



MALDON DISTRICT COUNCIL

FINAL INTERNAL AUDIT REPORT

MANAGEMENT OF S106 FUNDS
OCTOBER 2023

Design Opinion	 Moderate
Design Effectiveness	 Moderate

IDEAS | PEOPLE | TRUST



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DISTRIBUTION

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BDO LLP APPRECIATES THE TIME PROVIDED BY ALL THE INDIVIDUALS INVOLVED IN THIS REVIEW AND WOULD LIKE TO THANK THEM FOR THEIR ASSISTANCE AND COOPERATION.

REPORT STATUS

Auditors:	Aaron Winter, Director and Chief Audit Executive Andrew Billingham, Audit Manager Chris Andre, Audit Manager Nadine Turner, Assistant Manager
Dates work performed:	July 2023 - August 2023
Draft report issued:	25 September 2023
Final report issued:	18 October 2023

EXECUTIVE SUMMARY

CRR REFERENCE: R5

Design Opinion



Moderate

Design
Effectiveness

Moderate

Recommendations



SCOPE

BACKGROUND

- ▶ The planning authority may require developers to enter into a legal undertaking to pay for, or provide, certain facilities within their development before planning permission is granted. These planning obligations under the Town and Country Planning Act 1990, are known as Section 106 (s106) agreements. They are used to help offset the pressure of new developments with improvements to local infrastructure and facilities.
- ▶ Additionally, local planning authorities are expected to use all of the funding they receive in accordance with the terms of the individual planning obligation agreement. A planning obligation can be subject to conditions, it can specify restrictions definitely or indefinitely, and in terms of payments the timing of these can be specified in the obligation. If the s106 is not complied with within an agreed period of time, it is enforceable against the person that entered into the obligation and any subsequent owner. In case of a breach of the obligation the authority can take direct action and recover expenses.
- ▶ The effective use of Section 106 is a key factor for ensuring that the infrastructure, facilities, and services necessary for sustainable communities, are in place. As of July 2023, the total funds held by the Council amount to £2.19m.

PURPOSE

- ▶ The purpose of the audit was to review and assess the effectiveness of the management of Section 106 funds. This included the collection of payments against the legal agreements and ensuring funds are appropriately allocated.

AREAS REVIEWED

- ▶ We assessed the guidance documentation available relating to s106 funds collection, management and use.
- ▶ We reviewed a sample of s106 agreements to see if they could be allocated, were dated and signed.
- ▶ We assessed how agreement trigger points are monitored and managed and whether roles and responsibilities were clear regarding the overall management of s106 funds at the Council.
- ▶ We tested a sample of S106 agreements to establish whether funds were being allocated and used as per the agreements, for example externally allocated for Health and internally allocated to affordable housing projects. Also, ensuring there was a robust authorisation process for releasing funds.



AREAS OF STRENGTH

- ▶ Government guidance requires the Council to produce a yearly Infrastructure Funding Statement (IFS) no later than 31st December each year, this is published on the Council's website, and clearly details the s106 income and expenditure for the year. In 2022/23 the income was £1,110,232.00 and expenditure was £416,203.98. Types of funding include affordable housing, youth facilities, open space, and health.
- ▶ There is a dedicated function responsible for s106 agreements within the Council, this team have made improvements to the process over the last couple of years. There is an excel master spreadsheet which is the source document and details the agreements, clauses, trigger dates, payments in, and allocation of payments out. This spreadsheet is manually updated once an agreement has been received and can be easily filtered and is colour coded for ease of use. There are currently 47 active agreements listed on the spreadsheet.
- ▶ The Head of Service role is policy and implementation, and as part of this monitors the housing in the district, therefore is aware of all housing completions which can feed into the recovery of s106 funds.
- ▶ There are regular monthly meetings between the Planning Policy and Implementation team and Finance. The excel master spreadsheet is reconciled against s106 payments received and posted on the finance ledger that is shared in a separate spreadsheet to see if there are any variances. This process has been in place for approximately a year and is working well according to both parties. We compared the information on both spreadsheets for accuracy and no differences were identified.
- ▶ There is clear information for developers on the Council website regarding s106 agreements under Planning and Building Control. So relevant information is publicly available.
- ▶ All s106 agreements sampled tested were recorded on the master spreadsheet and were in line with the terms of the agreement, so the funds can be retrieved/managed. The s106 agreements were also held as a record and were dated and signed accordingly.
- ▶ Allocation of s106 funds were assessed to establish whether they had been allocated/spent as per the terms of the agreement. In all cases sampled the funds were correctly allocated.
- ▶ Reporting on s106 performance is sent to the Performance Governance and Audit Committee twice a year, so there is clear oversight.



