

PLANNING ENFORCEMENT REPORT

January - September 2010

Introduction

The purpose of this report is to update the Committee on the work being carried out by the monitoring and enforcement team within Development Services. It includes a summary of the high priority cases, an update on enforcement activity through this year and brief details and work of the Section 106 Monitoring Officer and what has been achieved. The report also identifies information on the resources allocated to the team.

Team Resources

The district is split into two regions north and south. The team is made up of two enforcement officers who cover this area. There is also a new post that has been created, a Section 106 Monitoring Officer. There was until recently also an Arboriculturalist position which worked with the team who dealt with Tree Preservation Orders, high hedges and landscaping. The post holder took early retirement and the works will in future be undertaken by specialist arboriculturalist consultant. The Section 106 post is a new function within Development Services which was implemented in late 2008. This post was created in response to an identified corporate need to improve the Council's monitoring of Section 106 Agreements.

Until recently there have been limited resources available to the enforcement team to fully achieve its expected function within its role in pursuing and dealing with enforcement cases. Since the beginning of 2010, with the support of the Section 106 Officer, the APAS enforcement software programme has been updated. This has equipped the team with a competent package which has allowed a more thorough approach in dealing with matters within the enforcement function.

The current Section 106 Monitoring post is still a temporary position after nearly two years and no decision has been undertaken to define exactly whether this position will be permanent.

Enforcement Report

The majority of the enforcement team's work remains reactive, responding to reports about possible breaches of planning control. This is the first enforcement report which highlights the current workload within enforcement function. It is envisaged such reports will be undertaken on a regular 6 monthly basis in the future. The next report will be submitted in January 2011.

From 1 January 2010 the enforcement team has received 162 cases. Of those cases the enforcement team has been successful in pursuing compliance or has reached a conclusion that it is not expedient to pursue or there has been no breach of planning control in 55 cases.

The following report identifies and provides brief details of 4 Enforcement Notices that have been served during the year 2010 on enforcement situations. This has led to 3 Enforcement Notice appeals. Currently no Breach of Condition Notice, Listed Building Enforcement Notice or Section 215 Notice has been served this year. Court action is currently underway for the unauthorised alteration to a listed building in the south of the area. Similar action may be considered on a further site where unauthorised works has been undertaken to a listed building in the north area. A formal interview under caution has been undertaken with the respective party but no further action is yet being considered until there have been consultations between the case officer and English Heritage.

ENFORCEMENT PERFORMANCE FIGURES 2010

Cases Opened	162
Cases Closed	55

ACTIONS	
Enforcement Notices	5
Breach of Condition Notices	Nil
S215 Notices	Nil
Listed Building Enforcement Notice	Nil
Temporary Stop Notice	Nil
Stop Notice	Nil
Prosecutions (Notice non-compliance)	Nil
Prosecutions (Adverts)	Nil
PCN/S330/S16 Notice	5

APPEALS	
Enforcement Appeal Lodged	4
Enforcement Appeal Dismissed	2
Enforcement Appeal Allowed	Nil
Enforcement Appeal Withdrawn	Nil

ENFORCEMENT NOTICES SERVED 2010

- Land adj Hards Lane, Frognall - Enforcement Notice served in respect to the erection of storage building, siting of six storage containers and creation of hard standing. Issued 21 May 2009. Enforcement Appeal (Public Inquiry) 9 February 2010. Appeal partially dismissed - removal of building and storage containers. Compliance. The hard standing had been in place for over 4 years immune from enforcement action retained. One small container has not been removed. Further letter forwarded to land owner requesting removal. Failure to undertake the measures indicated prosecution proceedings will be instigated.
- Greytrex House, Tinwell Road Lane, Stamford - 2 Enforcement Notices served in connection with two annexes being used as independent residential units. Issued 28 April 2009. Enforcement Appeal (Public Inquiry) 2 March 2010. Appeal dismissed - occupation of both units needs to have a functional link with the

owners of the main premises. Compliance date 16 July 2010. Award of partial cost of £8,819.16.

