligations are not met by developers resulting in reputational damage and financial loss. | High | Medium | Medium |

Scope

As part of our review the following controls were examined:

1. Data is input into the database in a timely, effective and accurate manner to allow appropriate management and monitoring of both the S106 and the CIL agreements.
2. There are clear processes and procedures in place for both staff and developers which are in line with legislation.
3. Reporting and monitoring of S106/CIL is undertaken on a regular basis and includes informing parishes on the receipt of S106 contributions and any delays in their receipt.
4. All relevant stakeholders are involved in the decision-making process and the participatory budgeting process is adhered to.
5. Trigger points are set so that demands are raised and collected on a timely basis.
6. Outstanding demands are subject to effective debt collections process including legal recovery when necessary.
7. The Impact of Covid-19 is understood and is being mitigated.
8. There is adequate resource in place to manage the S106 and CIL process.

We have concentrated on the S106 process and how the funds are used for sport, play and open space provision within the district. We have also undertaken a high-level review of the CIL process. We have not looked at the Affordable Housing Provision.

Findings and Outcomes

Risk 1. S106/CIL contributions are not received by the Council or obligations are not met by developers resulting in reputational damage and financial loss.

Medium

1.1 Finding and Action

Issue

Actions outstanding on Exacom dating back to 2018.

Findings

We found that data is input into Exacom accurately and the issue identified in the previous audit on applications having a missing Ward or Parish is no longer a concern. However, there are a large number of outstanding actions dating back to 2018 and therefore Exacom is not currently up to date, which the team are already aware of. The Primary Stages report shows that the actions outstanding include:

| Year | Total | Check/Email Devon CC to see if actions outstanding | Demand required or needs chasing | Spend needs checking to see if allocated and/or spent | Site Visit required | Miscellaneous |
|-------|-------|--|----------------------------------|---|---------------------|---------------|
| 2018 | 881 | 57 | 87 | 229 | 96 | 412 |
| 2019 | 150 | 7 | 2 | 41 | 2 | 98 |
| 2020 | 218 | 1 | 3 | 37 | 3 | 174 |
| Total | 1249 | 65 | 92 | 307 | 101 | 590 |

There are also 770 agreements where the target is ASAP and these relate to removing Land Charges. However, this was followed up with the Land Charges team and 152 of these agreements have been removed but Exacom has not been updated.

We are unable to state with certainty that all these actions are outstanding as it may be just a case of the action not being removed once completed but this is the report that the Planning Obligations Officer will use to deal with outstanding actions. It is also difficult to ascertain the full impact of these outstanding actions and what the implications is on them remaining incomplete, although some of the financial impact is shown in Finding 1.2 below. The reason for the delay in completing the outstanding actions is mainly caused by the Planning Obligations Officer was redeployed to populate Exacom, input the projects and sort out the finances during late 2018 – autumn 2019 and therefore was not undertaking her usual role. In addition, during the Covid-19 pandemic both the Planning Obligation Officer and the Community Engagement Officer were redeployed to the Community Hub to assist. This meant that very little progress was made during this period either. There was no cover for S106 during the periods when the Planning Obligations Officer was redeployed which caused these actions to remain outstanding for, in some cases, over two years.

There is a CIL administration Fund and S106 Monitoring Fund which is used to fund both the Planning Obligations Officer and Planning Obligations Support Officer. However, there is currently sufficient funding left to consider appointing an officer to assist with the backlog and provide the resilience required.

We also suggest that the Primary Stages Report is run on a regular basis and presented to the Assistant Development Manager and Development Manager to monitor the progress of the outstanding actions and establish whether any additional resource has been effective.

SWAP Ref: 44284

| Agreed Action | | Priority Score | 2 |
|---|---------------------|----------------|--|
| We agree to review the current resources and review the requirement for a temporary officer to be appointed to assist with the backlog of actions We will also instruct the Planning Obligations Officer to provide us with a quarterly report on the status of the outstanding actions – including recovery (see finding 1.2). | | | |
| Responsible Officer | Development Manager | Timescale | Quarterly reports from Jan 2021 Review resource needs and advertise post by end Feb 2021 Appoint: April 2021 |

1.2 Finding and Action

Issue

Not all demands are raised on a timely basis and the recovery processes are ineffective as there are unpaid demands dating back to 2017.

