

HERTFORDSHIRE COUNTY COUNCIL

AUDIT COMMITTEE

THURSDAY 11 DECEMBER 2003 AT 10:00 A.M.

Agenda Item No:

2

AUDIT OF HIGHWAYS-RELATED SECTION 106 AGREEMENTS

Report of the Chief Internal Auditor

Author: James Harbord Tel: (01992) 555315

1. Purpose of Report

To inform the Committee of the findings of Internal Audit's reviews of Highways-related Section 106 Agreements, and their recent update review to check on progress with the implementation of earlier agreed recommendations.

2. Background

Under Section 106 of the Town and Country Planning Act 1990, a developer may be asked by the Local Planning Authority (LPA) to enter into a legally binding agreement, to make a contribution towards the cost of additional improvements in relation to the permitted development.

An Internal Audit report on Highways-related Section 106 Agreements was included in the 2003/4 Internal Audit plan at the request of John Wood, Director of Environment, on behalf of the Environment Scrutiny Committee. He requested that particular attention be paid to the enforcement and subsequent implementation of Section 106 Agreements, and to verify that the procedures in place were both effective and efficient.

The report and the priorities for action were considered by the Environment Scrutiny Committee on 21 October 2003. The Committee welcomed the findings of the report and noted that there were improvements being made in accordance with these.

Two issues arose from the debate:

- the speed and turnaround time of Section 106 agreements
- the tracking of the outcomes of Section 106 agreements

It was also suggested that a list of outstanding Section 106 agreements should go to Joint Member Panels.

The Committee agreed that the report should go to the Planning Obligations Topic Group set up by the Resources Scrutiny Committee, and the Committee agreed that a further report should be submitted to their March meeting.

A further unscheduled audit was later added to the 2003/04 Internal Audit Plan at the request of the Director of Environment, following concerns raised by County Councillors Paul Goggins (as Audit Committee Chairman) and Stephen Giles-Medhurst. The scope of this audit was to establish S106 money collected, authorised for expenditure, spent to date and the amount remaining both allocated and unallocated, in respect of:

- 51 Clarendon Road - Watford
- Leavesden developments - Three Rivers.

All the findings of this second audit report on specific Section 106 Agreements provided confirmation of the findings already established in the initial report, and no further recommendations were made.

3. Benefits of Section 106 Agreements

Properly used, a planning obligation may enhance the quality of the development and enable proposals to go ahead which otherwise could be refused.

Some S106 Agreements can involve substantial sums; for instance, negotiations on the Hatfield Aerodrome site secured nearly £10 million of contributions for local transport provision and £2.75 million of local highway improvements.

Other S106 contributions are much more local and of a smaller scale. £1.9 million of contributions have been released and £3 million of highway works scheduled through other Section 106 Agreements over the last three years.

4. Audit of Highways-related Section 106 Agreements

Internal Audit reviewed the systems relating to Section 106 Agreements, and evaluated the continuing adequacy and effectiveness of the systems in operation.

They were generally satisfied with the controls and procedures in place to ensure that S106 Agreements were implemented effectively and efficiently. There were, however, a number of areas of concern surrounding the implementation and enforcement of S106 Agreements.

Whilst S106 Agreements, as part of the Town and Country Planning Act 1990, can be implemented and controlled using procedures and departmental instructions, it is both unreasonable and unrealistic to expect them to be rigidly enforced in every circumstance to a recognised format or formula.

By their very nature, securing, agreeing, collecting and implementing S106 Agreements can be a lengthy process, often taking up to five years to complete. (In some circumstances, such as BAe Hatfield, the process may take up to fifteen years.) This is due to variations to the original application for planning permission, and the changing requirements of the local community and environment.

There is no standard formula on which the value of the contribution or scale of the related development is based. It is largely dependent upon:

- i) the negotiation skills of the individual planning engineer

- ii) being able to justify the scale of the proposed development that the contribution will be used for
- iii) the availability of transport strategy and demographic statistics.

There is a clear split and defined separation of duties with regard to the different sections which actively become involved with the implementation and operation of the development and projects involving S106 Agreements and contributions. For this reason, no one person will be completely conversant with the status, history and individual specifics of the S106 Agreements from conception to completion. However, with records of all live projects being maintained for five years and then archived after completion for a further five years, before controlled disposal, audit and management trails are clearly visible.