- Grange Farm, Hougham - Enforcement Notice served in connection with the use of land for car boot sales. Issued 29 April 2010. Compliance with the notice is dependent on whether there has been more than 14 car boot sales conducted in any one calendar year. Enforcement monitoring.
- Mama Liz's Soul Shack, 9A North Street, Stamford – Enforcement Notice served in connection with the making of a material change of use of the premises as restaurant with ancillary bar to music/comedy club and related uses including live and recorded music which is currently operating in the basement of the premises. Served 15 March 2010. Public Inquiry 2 November 2010.
- Land adj Fallows End, Stragglethorpe Lane, Fulbeck Lowfields – Enforcement Notice served in connection with travelers camp on 10 September 2008. Time compliance within 3 months of effective date of 10 October 2008. Enforcement appeal regarding time compliance of enforcement notice. Extended by Planning Inspectorate to read 9 months. Compliance date 21 May 2010. Most recent planning application s10/1081 has recently been refused. The Development Control Committee has recently refused this planning application and authorised both prosecution and injunctive proceedings to be initiated.

THE GENERAL APPROACH TO ENFORCEMENT

Local Planning Authorities have a general discretion to take enforcement action, when they regard it as expedient. They should be guided by the following considerations:-

1. Parliament has given LPA's the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative area (the private citizen cannot initiate planning enforcement action);
2. The Commissioner for Local Administration (the local ombudsman) has held, in a number of investigated cases, that there is "maladministration" if the authority fail to take effective enforcement action which was plainly necessary and has occasionally recommended a compensatory payment to the complainant for the consequent injustice;
3. In considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest;
4. Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site); and
5. Where the LPA's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop (LPA's should bear in mind the statutory time limits for taking enforcement action).

Where Development is Carried Out Without Permission

6. In assessing the need for enforcement action, LPA's should bear in mind that it is not an offence to carry out development without first obtaining any planning permission required for it. New section 73A of the 1990 Act specifically provides that a grant of planning permission may relate to development carried out before the date of the application. Accordingly, where the LPA's assessment indicates it is likely that unconditional planning permission would be granted for development which has already taken place, the correct approach is to suggest to the person responsible for the development that he should at once submit a retrospective planning application (together with the appropriate application fee). It may also be appropriate to consider whether any other public authority (eg the highway or environmental health authority) is better able to take remedial action.

7. While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought. In such circumstances, LPA's should consider using the new "planning contravention notice" to establish what has taken place on the land and persuade the owner or occupier to seek permission for it, if permission is required. The owner or occupier of the land can be told that, without a specific planning permission, he may be at a disadvantage if he subsequently wishes to dispose of his interest in the land and has no evidence of any permission having been granted for development comprising an important part of the valuation. As paragraph 14 of DOE Circular 2/87 (WO 5/87) points out, it will generally be regarded as "unreasonable" for the LPA to issue an enforcement notice, solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the enforcement notice. Accordingly, LPAs who issue a notice in these circumstances will remain at risk of an award against them of the appellant's costs in the enforcement appeal.

See photographs of areas of the district where issues have been highlighted to the enforcement team. The matter of whether it is expedient to pursue and enforce is subjective but each case is dealt with on a case by case basis and on a fact and degree principle.

SECTION 106 MONITORING OFFICER

The Section 106 Monitoring Officer was recruited in October 2008. The post holder is working with all Council departments to set up a new system for the closer monitoring of legal agreements associated with planning permissions. The post was a temporary 6-month contract to resolve historic Section 106 Agreements, of which there were 83 listed at that time, further 6 months extension to the contract has been agreed to the officer's tenure but with the uncertainty to the post not being permanent.

Background

The planning system aims to ensure that the impact of new development on local services and facilities (such as the additional need for play space, educational facilities and road improvements) is addressed as a part of the planning process. This is achieved through the system of planning obligations, under Section 106 of the Town and Country Planning Act 1990.

