



## Follow-up Report

# EHDC Section 106

**September 2013**

**Issued to:** Simon Drinkwater – Director of  
Neighbourhood Services  
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Holder

**Reference:** E1115/13/001

**Report Status:** Final

**Original Report  
Date:** October 2012

**Original  
Assurance:** Moderate

**Status of  
Recommendations:** Implemented

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## 1. EXECUTIVE SUMMARY

### Background and Purpose

1. An audit of Section 106 contributions in East Herts District Council was undertaken during 2012/13 as part of the agreed internal audit plan for that year. The final report was issued in October 2012. The report concluded that overall a moderate assurance rating was applicable and 13 recommendations were made and agreed, 7 of which were categorised as high priority.

### Scope of Work

2. Provision was made in the 2013/14 audit plan to follow up implementation of the recommendations made in original report issued in October 2012.

### Follow Up Findings and Opinion

3. As part of this follow up, we have obtained management's assertions over the status of agreed actions and where appropriate sought evidence to support management's view.

Appendix A details the results of the work undertaken and shows that all recommendations have now been implemented.

No.	Recommendation / Agreed Management Action	Priority	Original Target Date	Current Position	Status
1. 1.1	<p><b>Unspent Contributions</b></p> <p><b>Recommendation:</b> The Service Department Responsible Officer should ensure that contributions are used in accordance with the original agreement. Progress on spend should be monitored quarterly to ensure that agreed work has been undertaken. Monitoring should also ensure that eligible works have not been carried out using other Service Department budgets.</p> <p><b>Agreed Management Action:</b> Continue with monitoring reports to ensure that available contributions are spent in accordance with the requirements of the legal agreement and to report to CMT quarterly.</p> <p><b>Responsible Officer:</b> Head of Communications, Engagement and Cultural Services</p>	High	Process already introduced	Already in place at the time of the audit.	Implemented
1.2	<p><b>Recommendation:</b> The Development Control Manager should identify all contributions which are more than 5 years old and where the money is</p>	High	First report to CMT by end of December	<b>Development Manager</b> First report submitted to CMT on 12 <sup>th</sup> March 2013 in conjunction with recommendation No.3.	Implemented

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	<p>unlikely to be spent for the original purpose. Meetings should then be held with the developer to discuss possible changes to the original agreement</p> <p><b>Agreed Management Action:</b> Review older agreements where the original contribution is unlikely to be spent and consider whether any appropriate alternatives can be negotiated given the tests in Circular 05/05. Then to report to CMT accordingly.</p> <p><b>Responsible Officer:</b> Development Manager</p>		<p>2012.</p> <p>Then report to CMT annually on progress.</p>	<p>This states that further research is being carried out in relation to those older agreements and CMT will be updated at the next few meetings</p>	
2.	<p><b>Clawback of unspent contributions</b></p> <p><b>Recommendation:</b> The S106 Monitoring Officer should record the clawback date on the shared spreadsheet and inform both the Service Department and Finance of the date by which the contributions should be spent.</p> <p><b>Agreed Management Action:</b> Include clawback date on spreadsheet.</p> <p><b>Responsible Officer:</b> Section106 Monitoring Officer</p>	High	With immediate effect	<p><b>Development Manager</b> Clawback date has been added to the spreadsheet and where the trigger dates have been exceeded is recorded in red. All older agreements are being reviewed to add clawback dates where applicable.</p>	Implemented

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3.	<p><b>Responsible Officers</b></p> <p><b>Recommendation:</b> For the older contracts (those over 5 years old), the Heads of Service should either: a) review the legal agreement to try to identify the purpose of the contribution; or b) Arrange a meeting with the Development Control Manager to agree the spending of the contributions to meet the documented spending criteria.</p> <p><b>Agreed Management Action:</b> Undertake as part of reporting in relation to point 1.2 above.</p> <p><b>Responsible Officer:</b> Development Manager</p>	High	End of December 2012	<p><b>Development Manager</b> First report submitted to CMT on 12<sup>th</sup> March 2013 in conjunction with recommendation No 1.2. This states that the purpose of the contributions is discussed to agree the spending criteria.</p> <p>Quarterly reports enable CMT to explore spending options and seek further information and input from service heads as necessary to inform their decisions.</p>	Implemented
4.	<p><b>Liaison Prior to Contract</b></p> <p><b>Recommendation:</b> Development Control Section and Service Department Officers should meet and clearly document what is required on each site and the specific purpose of each contribution.</p>	High	December 2012	<p><b>Head of Planning and Building Control</b> First meeting took place on 12 November 2012. Meetings are held every 3-4 weeks depending on Council Committee dates.</p>	Implemented

No.	Recommendation / Agreed Management Action	Priority	Original Target Date	Current Position	Status
	<p><b>Agreed Management Action:</b> Reinstate regular Section 106 liaison meetings.</p> <p><b>Responsible Officer:</b> Head of Planning and Building Control</p>				
5.	<p><b>Process Notes</b></p> <p><b>Recommendation:</b> Process notes should be produced for the S106 process within Planning.</p> <p><b>Agreed Management Action:</b> Produce notes.</p> <p><b>Responsible Officers:</b> Development Manager and Section 106 Monitoring Officer</p>	Medium	March 2013	<p><b>Development Manager</b> Accommodated within the note produced as part of recommendation 6.1 and likewise anticipated completion end April 2013 – completed.</p>	Implemented
6. 6.1	<p><b>Roles and Responsibilities</b></p> <p><b>Recommendation:</b> Roles and responsibilities of all departments involved in the S106 process should be documented to ensure that all parts of the process are completed for each contribution received.</p>	High	March 2013	<p>On target – completed note should be prepared by end of March 2013. Each liaison meeting agenda will include a standing item to consider income which has been received since the previous meeting.</p>	Implemented