Findings

We are unable to confirm with any accuracy how many demands are due to be raised although the Primary Stages Report indicates that there are 92 demands that either require raising or chasing.

The Balance Sheet Report shows the following data:

| Type of Value | Amount | Number of Covenant |
|-----------------|-------------|--------------------|
| Total Potential | £60,684,908 | 1766 |
| Total Due | £20,823,408 | 961 |
| Total Paid | £20,574,085 | 901 |

Other important data is shown below:

| | | |
|----------------------------------|-------------|-----|
| Total Potential unraised/not due | £40,773,328 | 805 |
| Total due but not received | £510,521 | 61 |

We were advised that the amount 'due but not received' should be correct but they have not been double checked for accuracy and could have been superseded with new permissions.

We were informed by the Planning Obligations Officer that a more accurate method to establish which demands require raising was to review the actions outstanding on the Primary Stages Report. This report showed that there are 92 applications that require invoices raising or chasing and we were advised that no demands have been raised between April and August 2020 during the Covid-19 pandemic.

Total value of these agreements is £1,241,916 but £812,177 has been paid leaving a total of £429,739 that potentially requires raising. This does not include one application which totals £4,663,493 where there has been some payments received but there is currently a demand required for the indexation amount and late payment interest plus 5 months x £999 for monitoring fees which has not yet been raised.

We also ran the S106 Unpaid demands report in early September, and this showed the following demands remain unpaid:

| Year | Value | Number of demands |
|--------------|-----------------|-------------------|
| 2017/18 | £136,819 | 36 |
| 2018/19 | £7,452 | 3 |
| 2019/20 | £60,795 | 10 |
| 2020/21 | £265,086 | 5 |
| Total | £470,153 | 49 |

Exacom has the ability to monitor outstanding debts and can be used to issue reminder letters via the Notices Module. However, the demand raising and recovery process, has not been formally agreed since it has moved from the Accounts Payable function, so this has not been utilised. It should therefore be made a priority to review all the demands outstanding and issue reminders using Exacom where appropriate and this could include using a temporary officer to assist in the raising and chasing of demands where appropriate.

In addition, the outstanding actions on the Primary Stage Report should be reviewed and all demands that are due should be raised.

NOTE: A recommendation has already been made as part 1.1 re. additional resource to support in the management of data which will support in addressing this issue.

SWAP Ref: 44284

| Action | Priority Score |
|--|----------------|
| We will start to utilise Exacom to track the recovery process including using further notices and date tracking. This process relies on having sufficient resource in place so will be reliant on a temporary officer being appointed. | 3 |
| Responsible Officer | Timescale |
| Planning Obligations Officer | By June 2021 |

1.3 Finding and Action

Issue

Participatory Budgeting Guide is out of date and not easily located.

Findings

The main information that is available for Town and Parish Councils to advise them of how the S106 spend process works is the Participatory Budgeting Guide on the website. We were advised by the Planning Obligations Officer that she provides the link direct to the correct part of the website, but it is difficult to find it if you search for it on the website.

In addition, although this is useful information to assist the Town and Parish Council with the process it should be reviewed and updated. The following issues were identified:

- It states that Community Infrastructure Levy (CIL) is due to start soon when it was implemented in September 2016.
- It also states that EDDC are considering expanding the types of open space that the contributions can be used for and this has taken place as contributions are used for open spaces as well as sport and play.