Planning obligations or 'Section 106 agreements' are legal agreements negotiated by the local planning authority with the developer (or landowner) of a proposed development. They identify the specific local facilities, services or improvements necessary to make the development acceptable in planning terms. Where it is not possible to provide such facilities on-site, Section 106 agreements can specify that developers make financial contributions, or 'commuted sums', to the local authority to enable it to provide the required facilities/services outside the site.

Any developer contributions, or 'commuted sums', received by the District Council are managed by it, in accordance with District Audit guidelines. The Council then uses these sums to provide the required facilities or services.

Monitoring and Spend Arrangements

Section 106 Agreements are listed on a spreadsheet. There are currently 121 Section 106 Agreements with various different obligations, including (but not limited to) commuted sums for Affordable Housing, Education contributions, PCT (Primary Care Trust) contributions, Highway contributions, Play Equipment, Green Area Maintenance and Public Open Space. The Section 106 Agreement on Elsea Park has 19 separate obligations which need to be monitored. The Growth Point applications will have suitably complex obligation agreements which will require careful monitoring with the risk of losing contributions if key trigger points are missed.

Section 106 monies can only be spent on what they were allocated for (monies received to improve education facilities in Grantham cannot be spent on improving education facilities in Bourne).

Monies received have to be paid into an interest bearing account and repaid to the Payer if not used within the required timescale (usually 5 years from the date of payment).

The work of the Section 106 Officer has not only sorted out the Section 106 Agreements but has resulted in the establishment of a reliable and efficient monitoring system for all new agreements. The spreadsheets and procedures operated by the Section 106 Officer have undoubtedly resulted in money due being collected in an efficient and timely manner. In addition, the officer's work has enabled other aspects of the Section 106 system to work more effectively and has meant that the need for other already stretched officers to do Section 106 work has been obviated. Without a dedicated monitoring officer it is likely that there would be a return to the problems of the past, officer responsibilities for Section 106 monitoring are divided between several posts, thus increasing the likelihood that it would be ineffective and considerably increase the risk of SKDC missing out on gaining, the benefits of contributions.

Recommendation

That Members note the performance of both Planning Enforcement and Section 106 Monitoring.

Schedule of S106 Monies Recovered

Oct 2008 to Mar 2009	Apr 2009 to Mar 2010	Apr 2010 to Mar 2011
£239,517.20	£374,183.45	£456,418.50

Total monies received to date: £1,070,119.15 – details below.

Schedule of Monies Paid Direct to Lincolnshire County Council for Education

Oct 2008 to Mar 2009	Apr 2009 to Mar 2010	Apr 2010 to Mar 2011
£106,168.00	£593,561.77	£85,000.00

Total monies received to date: £784,729.77 – details below.

S106 MONIES IDENTIFIED Oct 2008 to Mar 2009

S106 Ref No	Planning App Ref	Site Location	Amount	Received
(64)	SK94/0125	Elsa Park, Bourne (SKDC costs)	£2,500.00	23.01.02
(18)	S02/0216	Land between 55&57 Linchfield Road, Deeping St James (PE)	£2,000.00	09.01.03
(4)	S00/0817	Land Off Station Road, Rippingale (Miller's Close) (Legal Services Fees)	£1,384.00	10.05.04
(1)	S00/0329	Land off Station Road, Billingborough (GAM)	£1,427.00	14.02.05
(5)	S00/0843	Land north of Springfield Road, Grantham (PE)	£6,031.00	13.05.05
(1)	S00/0329	Land off Station Road, Billingborough (AH)	£12,500.00	06.09.05
(39)	S04/1713	Former British Rail Social Club, Huntingtower Road, Grantham (Hudson Way) (PE)	£10,000.00	28.10.05

Recovered via Legal Services (Shelley Hardy/Paul Rushworth)

S106 Ref No	Planning App Ref	Site Location	Amount	Received
(7)	S01/0401	Land at Westborough Lane, Long Bennington (AOS)	£5,190.20	17.11.08
(7)	S01/0401	Land at Westborough Lane, Long Bennington (AH)	£90,000.00	15.12.08
(6)	S00/1003	Land at Bridge End Road, Grantham (PE)	£2,750.00	09.01.09
(27)	S03/0138	Land at Wharf Road, Stamford (Blashfields Place) (PE)	£20,000.00	12.01.09
(62)	S99/1156	Land off Manthorpe Road, Grantham (Langford Gardens) (EDU) (2x£10,000)	£20,000.00	17.03.09
(48)	S05/1288	Land at Spalding Road, Deeping St James (POS & LEAP)	£17,711.00	30.03.09