No.	Recommendation / Agreed Management Action	Priority	Original Target Date	Current Position	Status
6.2	<p><b>Agreed Management Action:</b> Produce procedure note.</p> <p><b>Responsible Officers:</b> Head of Planning and Building Control and Head of Communications, Engagement and Cultural Services</p> <p><b>Recommendation:</b> The S106 Monitoring Officer should continue to send out receipt of contribution emails to the responsible officers.</p> <p><b>Agreed Management Action:</b> Continue sending 'receipt of contribution' e- mails to responsible officers.</p> <p><b>Responsible Officer:</b> Section 106 Monitoring Officer</p>	High	Process already introduced	<p><b>Development Manager</b> Now anticipated to be completed by end of April 2013.</p> <p><b>Head of Planning and Building Control</b> Final draft procedure note has been prepared and circulated for comment. Anticipated now that it should be finalised by end April 2013</p> <p><b>Head of Communications, Engagement and Cultural Services</b> Confirmed checked 'note' and considers this now complete.</p> <p>Emails continue to be sent out on receipt of contributions</p>	Implemented



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7. 7.1	<p><b>Monitoring Fees</b></p> <p><b>Recommendation:</b> The Development Control Officer who produces the document taken to the Development Control meeting for approval must ensure that a monitoring fee is always included on that document, currently £300 per clause to ensure that it is included in the agreement prepared by legal.</p> <p>The S106 Monitoring Officer should check that all contracts include a monitoring fee. Even if a monetary figure has been omitted from the agreement, there is a clause which does state that the developer will pay a monitoring fee and therefore the local authority are entitled to this fee.</p> <p><b>Agreed Management Action:</b> Ensure that monitoring fee requirements are included in the DC report and checked.</p> <p><b>Responsible Officers:</b> Development Control Manager and Section 106 Monitoring Officer</p>	Medium	December 2012	<p><b>Development Manager</b> Officers made aware of the need to include the monitoring fee in the committee report and Development Manager and/or Head of Planning &amp; Building Control to check reports accordingly prior to each committee meeting.</p> <p><b>Development Manager</b> Completed and on-going requirement of the Monitoring role</p>	<p>Implemented</p> <p>Implemented</p>

No.	Recommendation / Agreed Management Action	Priority	Original Target Date	Current Position	Status
7.2	<p><b>Recommendation:</b> The S106 Monitoring Officer should take care when checking the number of clauses that should be charged for and ensure that the monitoring fee is not included as a clause.</p> <p><b>Agreed Management Action:</b> Carefully check the number of clauses in each agreement, disregarding the monitoring fee as a clause.</p> <p><b>Responsible Officer:</b> Section106 Monitoring Officer</p>	Medium	December 2012	<b>Development Manager</b> - Completed and on-going requirement of the Monitoring role	Implemented
8. 8.1	<p><b>Spreadsheet Amendments</b></p> <p><b>Recommendation:</b> The S106 Monitoring Officer should only keep “live” S106 contracts on the shared drive spreadsheet. All those that show contributions for other bodies, i.e. HCC, which have been received should be removed and all those for EHDC where the contribution has been received and all spent should also be removed.</p> <p><b>Agreed Management Action:</b> Amend spreadsheet accordingly.</p>	Merits Attention	May 2013	<b>Development Manager</b> - Completed and on-going requirement of the Monitoring role. Only “live” S106 contracts are kept on the shared drive.	Implemented

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8.2	<p><b>Responsible Officer:</b> Section 106 Monitoring Officer</p> <p><b>Recommendation:</b> The Head of Communications, Engagement and Cultural Services should pass the name of the responsible officer on to the S106 Monitoring Officer to add to the spreadsheet.</p> <p><b>Agreed Management Action:</b> Ensure that the name of the responsible officer is passed to the Section 106 Monitoring Officer and the Development Control Manager and added to the spreadsheet.</p> <p><b>Responsible Officers:</b> The Head of Communications, Engagement and Cultural Services and the Section 106 Monitoring Officer</p>	Merits Attention	With immediate effect	<p><b>The Head of Communications, Engagement and Cultural Services</b> - Confirmed this will be done each time a new project is put into place and new 'spend' officers identified and approved by CMT. CMT meet quarterly but on occasions a separate authorisation to proceed will be requested from CMT.</p> <p><b>Development Manager</b> - Confirmed and will be done as and when new spend officers are identified and approved by CMT. Column added to the spreadsheet to record this, all responsible officers will be entered for older contributions.</p>	Implemented
9.	<p><b>Coding of the Monitoring Fee</b></p> <p><b>Recommendation:</b> The Accountancy Manager should ensure that a unique code is set up for all future monitoring fee contributions and all 2012/13</p>	Merits Attention	August 2012	<b>Accountancy Manager</b> - Unique code established in August 2012. All Monitoring Fee income was transferred	Implemented

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	<p>monitoring fee contributions are journalled to this code.</p> <p><b>Agreed Management Action:</b> New code set up and 2012/13 monies transferred to it.</p> <p><b>Responsible Officer:</b> Accountancy Manager</p>			to this code and new amounts credited there.	