AREAS OF CONCERN

- ▶ Trigger points were not always documented in the master spreadsheet limiting the Council's ability of proactively requesting the funds due (Finding 1 - Medium)
- ▶ Supporting documentation was not always available for the authorisation of s106 funds, and greater clarity is required on due diligence requirements of the secondary authorisation signature (Finding 2 - Medium)
- ▶ There is no review process in place for standard operating procedures, ensuring they remain fit for purpose (Finding 3 - Low).



CONCLUSION


Overall, the Council has established a control framework for managing s106 funds. This is a manual process so will be subject to human error. However, there is a robust reconciliation process in place between the team and Finance so any variances can be detected and investigated quickly. We compared the information documented for accuracy and no differences were identified. It is worth noting that the process has evolved over the last couple of years with a change in members joining the Council and running the s106 process.

However, we identified an inconsistency in documenting trigger points, authorisation documentation was not always evident and there was no review process for standard operating procedures.

Therefore, we have concluded moderate assurance for control design and operational effectiveness.

DETAILED FINDINGS

1 Financial Trigger Points

TOR Risk:	There are no processes in place to monitor for developer trigger points as to when contributions become due
Significance	 Medium



FINDING

Trigger points are points throughout the s106 agreements where a payment should be made to the Council. These are monitored through the master spreadsheet, linking in with the housing master spreadsheet and are identified via a manual filter.

The Local Plans and Implementation team review the clauses in the spreadsheet and contact the developers at the appropriate time. If indexation applies to the agreement, they work out the indexation and write to the developers for agreement of the costs, then send an invoice. Occasionally a developer may contact the Council directly and ask them to raise an invoice prior to the council contacting them.

We reviewed five s106 agreements to check for examples of letters/invoices sent at trigger points to retrieve payment. We found:

- One agreement (20% of our sample), 21/00702/FUL (signed 05/09/22) had a payment of £10,810.00 due prior to occupation which did not include a trigger date. Therefore, it is unclear when the Council should be raising an invoice for payment.
- Two agreements (40% of our sample) had no date of commencement or trigger date documented on the master spreadsheet; however, the relevant payments have been made. The developer had paid prior to an invoice being raised.

The risk of not defining trigger dates may lead to a failure to obtain s106 payments in a timely fashion, potentially adding an administrative burden to the team as agreements may need to be reviewed again to establish the appropriate time frames for payments, as well as limiting the Council's ability of recovering payments due.



RECOMMENDATION

- a) Council to explore further controls or measures to reconcile and monitor the completeness of information in the master spreadsheet, for example proactive inspection of sites.
- b) Triggers not documented on the master spreadsheet should be reviewed and a trigger date should be entered for monitoring purposes. If a date is not specified, by the developer then Building Control information should be used to add a provisional/estimated date, this will enable proactive planned site visits.
- c) Enhance the master spreadsheet by introducing a traffic light system to show when a trigger point is approaching. This could be automated using specified timeframes to inform the gradings.
- d) Consideration should be given to introducing a software support system which would automate part of the process, such as Acolaid/Arcus, especially if the Community Infrastructure levy (or its replacement) is introduced in the future.