Also received

S106 Ref No	Planning App Ref	Site Location	Amount	Received
(A)	S07/1323	Wherry Yard, South Road, Bourne (PCT)	£28,024.00	08.10.08
(34)	S04/1083	Grantham Cattle Market & Land R/O 77 & 78 Westgate, Grantham (ART)	£20,000.00	14.10.08

TOTAL RECEIVED BY SKDC **£239,517.20**

Monies paid direct to LCC (Education)

S106 Ref No	Planning App Ref	Site Location	Amount	Received
(39)	S04/1713	Former British Rail Social Club, Huntingtower Road, Grantham	£97,168.00	24.10.05
(50)	S05/1372	Former Lincolnshire Road Car Depot, Huntingtower Road, Grantham	£9,000.00	15.03.09

TOTAL PAID DIRECT TO LCC **£106,168.00**

S106 MONIES IDENTIFIED FROM Apr 2009 to Mar 2010

S106 Ref No	Planning App Ref	Site Location	Amount	Received
(3)	S00/0815	Land off Londonthorpe Lane, Grantham (PE)	£15,000.00	16.04.09
(61)	S99/0930	Land off Londonthorpe Lane, Grantham (PE)	£15,510.00	06.05.09
(47)	S05/0878	Land at Manning Road, Bourne (Browning Court) (AH)	£95,000.00	15.05.09
(47)	S05/0878	Land at Manning Road, Bourne (Browning Court) (TCE)	£5,000.00	03.06.09
(38)	S04/1610	Land off Dysart Road, Grantham (Autumn Park) (TR)	£20,000.00	06.06.09
(21)	S02/1046	Land at Elm Farm, Lilley Street, Long Bennington (PE - Parish Council)	£2,000.00	19.11.09
(24)	S02/1670	Former Quarry Farm Brickworks, Little Casterton Road, Stamford (TR)	£68,000.00	15.03.10
(24)	S02/1670	Former Quarry Farm Brickworks, Little Casterton Road, Stamford (TR)	£22,000.00	25.03.10

Recovered via Legal Services (Shelley Hardy/Paul Rushworth)

S106 Ref No	Planning App Ref	Site Location	Amount	Received
(62)	S99/1156	Land off Manthorpe Road, Grantham (Langford Gardens)(EDU)	£10,000.00	04.06.09
(2)	S00/0756	Land at Bourne Road, Corby Glen (GAM)	£4,233.45	03.07.09
(60)	S99/0623	Land at Doddington Lane, Claypole (AH)	£84,050.00	12.08.09
(62)	S99/1156	Land off Manthorpe Road, Grantham (Langford Gardens)(PE)	£15,000.00	21.10.09
(62)	S99/1156	Land off Manthorpe Road, Grantham (Langford Gardens)(GAM)	£4,440.00	21.10.09

Recovered via Assets & Facilities (Lynne Le Conte)

S106 Ref No	Planning App Ref	Site Location	Amount	Received
	S06/0451	The Still, Rosemary Avenue, Market Deeping	£13,950.00	17.04.09

TOTAL RECEIVED BY SKDC **£374,183.45**

Monies paid direct to LCC (Education)

S106 Ref No	Planning App Ref	Site Location	Amount	Received
(59)	S99/0188	Land off Casterton Road, Stamford (Belvoir Close)	£12,000.00	01.04.09
(50)	S05/1372	Former Lincolnshire Road Car Depot, Huntingtower Road, Grantham	£9,000.00	15.04.09
(50)	S05/1372	Former Lincolnshire Road Car Depot, Huntingtower Road, Grantham	£9,000.00	13.05.09
(45)	S05/0220	Land at Springfield Road, Grantham (Impress Metal Packaging)	£553,828.77	Aug 2009
(50)	S05/1372	Former Lincolnshire Road Car Depot, Huntingtower Road, Grantham	£9,733.00	06.08.09

