



Hinckley & Bosworth Borough Council – Internal Audit Report  
**Section 106 Planning Obligations**  
April 2024

Final Report

**mazars**

# Contents

01 Introduction	3
02 Background	3
03 Key findings	4
04 Areas for further improvement and action plan	7
A1 Audit information	12
Statement of Responsibility	13
Contacts	14

## ***Disclaimer***

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## 01 Introduction

A review of S106 Planning Obligations was included in the 2022/23 internal audit plan. The objectives of the audit were to evaluate the adequacy of the system of internal controls and its application in practice with the area under review.

We are grateful to the Compliance and Monitoring Officer for their assistance during the audit.

This report summarises the results of the internal audit work and, therefore, does not include all matters that came to our attention during the review. Such matters have been discussed with the relevant staff.

## 02 Background

Planning obligations, also known as Section 106 agreements, (based on that section of the 1990 Town & Country Planning Act), are legal obligations required between local authorities and developers which are attached to relevant planning permissions to make acceptable developments which would otherwise be unacceptable in planning terms. The obligations seek to secure contributions from developers which are used to offset the impact that their scheme may have on a local community.

Planning obligations are monitored by the Council's Compliance and Monitoring Officer. Once a planning obligation is secured, it is recorded in a database in order to facilitate the monitoring process. A legal fee is charged for the preparation, checking and production of a Section 106 Agreement or Unilateral Undertaking together with securing a Monitoring Fee (from 1 October 2022) for each obligation contained within. These fees are included in the Section 106 Agreement or Undertaking which also includes the triggers for payments.

If a breach of an obligation occurs, the relevant party will be given an opportunity to remedy the breach, failing this, the Compliance and Monitoring Officer will review the breach with the Planning Enforcement / Planning Manager and Legal Services for advice before any action is taken. The Council will work with the relevant party to avoid legal action, however if the relevant party do not co-operate then legal action will be sought.

The Council's internal guidance requires that Section 106 agreements are captured within the monitoring spreadsheet. This spreadsheet documents the planning application reference number, the date of the agreement signed, the amount of monies due from developers, and tracks whether this has been received, spent, or is waiting for a trigger to be met.

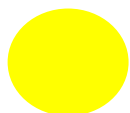
Requests made for Section 106 funds by Parish Councils are made in writing. This should include plans on how to utilise the funds, such as plans or quotes. This request is then presented to the Section 106 electronic forum meeting, which consists of Council Officers and elected councillors, who approve or reject the request. An internal invoice is then raised for the monies to be transferred if acceptable. This is done in accordance with the financial procedure rules and delegations.

The Community Infrastructure Levy Regulations 2010 require local authorities that agree to Section 106 Planning Obligations with developers, to publish their obligations on an annual basis. The Infrastructure Funding Statement for the previous three years are available under the 'Section 106 Planning Obligations section' of the website. The table below illustrates a summary of the agreements with each financial year:

<b><u>Year</u></b>	<b>Total financial contributions received</b>	<b>Total unallocated funds as of the end of year</b>
2019-2020	£539,122	£1,279,701.01
2020-2021	£782,238.16	£1,696,714.52
2021-2022	£1,333,385.64	£1,515,679.13

## 03 Key findings

### Assurance Rating



**Moderate Assurance**

### Rationale

Based on the agreed scope and rating criteria (see **Appendix A1** for the detailed scope and definitions of the assurance ratings), there is **Moderate** assurance over the system of internal control evaluated.

We have identified several areas of significant control deficiency. Further detail regarding the recommendations is in **Section 04** and a summary of key observations is included below.