MANAGEMENT RESPONSE

a) An additional column has been added onto the Housing Master Spreadsheet which will indicate that there is a S106 linked to that planning permission. This will mean anyone looking at the Housing Master Spreadsheet will know to cross-check the triggers on the S106 Master Spreadsheet; it has also been colour shaded to stand out. As part of the Service Delivery Phase 2 Restructure Proposal for Change, the Planning Enforcement team is going to have an additional member of staff to work as a Compliance/Site Visit Officer. This is being part-funded from the monitoring fees from S106 which will enable part of their role to visit sites with S106 agreements and count the completed houses, this will, in turn feed back into the trigger monitoring on the agreements.

b) An additional column has been added onto the Housing Master Spreadsheet which will indicate that there is a S106 linked to that planning permission. This will mean anyone looking at the Housing Master Spreadsheet will know to cross-check the triggers on the S106 Master Spreadsheet; it has also been colour shaded to stand out.

The trigger column on the S106 Master Spreadsheet is going to be deleted. It has never been completed because there is no set trigger dates, and it is not possible to even estimate what these dates are which is just leading to a false impression of how the work can be done and monitored. See a) above in regard to how this matter is going to be monitored more effectively in the future.

The Council cannot use Building Control records universally for this activity because hardly any of the major housing sites/developers use the Council's Building Control services. There is a choice for developers to use the private sector to complete Building Control inspections and the Council do not have access to that information. Officers will instead continue to go out on site as part of the management of the Housing Master Spreadsheet, augmented by the work of the new Compliance/Site Visit Officer in Planning Enforcement. The Council has to do this work anyway as part of the evidence work on monitoring the 5-year housing land supply and to ensure this is accurate - this then feeds back into the S106 Master Spreadsheet.

c) Please see the response to b) above.

d) Introducing a software support system will be considered if the Infrastructure Levy is adopted by the Council - this will have to be a new system outside the existing system of Uniform, unless Uniform can be significantly improved. At the present time it is an inadequate system for monitoring financial matters as experienced by other local authorities that use supplementary systems such as those mentioned as well as others. This will come at an additional cost to the Council which will need to be budgeted for.

Responsible Officer:

- a) Anne Altoft-Shorland
- b) Anne Altoft-Shorland
- c) Anne Altoft-Shorland
- d) Anne Altoft-Shorland


Implementation Date:

- a) The column has already been added onto the Housing Master Spreadsheet - the employment of the additional officer in Planning Enforcement is subject to the satisfactory conclusion of the Service Delivery Restructure but should be completed by January/February 2024.
- b) The column has already been added onto the Housing Master Spreadsheet - the employment of the additional officer in Planning Enforcement is subject to the satisfactory conclusion of the Service Delivery Restructure but should be completed by January/February 2024.

c) The column has already been added onto the Housing Master Spreadsheet - the employment of the additional Enforcement is subject to the satisfactory conclusion of the Service Delivery Restructure but should be completed by January/February 2024.

d) The Council will be examining the Infrastructure Levy during the review of the Local Development Plan which is due for submission in 2026.

2 Authorisation Process

TOR Risk:	There is no process to ensure that funds are approved prior to being released to projects	
Significance		Medium



FINDING

An authorisation process shows a record of the release of funds, ensuring they are allocated to the appropriate area of use. In addition, authorisation should be aligned to the Councils' financial delegations of authority.

When there is a request for s106 funds, the Head of Service completes a financial form, conducts due diligence checks to ensure the spend is within the acceptable date and in line with its intended purpose. The release of any funds requires a secondary signature as per the delegations of authority.

We reviewed five s106 agreements to review the process for the allocation of funds and assess whether the authorisation level was appropriate. We found:

- For two agreements (40% of our sample), there was no supporting authorisation documentation for RAMS payments made to Essex County Council (relating to the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy) made on 31/05/2023 (19/1257/FUL and 19/1208/FUL, total £16,092.75). We were unable to confirm who authorised the payment.
- For all agreements tested, there was no supporting evidence of the due diligence checks conducted by the secondary signature. Note these are officially done via the financial system so it is clear who approved payment.

This risk of releasing funds without a robust authorisation process may result in payments being made outside of the documented time frames and intended purpose/use, potentially resulting in reputational damage and a financial loss to the Council if the funds have to be returned.