TOTAL PAID DIRECT TO LCC **£593,561.77**

REFUNDED

(59)	S99/0188	Land off Casterton Road, Stamford (Belvoir Close)(PE) Overpayment – PE in Rutland part of development – forwarded to Rutland	£4,180.00	27.07.09
(2)	S00/0756	Land at Bourne Road, Corby Glen (GAM) Overpayment - mistakenly calculated over 25 years should be 10 years	£6,302.10	16.10.09

S106 MONIES IDENTIFIED FROM Apr 2010 to Mar 2011 (Updated 05.08.10)

S106 Ref No	Planning App Ref	Site Location	Amount	Received
(54)	S06/1128	Land at Former Concrete Works, Spalding Road, Deeping St James (EDU)	£125,514.00	06.04.10
(25)	S03/0024	Land at Dysart Road, Grantham (Newtons Walk) (Legal Services Fees -DoV)	£750.00	29.04.10
(37)	S04/1463	Tesco Stores Limited, Godsey Lane, Market Deeping (CCTV)	£80,000.00	18.06.10
(54)	S06/1128	Land at Former Concrete Works, Spalding Road, Deeping St James (PCT)	£32,400.00	05.07.10
(22)	S02/1169	Land off Springfield Road, Grantham (£60,225.00 – EDU – 40.15%) (£18,067.50 – PE – 40.15%)	£78,292.50	02.08.10
(52)	S05/1691	Land at Spalding Road, Frognall, Deeping St James (EDU)	£139,462.00	05.08.10

TOTAL RECEIVED BY SKDC **£456,418.50**

Other Monies paid direct to LCC

S106 Ref No	Planning App Ref	Site Location	Amount	Received
(64)	SK94/0125	Elsea Park, Bourne (Library Facilities)	£75,000.00	27.05.10
(62)	S99/1156	Land off Manthorpe Road, Grantham (EDU)	£10,000.00	08.07.10

TOTAL PAID DIRECT TO LCC **£85,000.00**

South Kesteven District Council

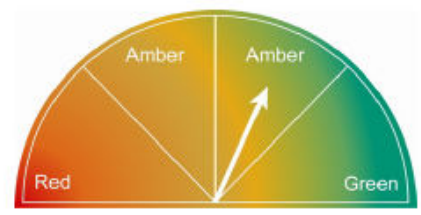
Section 106 (02.10/11)

Internal Audit Report

July 2010

DRAFT

Overall Opinion



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Debrief meeting	21 st June 2010	Auditors	Chris Harris, Director
Draft report issued	05 th July 2010		Rob Barnett, Client Manager
Responses received			Amjad Ali, Assistant Manager Edward Mills, Lead Internal Auditor
Final report issued		Client sponsor	Ian Yates, Strategic Director – Development & Growth Focus
		Distribution	Ian Yates, Strategic Director – Development & Growth Focus Teena Twelves – Corporate Head Sustainable Communities



This review has been performed using RSM Tenon's bespoke internal audit methodology, **i-RIS**.

The matters raised in this report are only those which came to our attention during our internal audit work and are not necessarily a comprehensive statement of all the weaknesses that exist, or of all the improvements that may be required. Whilst every care has been taken to ensure that the information provided in this report is as accurate as possible, based on the information provided and documentation reviewed, no complete guarantee or warranty can be given with regard to the advice and information contained herein. Our work does not provide absolute assurance that material errors, loss or fraud do not exist.

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1 EXECUTIVE SUMMARY

1.1 INTRODUCTION

An audit of Section 106 was undertaken as part of the approved internal audit periodic plan for 2010/11. Section 106 agreements are put in place to mitigate the impact of development and are a condition to planning approval. Any proposed development with greater than 10 dwellings is classed as a major development and therefore consideration is to be given as to whether a Section 106 agreement should be put in place. Planning utilise the Circular 05/2005 government guidance for planning applications and Section 106.