Priority	Number of Recommendations
High	-
Medium	2
Low	2
<b>TOTAL</b>	<b>4</b>

### 3.1 Examples of areas where controls are operating reliably

#### *Charging and Collection*

- We navigated to the Hinckley and Bosworth Borough Council 'Planning and Building Control' page on the website. We then navigated to the 'Apply for Planning Permission' page which showed a link for Section 106 Planning Obligations. We confirmed that 5 pages of guidance are available for the public and developers which included, 'Planning Obligations Explained'. 'What can planning obligations do?', and forms to agree the draft heads of terms of the Section 106 agreement.
- Internal processes documents were provided such as a Section 106 flowchart. This illustrated how obligations are managed and monitored, beginning at the planning stage where the agreement is issued and signed. Once signed the obligation is captured on the monitoring spreadsheet. The document continues, stating that unpaid obligations are monitored through building control records, site visits, and liaison with the developer. Indexation calculations are raised where necessary.
- Further internal process documents were evidenced in regard to the purposes of Section 106 electronic forum meetings, where requests from Parish Councils are approved.
- The Council website section 'Infrastructure funding statement, planning obligation monitoring and fees' stated the Monitoring Fees that are charged within the triggering for payments. We were advised that these fees were implemented in October 2022, thus we were unable to test if these had been charged. Some examples can be found below:
  - One to 10 dwellings or less than 1,000 square metres gross floor space: £349 per obligation
  - Site inspection fee: £219

- We selected a sample of 11 unfulfilled obligations and 6 fulfilled obligations and sought to confirm that they were recorded accurately. We noted that in 15 of the obligations an invoice was raised to the developer.
- In all 17 obligations we noted that collection of funds was recorded on the Civica financial management system where the date of payment and amount received was stated recorded.

#### *Allocation and Use of Funds including decision making*

- A methodology statement for the Play and Open Space study produced in October 2016 informs where open space contributions are utilised. The guide recommends a 5-step approach, which includes identifying local needs, auditing local provision, setting provision standards, and draft policies.
- A sample of three health obligations was provided where a NHS CCG application for funds was made. The application included the impact any new development would have on the practice, the proposals of the practice to address capacity issues, and the financial contribution they have requested.
- From the sample of six fulfilled obligations which had a total spend, as per the monitoring spreadsheet, of £489, 084.13. We were able to confirm that the obligations were spent on their intended purpose. On one occasion the developer was consulted if the spending purpose could be amended, and this was agreed to.
- Furthermore, we confirmed that five of the six spent open spaces obligations were approved by a Section 106 Forum meeting. One obligation, that related to an affordable housing contribution, was requested on a pro forma on the 15/09/22 by the Strategic Housing and Enabling Officer.
- We confirmed that a spreadsheet exists which monitors the obligations and unilateral undertakings the council currently has in place. The obligations can be filtered by whether they have been spent, received, applications have expired, or that the council is waiting on triggers to be met. The spreadsheet further differentiates on who the obligations are held for, for example the police, open

spaces, or the National Trust.

#### *Performance and Management Reporting*

- We were advised that performance information is provided to the scrutiny commission, which is composed of elected councillors. We reviewed the minutes of the meeting on the 10<sup>th</sup> November 2022 and 27<sup>th</sup> January 2022. Within the minutes the infrastructure funding statement and progress on Section 106 contributions was provided. In the latter meeting a representative from Leicestershire and Rutland CCG provided an update on Section 106 health contributions.
- The Infrastructure Funding Statement 2019-20, 2020-21, and 2021-22 were available on the Section 106 Planning Obligations section of the website. These reports set out a summary of the Section 106 agreements of the year
- We confirmed there is a documented procedure in place on the monitoring process flowchart if a developer does not pay the obligation. Finance would produce reminders and identify this within their monthly aged debtor report. The planning team would request the legal team to get involved and begin recovery action. A payment plan can be negotiated if necessary. We were provided with one example where a payment plan was formulated.

### **3.2 Risk Management**

The risks most relevant to Section 106 Planning Obligations are:

- Lack of monitoring of trigger points could result in contributions not being collected
- Developments remain unacceptable in planning terms
- S106 funds are allocated to projects that are not set out in the relevant agreements, and the effective use of scarce capital is not maximised
- Fraud or misappropriation of S106 contributions
- Poor decision making resulting in financial loss to the council and failure to achieve desired objectives
- Poor project performance is not identified or rectified
- Financial loss arising from requirement to return unspent contributions



We reviewed the corporate risk register at Hinckley, however there were no risks that were associated with Section 106 agreements. Likewise, we also reviewed the planning risk register, although no risks regarding Section 106 were mitigated for.

### 3.3 Value for Money

Value for Money (VfM) considerations can arise in various ways and our audit process aims to include an overview of the efficiency of systems and processes in place within the auditable area.