RECOMMENDATION

- Maintain authorisation documentation that supports the release of s106 funds.
- Review the robustness of the authorisation process including the due diligence requirements of the secondary signature, consideration should be given to introducing a checklist which will provide assurance that the spend is in line with the agreements. These authorisation checklists should be kept with the s106 records.
- Consideration should be given to reintroducing a s106 group to provide better accountability for decision making and overall scrutiny of what funds are available and where the funds are to be spent.



MANAGEMENT RESPONSE

a) Documentation is retained as to the authorisation by Assistant Directors of any S106 expenditure, but it is in SAGE (the Finance Approval System) is not readily accessible and only supports the financial assurance checks, not any additional checks specially for S106. As set out in recommendation b) we agree that there should be a checklist for additional S106 assurance that is then kept with the details of the S106 agreement in Sharepoint for everyone to access. This will be easier to verify and give evidenced assurance of due diligence being followed.

b) Agreed that there can be a Checklist introduced to provide further assurance. This will seek to document in a standard written form what is currently managed through an email/verbal assurance process ahead of S106 expenditure, before requests for the commitment of S106 funding are given. This will be regardless of whether it is being spent on MDC specified projects such as the youth facilities, or by third parties on community infrastructure. This will confirm in writing the value of the expenditure being requested; the S106 Agreement/s that it relates to; a validation check that the nature of the expenditure complies with the legal agreement and that any issues have been adequately addressed with legal input as necessary ahead of the request for spend; an assurance check that the body requesting the funds have a right to spend the money as well as corresponding projects to spend it on that tie back to the S106 legal agreement and the planning consent that secured them and any timescales for delivery that have been agreed.

C) The Council did have a S106 Project Liaison Group until early 2022 but it was ineffective and was not a good use of officer time, so it was discontinued. This was largely because although the Council could see having such a governance arrangement was of benefit, the Council did not have the project resources to deliver schemes from S106 funds that related back to the Council (e.g. affordable housing and youth facilities) and each meeting did not progress any matters. This has now been in part rectified with the future employment of a project officer (funded by MDC not using S106 funds) for the projects on the youth facilities funding which is presently part of the S106 funds held by the Council. This will result in the regular project delivery meetings with the relevant officers involved including an officer from the Planning Policy & Implementation Service to ensure oversight of the spend of S106 funding. The same will apply for any other projects involving S106 funding in the future including affordable housing. This is far more effective rather than just having a single cover-all group, as the separate groups can focus in more detail on the delivery of individual projects.


Responsible Officer:

- a) Anne Altoft-Shorland/Matthew Winslow/Hannah Wheatley/ Finance
- b) Anne Altoft-Shorland/Matthew Winslow/Hannah Wheatley/ Finance
- c) Anne Altoft-Shorland/Matt Harwood-White/

Implementation Date:

- a) December 2024
- b) December 2024
- c) Completed.

3 Standard Operating Procedures (SOP)

TOR Risk:	There are no policies and procedures in place with regard to the levying and management of s106 contributions
Significance	 Low



FINDING

There are two operating documents available for the management of s106 processes at the Council, those are:

- Money in workflow process diagram
- Payment of planning contributions

These are available on SharePoint but have not been reviewed for several years, are not dated and no ownership defined. There are no documented procedures for completing the master spreadsheet which is the main source for managing and monitoring s106 agreements.

The risk of not frequently reviewing SOP's may lead to processes that are not fit for purpose or result in different processes being followed which fall outside the established control framework.



RECOMMENDATION

- The Money in workflow process diagram and Payment of planning contributions to be reviewed, updated where necessary, dated so version control can be introduced and a responsible review officer to be defined and recorded.
- Consideration to be given whether it will be beneficial to define the process for completing the super master spreadsheet, as the source document for managing and monitoring s106 agreements.



MANAGEMENT RESPONSE

a) The Money in Workflow process has been updated already as recommended by Planning Policy & Implementation & Finance and is available on Sharepoint - it will now also be reviewed bi-annually.

b) A process will be written on how to complete the S106 Master Spreadsheet to ensure a consistent approach can be followed regardless of who is completing the spreadsheet - it will then be put on sharepoint and linked into an Information Tab on the Spreadsheet.