Depending on the proposed development, obligations are incorporated within the agreement with contributions to be made which can be either monetary or non-monetary, for example the developer must contribute a commuted sum of monies for education or install playground equipment. The Planning Team complete the consultation process obtaining contribution levels from bodies including, for example, the Highways Agency.

Planning notify Legal Services to draft a Section 106 agreement with the respective obligations included. Proposed contributions are passed to the developer. If the developer is not willing to meet the level of contributions requested then a development appraisal can be undertaken detailing what the developer is willing or able to pay which is reviewed for reasonableness. Planning put forward recommendations to the Development Control Committee.

The Council currently have approximately 120 Section 106 agreements in place. At the time of the audit there had been £126,264 monies paid to the Council during the current financial year (2010/11).

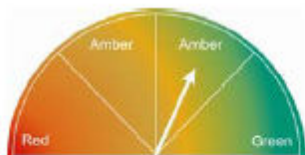
Obligations within the agreement have certain trigger dates, for example contributions to be made, which must be monitored. The S106 Monitoring Officer, who has been in post since October 2008, is responsible for tracking the agreements ensuring that obligations are met in line with the triggers. The S106 Monitoring Officer currently tracks all of the agreements on a manual spreadsheet, with key triggers entered within the email calendar. Developers are given up to the trigger date to meet the obligations at which point the S106 Monitoring Officer will issue standard correspondence tailored to the individual agreement requesting completion in 14 days. A 7 day letter is then issued after this. If obligations are still outstanding after this point then this is referred to Legal Services.

Consideration is currently being given to introducing new software to manage the agreements. Two options are currently being consider, one being a additional module (which would require fees to be paid) for APAS currently used for the planning applications and the other, the Colchester model (no cost involved), is a stand alone access database. Both systems will allow trigger prompts / reminders to be used to monitor development progress and the completion of the associated obligations.

The audit was designed to assess the controls in place to manage the following objectives and risks:

Objective	To provide assurance to the Council that Section 106 agreements are in place and are completed in full for all planning applications.
Risk	Loss of opportunity provided by Section 106 agreements. Section 106 agreements are not in place or completed fully for planning applications.

1.2 CONCLUSION



Taking account of the issues identified, the Authority can take reasonable assurance that the controls upon which the organisation relies to manage this risk are suitably designed, consistently applied and effective.

However we have identified issues that, if not addressed, increase the likelihood of the risk materialising.

The above conclusions feeding into the overall assurance level are based on the evidence obtained during the review. The key findings from this review are as follows:

Design of control framework

- There are currently only ad hoc 106 Group meetings to deal with site specific issues.
- There are no operational guidance notes in place for the Section 106 Monitoring Officers role.

Application of and compliance with control framework

- Obligations had been highlighted as completed, however no evidence could be found to justify that the contribution had been made.

We have also made two suggestions that South Kesteven District Council may wish to consider.

Suggestions Made During the Audit

Legal do not currently hold a register of completed 106 agreements. Once agreed the agreements are issued by Legal Services to all relevant parties including the Section 106 Monitoring Officer. Copies are held by Legal on file. The Section 106 Monitoring Officer maintains a spreadsheet database of 106 agreements and individual obligations to ensure that triggers and associated contributions are monitored.

A sample of 15 Section 106 agreements held on file within Legal Services was compared against the Section 106 Monitoring Officers spreadsheet to ensure that the corresponding obligations had been recorded to be monitored. All 15 agreements sampled had been incorporated within the spreadsheet.

Consideration should be given to Legal Services maintaining a register of completed Section 106 Agreements issued to be reconciled with the Section 106 Monitoring Officers spreadsheet on a periodic basis.

There is a Section 106 agreement check box within the APAS system for application records identifying whether application have a 106 agreement in place. Once checked a date can be entered to establish the date signed / completed.

A sample of 25 obligations from five applications and corresponding Section 106 agreements were reviewed. Upon review of the APAS application records it was found that four from the five sampled did not state that there was a Section 106 agreement in place.