We found that the monitoring spreadsheet contained detailed information regarding the developer and the obligation information, however, on some occasions the key trigger information was not always stated. This may lead to funds not being received on time. We have raised a recommendation in relation to this in Section 04.

Providing value for money is important, and it is best practice for invoices to be raised to developers where possible so that an audit trail can be kept. We noted two anomalies where an invoice was not raised.

- 13/00147-ful-dac6: In this case an invoice was not raised as this was received in cash via cheque.
- 07/01360-FUL-dac1: This obligation dates to 2008 and no invoice was raised.

### 3.4 Sector Comparison

From our experience across our client base, we are seeing pressure on resources, and higher service demands have resulted in challenges to the existing control environment. This often results in increased challenges to the decision-making process where conflicting priorities exist and need to be balanced with effective risk management.

#### *Unfulfilled Obligations*

During the audit we found that there were a number of unfulfilled obligations. Unfulfilled obligations are monies received from developers, but which have not been spent on an agreed project. This is similar to peers across the country where obligations may not be spent, and in some cases where the clawback date has passed.

#### *Monitoring*

We also note the councils use a variety of monitoring systems, such as spreadsheets, to track their Section 106 obligations. During our fieldwork at Hinckley, we found that on occasion the key trigger measure, which allows monitoring of when funds can be received, was incomplete. Further details of this can be found in Section 4.

#### *Policies and procedure*

It is considered good practice to have updated policies and procedures and in the past at other local authorities we have noted that customer guidance may not be reviewed and updated. This could be information located on the Council website. Furthermore, we have also found in the past that others Council may not have a set of approved policies or procedure for officers to follow. However, at Hinckley we found the website to have clear and up to date information for the public and developers to read.

## 04 Areas for further improvement and action plan

Definitions for the levels of assurance and recommendations used within our reports are included in Appendix A1.

We identified a number of areas where there is scope for improvement in the control environment. The matters arising have been discussed with management. The recommendations are detailed in the management action plan below.

Ref	Observation/Risk	Recommendation	Priority	Management response	Timescale/ responsibility
4.1	<p><b>Transfer of Land Delays</b></p> <p><i>Observation:</i> Within Section 106 Agreements, maintenance provisions are released by the developer and spent by the Council. The purpose of these is to maintain the area to which the agreement relates for a number of years.</p> <p>From a sample of 11 unfulfilled obligations, we enquired as to why these had not yet been spent. We were advised on four occasions that funds have not been spent as there have been land transfer delays from the developer to the Council, before the maintenance funds are to be spent.</p> <p>We were advised that for one case both the provision and maintenance funds received have not been spent due to delays in land transfers:</p> <ul style="list-style-type: none"> <li>12/00341/FUL/15/01095/CONDIT: This obligation provided £60,208.20 for Waterside Park Open Space Improvement Contribution and £29,340 of this sum is for maintenance</li> </ul>	<p>The Council should consider adding a provision to Section 106 Agreements where a transfer of land is concerned so that there is a reasonable timeframe in which that transfer occurs.</p>	Low	<p>Agree with recommendation and low priority rating.</p> <p>S106 Agreements to include a clause for transfer to be completed within a timeframe to assist.</p>	<p>With immediate effect</p> <p>Legal Services / Case Officer / Compliance &amp; Monitoring Officer</p>

Ref	Observation/Risk	Recommendation	Priority	Management response	Timescale/ responsibility
	<p>which was received fully by January 2016. The clawback date for this agreement is 10 years. We were advised that this has been in progress for a long time and that the Council aims for the transfer to be completed in the next six months. We were further advised that members of the Scrutiny Committee are aware of this obligation.</p> <p>In the following three cases we were advised the maintenance provisions have not been spent due to land transfer delays:</p> <ul style="list-style-type: none"> <li>• 17/00964/FUL: This obligation of £47,876.23 was received in October 2019. We were advised that Burbage Parish Council are waiting for the land transfer.</li> <li>• 10/00518/OUT: This obligation of £222,184.22 was received in June 2014. Whilst there is a clawback upon the tenth anniversary of the development, we were advised that the developer is aware of situation. When the land is transferred, the money can then be used to maintain the area.</li> <li>• 13/00147/FUL 14/00163/CONDIT £33,905.48 was received in September 2014. We were advised that this transfer is in progress.</li> </ul>				