With departmental reorganisations, redeployment, some divisional changes in infrastructure and the natural turnover of staff, issues may be lost sight of and implementation of Section S106 applications, collections and arrangements can sometimes be adversely affected. This is largely because, once S106 Agreements are processed via the respective department, there are no feedback mechanisms or loops to confirm successful completion of the task.

Following the Internal Audit report and recommendations of May 1997, a comprehensive database encompassing all pertinent information was devised. The database allowed information to be collected and collated centrally, allowing a system of monitoring to take place including:

- the prompting of timely trigger and collection dates of S106 money from the developer
- the status of all Section 106 monies
- utilisation of S106 monies
- potential use of S106 monies.

The maintenance and the input of data into this database stopped abruptly in October 2001. Consequently, as each process was actioned, the section responsible became almost divorced from the preceding or proceeding stage in the process.

The efficiency, effectiveness, usefulness and practicalities of this system remained undetermined, as were the reasons why its maintenance and use ceased. It was essential that a decision be made with regard to its continued use and who was going to take responsibility for its maintenance.

There were occasions where, even though planning permissions had been approved and S106 contributions agreed, development never actually occurred, so, unless otherwise agreed, the contribution became invalid and had to be returned. There were also circumstances where the intended use of S106 contribution was no longer applicable, so the contribution, depending upon the nature or the agreement, would be diverted locally elsewhere to the benefit of the community and environment as a whole, or refunded back to the developer.

There was no automatic warning or trigger system in place to request the delivery of the agreed contribution by the developer. This caused some concern, since it is

unlikely that the developer will contribute funds unprompted, and care also has to be taken that the correct amount (as per the agreement) is paid.

Once a contribution was approved and made available to draw against, there were no procedures that ensure that the full benefit of this money was utilised and withdrawn against, as appropriate for the project or development for which it was originally requested.

S106 contributions were often used to supplement developments and highway strategies of a much larger scale, or smaller schemes in relation to the development. Because of this, it was difficult to derive an analysis of how such contributions had been spent.

5. Summary of progress and status of recommendations

The attached table summarises the Internal Audit recommendations and the current position in relation to the agreed actions.

6. Financial Implications

Improved systems and procedures should provide management with a clearer understanding of the Section 106 monies due, received, allocated (both unspent and spent), and the unallocated balance remaining. This should ensure that full and proper use can be made of the Section 106 monies agreed. There should then be a reduced risk of:

- the best possible use of Section 106 contributions not being identified
- large sums of unspent Section 106 money having to be returned to the developer
- ambiguous representation of actual funds available for spending
- allocated money remaining unspent
- unnecessary costs to Environment budgets.

7. Conclusion

A proper strategy to implement the Internal Audit recommendations by March 2004 has been put in place, and a project group assembled. Progress made to date in implementing the audit recommendations has been in accordance with the time-scale set out in the response to the audit report. The implementation process, however, must not be allowed to lose momentum, and Internal Audit are confident in the continuing efforts of the Environment Department. Internal Audit will continue to monitor progress with the implementation of the recommendations of their report and will report further on this in their annual report in June 2004.

Table 1: Internal Audit recommendations and progress with agreed actions

Recommendation 1

New Government guidelines are pending regulating the use, development and validity of any negotiated S106 contribution, with the suggestion that a formula may be introduced and operated very much like a tariff system.

This is an ideal opportunity to bring together all aspects of S106 negotiations, agreements, and arrangements. A flow chart illustrating these processes with lines of communication and feedback should be made available.

It is of paramount importance that the procedure becomes a cross cutting departmentally focused document detailing the involvement of all the relative parties. There must also be assurance that all parties involved in the enforcement and implementation of S106, have a clear understanding of what is required. All involved with S106 agreements must be made aware of the new procedures and the role that they play in them. This includes the County Secretary's Department.

Agreed Action	Responsibility	Target Date For Completion	Current Status
Review existing procedures and update in relation to new working practices. Produce a Transportation Planning Obligations document for the Environment Department.	Transportation Planning and Policy Unit - David Humby	December 2003 or when Government advice is published.	<p>Draft Government guidelines just received for consultation response by January 2004. Advice will then follow.</p> <p>Flowcharts showing processes for -</p> <ul style="list-style-type: none"> • S106 Planning Applications are drafted but not yet signed off • developer contributions are drafted and in development. <p>Process Maps showing the planning application process in relation to Herts Highways are drafted and in development.</p>

Recommendation 2

A review of the benefits gained from re-introducing and maintaining AMOS as a central database to control all movement and progress within S106 agreements should be initiated.

