

Date of Meeting 23 March 2023

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Exemption applied: None

Review date for release N/A

Section 106 and CIL Update

Report summary:

The purpose of this report is to advise members on the current position with regard to Section 106 and CIL collection and spend issues. The report follows discussion at a recent Scrutiny Committee meeting and the joint Scrutiny and Overview Committee to consider service plans where concerns were highlighted with current resourcing.

Members will recall that a SWAP audit was undertaken in 2020 and the findings reported to Audit and Governance Committee on the 28th January 2021 with a progress report on the implementation of the agreed actions considered at Members meeting of 29th July 2021. A subsequent follow-up audit by SWAP concluded that all actions had been completed.

This report seeks to update Members on the issues highlighted in the audit and concludes that the issues highlighted have not re-occurred. However issues have arisen subsequently with the resourcing of the spend process which are currently making it difficult to support the town and parish council's in consulting on the spend of Section 106 monies and the spend of monies which is causing some frustration and raises risks for the council.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That Audit and Governance Committee note the current position in terms of S106 and CIL processes and the proposed actions to address current issues highlighted in the report which include:

- a review of staffing for S106 and CIL monitoring and collection work including the role of the S106 Monitoring Officer;
- a review of the current resourcing issues with spend and delivery of S106 funded projects and how these can be unlocked; and
- a review of the information presented through the Exacom Public Facing module to ensure that it is clear and easy to understand.

Reason for recommendation:

To ensure Members are informed of the current position with regard to S106 and CIL processes.

Officer: Ed Freeman – Service Lead – Strategic Planning and Development Management

Portfolio(s) (check which apply):

- Climate Action and Emergencies
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Culture, Tourism, Leisure and Sport
- Democracy and Transparency
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information Audit and Governance Committee Report 28th Jan 2021 - [S106CILAuditandGovernanceReport.pdf \(eastdevon.gov.uk\)](#); SWAP Audit Report - [S106CILFinalInternalAuditReport.pdf \(eastdevon.gov.uk\)](#); Audit and Governance Committee Report 23rd September 2021- [Section 106 and CIL Update.pdf \(eastdevon.gov.uk\)](#)

Link to [Council Plan](#):

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

Background

In December 2020 SWAP completed an audit into the S106 and CIL planning contributions system. 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. The audit noted that a number of weaknesses were already known to the service at point of testing, such as the Exacom system not being up to date and work was ongoing at the time of the audit to ensure that the system was brought up to date before the end of the 2020/21 financial year.

The audit gave a rating of “limited assurance” and a number of actions to address the findings were agreed. These actions were all completed as noted in the SWAP follow up audit in the 21/22 audit work. The key findings and proposed actions of the audit are set out below with a comment on the current position with regard to the issues raised.

Findings, Actions and Progress

Finding 1: The audit identified a large number of outstanding actions on the Exacom system.

Action: It was agreed that we would review resources and look to appoint a temporary member of staff to assist with the backlog of actions by April 2021.

A review of resources was carried out and it was concluded that additional temporary staff were needed to help to get the system up to date and that this could be funded through money held in the S106/CIL admin and monitoring fees held by the Council. Two additional members of staff

were in place for much of 2021 and into 2022 and over half of the outstanding actions were resolved including the most pressing ones. The temporary staff were not replaced when their contracts ended as it was felt that having substantially reduced the number of outstanding actions to a more manageable number the S106 Monitoring Officer would be able to manage the remaining tasks. Finding suitable officers to undertake this work is also very challenging in the current employment market. Unfortunately progress with reducing the number of outstanding tasks since that time has been slow and there remain around 600 outstanding tasks. There were 1249 noted in the audit of 2021. It should be noted that given that there are thousands of obligations being monitored there will always be a significant number of outstanding tasks. Many are minor actions associated with checking whether work has commenced or a key stage reached. Others relate to simply checking that land charges records have been updated or that DCC have received monies owed to them. At worst delays in checking these matters may delay the invoicing and receipt of monies but they do not put the contribution itself at risk. The risk to EDDC is therefore minor but we do need to reduce the number of outstanding tasks.

Unfortunately the S106 Monitoring Officer left the Council in October 2022. We have a temporary monitoring officer in post who continues to work through the outstanding tasks list, however a review of the S106 Monitoring Officer role and resourcing across the S106 and CIL workstreams is needed to determine the resources needed moving forward so that where necessary additional resources can be requested and staff recruited to undertake this work. Due to other staff shortages within the service this review has been delayed but it is anticipated that this will be undertaken in the spring.

Action: It was also agreed that the Planning Obligations Officer would provide a quarterly report on the status of the outstanding actions from Jan 2021.

Managers have access to the system and can generate the report themselves to check on progress and act upon the information.

Finding 2: Not all demands are raised on a timely basis and the recovery processes are ineffective.

Action: It was agreed that we would start to utilise Exacom to track the recovery process including using further notices and date tracking by June 2021.

A new invoicing and recovery process was produced following the audit which clearly documents the relevant stages and actions needed using the Exacom system. This process has been in place since then and work is ongoing to work through the outstanding invoices and overdue payments.

This work faltered following the departure of the Development Manager (August 2022) and S106 Monitoring Officer (October 2022), however meetings with Revenues and Benefits Officers who are working on the debt recovery side of this work are recommencing with the temporary S106 Monitoring Officer and the Assistant Director.

Finding 3: Participatory Budgeting Guide is out of date and not easily located.

It was agreed that we would review and update the Participatory Budgeting Guide, to include recommending that Parish and Town Councils should take minutes of the steering/working groups and publish them on their website. This to be done by the end of Jan 2021.

The participatory budgeting guide was updated and the recommended amendments incorporated into the new guide which was published in January 2021. The guide is available at: [Participatory Budgeting - East Devon](#)

The guide remains in place, however resourcing issues mean that it has not been possible to provide support to town and parish councils seeking to pursue spend on projects in recent months. The departure of the Section 106 Monitoring Officer initially led to some delay but with a temporary officer now in place and up to speed it is considered that it is the long term absence of relevant officers in the communications and engineers teams that is causing most delay. Options for addressing this situation have recently been discussed by the Senior Management Team and a report will be prepared setting out the options and seeking Members views on how this is to be resolved.

Finding 4: Parish and Town Councils are not advised on how much S106 has been collected.

It was agreed that we would ensure that the Public Facing Exacom is made available as soon as we have been given assurance that Exacom is complete and accurate. This to be done by the end of March 2021.

The public facing module for Exacom has been live on our website since July 2021. The system can be found at: [East Devon PFM - Home \(exacom.co.uk\)](#).

It is understood that the data as presented does unfortunately cause some confusion and leads to requests for clarification from officers. The data includes that for habitats mitigation and the non-neighbourhood proportion of CIL which the town and parish councils are not able to spend as these come to the district council and either go to delivery of the joint habitats mitigation strategy or into the central CIL pot for spend on strategic infrastructure. This is something that needs to be reviewed with the software provider to try and remove these fields and simplify the data so that this can be relied on by the town and parish councils and other interested parties.

Conclusion

In conclusion the actions identified in the audit in 2021 were all completed and SWAP were content with this in their follow-up audit. Progress with some of the on-going tasks highlighted by the audit such as addressing the outstanding tasks list and debt recovery have been delayed in recent months due to staff shortages. These issues have also had a knock on impact on the delivery of projects. Officers are acutely aware of these issues and the need to resolve them with discussions taking place to review options in preparation for a report to Members.

Financial implications:

The financial and budgetary implications are laid out in the body of the report.

Legal implications:

There are no legal implications arising from this update report.