For completeness of application, records within APAS should be updated to reflect completed / signed Section 106 Agreements.

Going forward this may be required for linkage into the 106 module within APAS currently being considered by the Council.

1.3 SCOPE OF THE REVIEW

The objective of our audit was to evaluate the adequacy of risk management and control within the system and the extent to which controls have been applied, with a view to providing an opinion. Control activities are put in place to ensure that risks to the achievement of the organisation’s objectives are managed effectively. When planning the audit, the following controls for review and limitations were agreed:

Control activities relied upon:

- The Council works with SKDC planning department to ensure that Section 106 agreements are in place and provide appropriate support to the local community whenever possible.

Limitations to the scope of the audit:

- Testing will be on a sample basis only.
- Our work does not provide absolute assurance that material error, loss or fraud does not exist.

The approach taken for this audit was a Risk-Based Audit.

1.4 RECOMMENDATIONS SUMMARY

The following tables highlight the number and categories of recommendations made. The Action Plan at Section 2 details the specific recommendations made as well as agreed management actions to implement them.

Recommendations made during this audit:

Our recommendations address the design and application of the control framework as follows:

	Priority		
	High	Medium	Low
Design of control framework	0	2	1
Application of control framework	0	1	1
Total	0	3	2

The recommendations address the risks within the scope of the audit as set out below:

Risk	Priority		
	High	Medium	Low
Loss of opportunity provided by Section 106 agreements.	0	2	1
Section 106 agreements are not in place or completed fully for planning applications.	0	1	1
Total	0	3	2

2 ACTION PLAN

The priority of the recommendations made is as follows:

Priority	Description
High	Recommendations are prioritised to reflect our assessment of risk associated with the control weaknesses.
Medium	
Low	
Suggestion	These are not formal recommendations that impact our overall opinion, but used to highlight a suggestion or idea that management may want to consider.

Ref	Recommendation	Categorisation	Accepted (Y/N)	Management Comment	Implementation Date	Manager Responsible
1	In order to assist in co-ordinating Section 106 agreements and resolving issues, a formal periodic Section 106 Group meeting should be established between key Officers involved in the process, including Planning, Legal, Finance and the 106 Monitoring Officer.	Medium				
2	Periodic management reports should be produced. A break down of expected Section 106 income against actual income received should also be presented.	Low				

Ref	Recommendation	Categorisation	Accepted (Y/N)	Management Comment	Implementation Date	Manager Responsible
3	Obligations should not be highlighted as complete on the monitoring spreadsheet until evidence is received documenting that obligations / contributions have been completed by the Developer.	Medium				
4	Although it is recognised that aspects regarding Section 106 may change in light of the recent election it is recommended a policy should be approved covering the Councils current approach.	Low				
5	Documented procedural guidance should be collated covering the day to day responsibilities of the Monitoring Officer, including but not limited to, maintenance of the agreement register and monitoring / chasing Section 106 agreement obligations.	Medium				
	Consideration should be given to Legal Services maintaining a register of completed 106 Agreements. This can then be reconciled with the Section 106 Monitoring Officers spreadsheet on a periodic basis.	Suggestion				
	For completeness of application, records within APAS should be updated to reflect completed / signed Section 106 Agreements. Going forward this may be required for linkage into the Section 106 module within APAS currently being considered by the Council.	Suggestion				

3 FINDINGS AND RECOMMENDATIONS

This report has been prepared by exception. Therefore, we have included in this section, only those areas of weakness in control or examples of lapses in control identified from our testing and not the outcome of all audit testing undertaken.