The update should make clear the differences between the S106 and CIL and provide some idea of the timescales involved in the whole process. We also suggest that Parish and Town Councils undertaking the participatory budget process should take minutes at their steering/working groups and publish them on their websites to ensure that the process is open and transparent. We also suggest that reference is made to the benefit of having Neighbourhood Plans in place. This can reduce the time taken to complete the process if consultation has already been undertaken on the open space, sport and play requirements in the Parish or Town and is included in the Plan

SWAP Ref: 44299

| | | |
|--------|----------------|---|
| Action | Priority Score | 2 |
|--------|----------------|---|

We will review and update the Participatory Budgeting Guide, and this will include recommending that Parish and Town Councils should take minutes of the steering/working groups and publish them on their website.

| | | | |
|---------------------|---------------------|-----------|-----------------|
| Responsible Officer | Development Manager | Timescale | By end Jan 2021 |
|---------------------|---------------------|-----------|-----------------|

| 1.4 Finding and Action | | | |
|--|---------------------|--|-------------------|
| Issue | | | |
| Parish and Town Councils are not advised on how much S106 has been collected. | | | |
| Findings | | | |
| Currently, EDDC do not routinely provide the Parish or Town Councils with a report on how much S106 has been collected although they will provide this information if requested. However, they do receive an update on how much CIL has been allocated. | | | |
| We discussed reporting with the Planning Obligations Officer, and she advised that she could produce an update to Parish and Town Councils on how much S106 has been collected. However, with the upcoming public facing module from Exacom soon to be published, this information will be readily available then. Parish and Town Councillors can then extract the information when required. | | | |
| The Public Facing Exacom is working in the test system and is ready to be published once the data is brought up to date. It therefore should be made a priority to ensure that this is completed as soon as possible and then Exacom should be published. | | | |
| <i>SWAP Ref: 44300</i> | | | |
| Proposed Action | | | Priority Score |
| We will ensure that the Public Facing Exacom is made available as soon as we have been given assurance that the Exacom is complete and accurate. | | | 3 |
| Responsible Officer | Development Manager | | Timescale |
| | | | By end March 2021 |

Other suggestions

Overage

The Development Delivery Project Manager introduced a new procedure in January 2020 to monitor those S106 agreements with an overage clause. Prior to this process being implemented EDDC would be relying on the developers to submit the final account which is part of the agreement. A former Housing Delivery Officer was previously monitoring Overage but when she left in 2018 there was a period when it was not being monitored. However, this was picked up the Planning Obligations Officer after a gap when it wasn't being monitored.

The Development Delivery Project Manager confirmed that EDDC have not missed issuing any Overage demands but as the Development Accounts have not been submitted by the developers it maybe that they are due.

The agreements with an overage clause have all been reviewed and recorded them on a table to monitor the status. Due to the Covid-19 pandemic no work has been done on this since March, but the Officer is progressing it from October 2020 and will be issuing stage 1 letters to all developers who have an overage clause and haven't sent in the Development Account and have completed the site.

It was agreed that a full audit trail of actions undertaken on each agreement should be held.

Audit Framework and Definitions

Assurance Definitions

| | |
|--------------------|--|
| None | 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 to the achievement of objectives in the area audited. |
| Limited | Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited. |
| Reasonable | There is a generally sound 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. |
| Substantial | A sound 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. |

Definition of Corporate Risks

| Risk | Reporting Implications |
|---------------|--|
| High | Issues that we consider need to be brought to the attention of both senior management and the Audit Committee. |
| Medium | Issues which should be addressed by management in their areas of responsibility. |
| Low | Issues of a minor nature or best practice where some improvement can be made. |

Categorisation of Recommendations

In addition to the corporate risk assessment it is important that management know how important the recommendation is to their service. Each recommendation has been given a priority rating at service level with the following definitions:

| | |
|-------------------|---|
| Priority 1 | Findings that are fundamental to the integrity of the service's business processes and require the immediate attention of management. |
| Priority 2 | Important findings that need to be resolved by management. |
| Priority 3 | Finding that requires attention. |

Please note that this report has been prepared and distributed in accordance with the agreed Audit Charter and procedures. The report has been prepared for the sole use of the Partnership. No responsibility is assumed by us to any other person or organisation.

If you require the report in an alternative format, please contact SWAP Head Office.