Responsible Officer:	a) Anne Altoft-Shorland b) Anne Altoft-Shorland
Implementation Date:	a) Completed b) 1 st December 2023.

APPENDIX I - DEFINITIONS

LEVEL OF ASSURANCE	DESIGN OF INTERNAL CONTROL FRAMEWORK		OPERATIONAL EFFECTIVENESS OF CONTROLS	
	FINDINGS FROM REVIEW	DESIGN OPINION	FINDINGS FROM REVIEW	EFFECTIVENESS OPINION
Substantial	Appropriate procedures and controls in place to mitigate the key risks.	There is a sound system of internal control designed to achieve system objectives.	No, or only minor, exceptions found in testing of the procedures and controls.	The controls that are in place are being consistently applied.
Moderate	In the main there are appropriate procedures and controls in place to mitigate the key risks reviewed albeit with some that are not fully effective.	Generally a sound system of internal control designed to achieve system objectives with some exceptions.	A small number of exceptions found in testing of the procedures and controls.	Evidence of non compliance with some controls, that may put some of the system objectives at risk.
Limited	A number of significant gaps identified in the procedures and controls in key areas. Where practical, efforts should be made to address in-year.	System of internal controls is weakened with system objectives at risk of not being achieved.	A number of reoccurring exceptions found in testing of the procedures and controls. Where practical, efforts should be made to address in-year.	Non-compliance with key procedures and controls places the system objectives at risk.
No	For all risk areas there are significant gaps in the procedures and controls. Failure to address in-year affects the quality of the organisation's overall internal control framework.	Poor system of internal control.	Due to absence of effective controls and procedures, no reliance can be placed on their operation. Failure to address in-year affects the quality of the organisation's overall internal control framework.	Non compliance and/or compliance with inadequate controls.

RECOMMENDATION SIGNIFICANCE

High	A weakness where there is substantial risk of loss, fraud, impropriety, poor value for money, or failure to achieve organisational objectives. Such risk could lead to an adverse impact on the business. Remedial action must be taken urgently.
Medium	A weakness in control which, although not fundamental, relates to shortcomings which expose individual business systems to a less immediate level of threatening risk or poor value for money. Such a risk could impact on operational objectives and should be of concern to senior management and requires prompt specific action.
Low	Areas that individually have no significant impact, but where management would benefit from improved controls and/or have the opportunity to achieve greater effectiveness and/or efficiency.

APPENDIX II - TERMS OF REFERENCE



KEY RISKS

Based upon the risk assessment undertaken during the development of the internal audit operational plan, through discussions with management, and our collective audit knowledge and understanding the potential key risks associated with the area under review are:

- ▶ There are no policies and procedures in place with regard to the levying and management of s106 contributions.
- ▶ There are no processes in place to monitor for developer trigger points as to when contributions become due.
- ▶ There is no definitive list of s106 agreements that is being monitored, making it difficult to determine completeness.
- ▶ There is no process to ensure that funds are approved prior to being released to projects.
- ▶ Funds are not used for the intended purposes as set out by the agreement and are not allocated in a timely manner.



SCOPE & APPROACH

The following areas will be covered as part of this review:

- ▶ We will review the policies in place to assess if there is adequate guidance regarding the collection, management and use of s106 funds.
- ▶ We will review records held of s106 agreements and assess how these are maintained to ensure all are accurately recorded and funds are managed appropriately.
- ▶ We will review the process for the allocation of funds.
- ▶ We will choose a sample of s106 expenditure and review how these were allocated and if they meet the intended purpose of the agreement.

The scope of the review is limited to the areas documented under the scope and approach. All other areas are considered outside of the scope of this review. However, Internal Audit will bring to the attention of management any points relating to other areas that come to their attention during the course of the audit.

We assume for the purposes of estimating the number of days of audit work that there is one control environment, and that we will be providing assurance over controls in this environment. If this is not the case, our estimate of audit days may not be accurate. It is intended that this audit will be completed through a combination of remote working and onsite meetings and testing, based upon the most effective way of carrying out the work.

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FOR MORE INFORMATION:

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