Ref	Observation/Risk	Recommendation	Priority	Management response	Timescale/ responsibility
	<i>Risk:</i> The Council faces delays in land transfers on open spaces that it wishes to maintain.				
4.2	<p><b>Unfulfilled Section 106 Agreements</b></p> <p><i>Observation:</i> Unfulfilled obligations are monies received from developers, but which have not been spent on an agreed project.</p> <p>We tested 11 unfulfilled Section 106 Agreements to provide clarity on why they had not been spent.</p> <p>We identified one obligation dating back to 2008, had not yet been spent:</p> <ul style="list-style-type: none"> <li>07/01360/FUL. This was a health contribution of £12,829.00 which was received in October 2008.</li> </ul> <p>We were advised that the Council is aware of this obligation and that there is no clawback date.</p> <p><i>Risk:</i> The value of contributions may fall year-on-year as they are not being spent.</p> <p>Local communities may not receive the enhancements promised to them within the agreement.</p>	The council should ensure clawback dates are added to Section 106 Agreements where they may be risk of non-expenditure.	Low	Agree with recommendation and low priority rating. Dates will be added to the agreements, where appropriate, going forward.	With immediate effect  Legal Services / Case Officer / Compliance & Monitoring Officer
4.3	<p><b>Evidence of Funds Spent</b></p> <p><i>Observation:</i> The Section 106 Monitoring Procedure states on page 4 that Play and Open Space payments will be made on</p>	The Council should ensure that funding is not released to Parish Councils and other contribution users, until full evidence is provided.	Medium	Agree with recommendation and medium priority rating  Review to be undertaken to change process for release of	6 months  Compliance & Monitoring Officer

Ref	Observation/Risk	Recommendation	Priority	Management response	Timescale/ responsibility
	<p>the basis of “Orders raised or bills from contractors/suppliers in respect of the scheme”.</p> <p>We sampled six fulfilled Section 106 obligations, five of which are in relation to Parish Councils, to assess whether they have been spent and evidenced adequately.</p> <p>We noted on one occasion that whilst evidence of screenshots of the play area was provided, a supplier invoice was not.</p> <p>14/00503/FUL: This obligation was for play and open spaces totalling £82,403.92 and payments were received in June 2015 and November 2016. Whilst photographs of the play area and the opening ceremony were provided, we could not locate the suppliers invoice that the Parish Council had paid.</p> <p><i>Risk:</i> Where evidence of fund spent is not provided in accordance with the Monitoring Procedure, there is a risk that funds are spent inappropriately.</p>			S106 contributions. Going forward funding will not be released until full evidence is provided.	
4.4	<p><b>Monitoring of Key Triggers</b></p> <p><i>Observation:</i> Key triggers are instances within Section 106 agreements where once met, payments need to be transferred to the Council by the developers.</p>	The Council should ensure that key triggers within the monitoring spreadsheet are documented once the Section 106 is added.	Medium	Agree with recommendation and medium priority rating. Key triggers will be documented on the monitoring spreadsheet going forward.	With immediate effect  Compliance & Monitoring Officer

Ref	Observation/Risk	Recommendation	Priority	Management response	Timescale/ responsibility
	<p>During our fieldwork we assessed whether key triggers within the monitoring spreadsheet are monitored.</p> <p>We noted on the monitoring spreadsheet that there were 638 entries for Hinckley Borough Council Obligations that have been spent, received, or expecting that the trigger will be met. On 422 of these entries the trigger for when the payment by the developer is due was not present. 180 of these 422 have been spent.</p> <p>We were advised that the key triggers column was added in August 2020 to improve monitoring. We confirmed this as we were provided with the old monitoring spreadsheet where Obligation details and key triggers of payment were documented in the same column.</p> <p>Therefore, since 2020 we could locate 239 obligations which were received, spent, or application made. 53 of these obligations did not have the trigger stated.</p> <p><i>Risk:</i> Key triggers are not being documented or monitored which may lead to funds not being received by developers.</p>				