	Controls (actual and/or missing)	Adequate Design (yes/no)	Test Result / Implications	Recommendation	Categorisation
Risk: Loss of opportunity provided by Section 106 agreements.					
1	<p>Missing Control</p> <p>Scheduled periodic Section 106 meetings are held to co-ordinate, monitor and highlight 106 agreement issues.</p>	No	<p>The Corporate Head Sustainable Communities confirmed that there is no formal group that meets on a periodic basis to review 106 agreements.</p> <p>There are ad hoc meetings held, however, these are site specific and do not cover a broader scope. A group consisting of key Officers in the process, including Legal Services and Finance could assist in proactively managing the Section 106 agreements.</p>	<p>In order to assist in co-ordinating Section 106 agreements and resolving issues, a formal periodic Section 106 Group meeting should be established between key Officers involved in the process, including Planning, Legal, Finance and the 106 Monitoring Officer.</p>	Medium
2	<p>Missing Control</p> <p>Periodic management reports are produced.</p>	No	<p>Discussions with the Corporate Head Sustainable Communities and Section 106 Monitoring Officer confirmed that there is currently no routine reporting mechanism in place. The Corporate Head Sustainable Communities confirmed that ad hoc requests are made including those from Scrutiny Committee.</p> <p>Discussions with the Section 106 Monitoring Officer confirmed that income analysis could be useful as a reporting tool. For example, the public open space contributions are calculated upon a standard formula and therefore an estimated income receivable could be generated.</p>	<p>Periodic management reports should be produced.</p> <p>A break down of expected Section 106 income against actual income received should also be presented.</p>	Low

	Controls (actual and/or missing)	Adequate Design (yes/no)	Test Result / Implications	Recommendation	Categorisation
3	Evidence is obtained from external bodies to ensure obligations / contributions have been received / spent as intended as per the agreement.	Yes	<p>Some contributions that are incorporated within the Section 106 agreements are made to other bodies for example, a highways agency contribution due to the increased impact the proposed development is to have on the local infrastructure. These are also monitored by the Section 106 Monitoring Officer who obtains evidence or confirmation from the external bodies that the contributions have been received thereby satisfying the obligation.</p> <p>A sample of 25 obligations from five applications and corresponding Section 106 agreements were reviewed. Upon review of the monitoring spreadsheet and documented evidence within the individual agreement files evidence could not be found for two obligations confirming that contributions had been received.</p> <p>In addition, there was no evidence on file to indicate that the monies had been utilised by the external bodies as intended in line with the agreement for three obligations. The monitoring spreadsheet however showed these obligations as being complete.</p> <p>There is a risk that the developer is in breach of the agreement resulting in potential monetary loss impacting on the local community.</p>	Obligations should not be highlighted as complete on the monitoring spreadsheet until evidence is received documenting that obligations / contributions have been completed by the Developer.	Medium

	Controls (actual and/or missing)	Adequate Design (yes/no)	Test Result / Implications	Recommendation	Categorisation
Risk: Section 106 agreements are not in place or completed fully for planning applications.					
4	The Council have a Local Development Policy in place.	Yes	<p>It was confirmed with the Corporate Head Sustainable Communities that the Council do not have an approved policy in place, with the Circular 05-2005 providing key guidance regarding the treatment of Section 106 agreements and the associated obligations.</p> <p>The Council currently have a draft Core Strategy in place which incorporates developer contributions and Section 106 agreements. This has been independently reviewed and an Inspectors report has been provided with recommended amendments. The Corporate Head Sustainable Communities confirmed that these changes have been incorporated and it is due for approval at full Council in July 2010. The Corporate Head Sustainable Communities has acknowledged however, that there are likely to be further changes to Section 106 and proposed tariffs as a result of the recent change in Government.</p>	Although it is recognised that aspects regarding Section 106 may change in light of the recent election it is recommended a policy should be approved covering the Councils current approach.	Low
5	<p>Missing Control</p> <p>Procedural guidance is in place covering the function of the Section 106 Monitoring Officer.</p>	No	The current Section 106 Monitoring Officer holds a temporary position. This involves the monitoring of obligations and triggers within the Section 106 agreements to ensure that contributions are made. The Officer also monitors the receipt of monies and expenditure, as well as liaising with the Developers to identify progress and breaches of set obligations. There is currently no documented guidance in place.	Documented procedural guidance should be collated covering the day to day responsibilities of the Monitoring Officer, including but not limited to, maintenance of the agreement register and monitoring / chasing Section 106 agreement obligations.	Medium