A presentation by IMU to all relative parties demonstrating AMOS's capacity and indicating how the efficiency and effectiveness of controlling and spending S106 contributions would be enhanced should be commissioned.

Ownership for the maintenance and upkeep of the database should be formally assigned and referenced in the procedures

Regular reviews of the database information should take place to ensure proper decision making processes are applied as well as maximum use of contributions.

Agreed Action	Responsibility	Target Date For Completion	Current Status
Review existing AMOS database through testing its application and consider alternative options. Update departmental procedures. Consider relationship to SHARP project	Transportation Planning and Policy Unit with Information Management Unit – David Humby and Terry Fox	October 2003.	AMOS database populated with 109 agreements from 2001 to present. Using the inputted data investigations and testing is in progress to identify and verify the adequacy, appropriateness and robustness of using this database system. Linkages to SHARP project have now been evaluated and confirmed as not appropriate as a priority.

Recommendation 3

Applications for any available monies should be structured in a controlled manner, with start and closing dates by which all applications should be submitted.

All applications should be prioritised and discussed on their merits to determine which one would be most advantageous to the community and surrounding area in relation to the original planning application and subsequent development.

Alternatively annual reports should be issued, where if applicable monies could be released to fund and make additional improvements to live works and developments that were not conceived at the time of the initial agreement

Full use should be made of the Amos database to monitor all applications to use S106 money.

Agreed Action Develop system for inviting and prioritising bids for available S106 funds. Report on an annual basis.	Responsibility Transportation Planning and Policy Unit – David Humby	Target Date For Completion March 2004.	Current Status Action assigned
--	--	--	--

Recommendation 4

Wherever possible the recovery of all preliminary costs in preparing and completing S106 Agreements should be built in to the agreement.

Careful judgement should be exercised before commissioning surveys and studies to support and justify various developments.

The use of a risk assessment matrix may be appropriate to reduce any potential associated risks before commissioning the relative study or survey to take place. This should be investigated as a possibility.

Full use should be made of the Amos database to monitor and ensure that where possible all preliminary costs are justified and recoverable from the S106 agreement.

<p>Agreed Action Agree all preliminary costs should be built into the agreement. Consider amended process with County Secretary and include in AMOS database as appropriate.</p>	<p>Responsibility Transportation Planning and Policy Unit - David Humby</p>	<p>Target Date For Completion January 2004.</p>	<p>Current Status Action assigned Work will commence once use of AMOS is fully developed.</p>
---	--	--	---

Recommendation 5

There should be regular steering group meetings to discuss development of projects and S106 spending.

The budget manager should diligently monitor all approved and authorised CS99's to ensure that the development is still valid and the allocated sum of money will be spent and not remain idle.

Finance should be alerted if the contribution is not going to be spent so that the money can be reallocated elsewhere.

Availability of allocated money for spending should be limited to a defined time period, which will ensure its application. This will reduce the amount of allocated but unspent money that is common to most CS99's.

Systems and procedures need to be introduced published and made widely available, e.g. on CONNECT.

Agreed Action	Responsibility	Target Date For Completion	Current Status
Develop robust monitoring system with Finance Unit. Include reports in Quarterly Monitoring Reports on use of funds to be monitored by Steering Group.	Transportation Planning and Policy Unit with Finance Unit. David Humby and Simon Barge.	December 2004.	Action assigned

Recommendation 6

Automated trigger mechanisms or warning systems should be introduced and installed.

Regular forums should be introduced to review pending contributions and make the relevant personnel aware that payment is due as per the original agreement.

Lines of communication between all relative parties should be established and maintained.

With the re-introduction of the AMOS database, a concise set of procedures with a departmental bias and a flow chart showing lines of communication and feedback should be introduced. This will address all issues and concerns contained within this report and its associated findings.

Agreed Action	Responsibility	Target Date For Completion	Current Status
Develop robust information system and link to Recommendation 7.01. Consider opportunity for inclusion in SHARP project.	Transportation Planning and Policy Unit – David Humby	December 2004.	Action assigned