## A1 Audit information

Audit Control Schedule	
<b>Client contacts:</b>	Ashley Wilson: Head of Finance Chris Brown: Planning Manager Lesley Keal: Compliance & Monitoring Officer
<b>Internal Audit Team:</b>	Peter Cudlip: Partner Sarah Knowles: Senior Audit Manager Lovepreet Dhillon: Internal Auditor
<b>Finish on-site / Exit meeting:</b>	14 March 2023
<b>Draft report issued:</b>	5 April 2023
<b>Management responses received:</b>	11 April 2024
<b>Final report issued:</b>	16 April 2024

Report Distribution List		
Report	Name	Job Title
Draft & Final	Lesley Keal	Compliance & Monitoring Officer
Draft & Final	Chris Brown	Planning Manager
Draft & Final	Sharon Stacey	Director (Community and Development Services)
Draft & Final	Ashley Wilson	Head of Finance (Section 151 Officer)
Final	Bill Cullen	Chief Executive

## Scope and Objectives

Audit objective: Our objective is to provide assurance that HBBC has effective controls in place over Section 106 processes.

Our audit considered the following risks relating to the area under review:

- Charging & Collection
  - Lack of monitoring of trigger points could result in contributions not being collected
  - Developments remain unacceptable in planning terms
- Allocation and Use of Funds including decision making
  - S106 funds are allocated to projects that are not set out in the relevant agreements, and the effective use of scarce capital is not maximised
  - Fraud or misappropriation of S106 contributions
  - Poor decision making resulting in financial loss to the council and failure to achieve desired objectives
- Performance and Management Reporting
  - Poor project performance is not identified or rectified
  - Financial loss arising from requirement to return unspent contributions

The objective of our audit was to evaluate the adequacy of key controls and the extent to which controls have been applied, with a view to providing an opinion on the extent to which risks in this area are managed. In giving this assessment, it should be noted that assurance cannot be absolute. The most an Internal Audit service can provide is reasonable assurance that there are no major weaknesses in the framework of internal control.

The limitations to this audit were that testing was performed on a sample basis and as a result our work does not provide absolute assurance that material error, loss or fraud does not exist.

Definitions of Assurance Levels	
Level	Description
<b>Substantial</b>	The framework of governance, risk management and control is adequate and effective.
<b>Moderate</b>	Some improvements are required to enhance the adequacy and effectiveness of the framework of governance, risk management and control.
<b>Limited</b>	There are significant weaknesses in the framework of governance, risk management and control such that it could be or could become inadequate and ineffective.
<b>Unsatisfactory</b>	There are fundamental weaknesses in the framework of governance, risk management and control such that it is inadequate and ineffective or is likely to fail.

Definitions of Recommendations	
Priority	Description
<b>High (Fundamental)</b>	Significant weakness in governance, risk management and control that if unresolved exposes the organisation to an unacceptable level of residual risk.
<b>Medium (Significant)</b>	Weakness in governance, risk management and control that if unresolved exposes the organisation to a high level of residual risk.
<b>Low (Housekeeping)</b>	Scope for improvement in governance, risk management and control.

## Statement of Responsibility

We take responsibility to Hinckley and Bosworth Borough Council for this report which is prepared on the basis of the limitations set out below. The responsibility for designing and maintaining a sound system of internal control and the prevention and detection of fraud and other irregularities rests with management, with internal audit providing a service to management to enable them to achieve this objective. Specifically, we assess the adequacy and effectiveness of the system of internal control arrangements implemented by management and perform sample testing on those controls in the period under review with a view to providing an opinion on the extent to which risks in this area are managed.

We plan our work in order to ensure that we have a reasonable expectation of detecting significant control weaknesses. However, our procedures alone should not be relied upon to identify all strengths and weaknesses in internal controls, nor relied upon to identify any circumstances of fraud or irregularity. Even sound systems of internal control can only provide reasonable and not absolute assurance and may not be proof against collusive fraud. The matters raised in this report are only those which came to our attention during the course of our work and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Recommendations for improvements should be assessed by you for their full impact before they are implemented. The performance of our work is not and should not be taken as a substitute for management's responsibilities for the application of sound management practices.

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