



## Final Internal Audit Report

# East Herts Council - S106 Agreements 2023/24

December 2023

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<b>Issued to:</b>	Benjamin Wood - Head of Communications, Strategy & Policy Jackie Bruce - S106 Programme Manager
<b>Copied to:</b>	Steven Linnett – Head of Strategic Finance & Property Members of the Audit & Governance Committee Executive Member for Financial Sustainability
<b>Report Status:</b>	Final
<b>Reference:</b>	E195/23/001
<b>Overall Assurance:</b>	Substantial
<b>Recommendations:</b>	One Low Priority

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## 1. EXECUTIVE SUMMARY

### Introduction

- 1.1 Internal Audit provides East Herts Council (the Council) with an independent and objective opinion on the organisation's governance arrangements, encompassing internal control and risk management, by completing an annual risk-based internal audit plan. This audit formed part of the approved 2023/24 Internal Audit Plan.
- 1.2 A Section 106 (S106) is a legal agreement made under Section 106 of the Town and Country Planning Act 1990, signed by the Council and developers that sets out what financial contributions will be paid and what additional, non-financial obligations are required as part of planning consent for a development.
- 1.3 S106 payments are required to make a development acceptable in planning terms. Without these financial contributions and obligations to improve the immediate area, or offset and mitigate any impacts of the development, it would likely not be considered acceptable and not be given planning permission.
- 1.4 The Council is the accountable body for spending received S106 financial contributions and therefore must ensure that:
  - The S106 funding is spent on facilities / projects that can be demonstrated to be required because of the new development or need in the locality of the development.
  - The process is transparent and fair to all and follows a consistent procedure.
  - Projects supported are necessary, viable, will deliver the required social and community benefits, and will be well managed and sustainable.
- 1.5 Financial contributions are used to support the provision of services and infrastructure, including highways, recreational facilities, education, health, and affordable housing. Non-financial obligations may include areas such as a sustainable travel plan for occupiers, making use of local businesses, provision of employment and training opportunities and the provision of affordable housing.
- 1.6 The Infrastructure Funding Statement (IFS) is published annually which provides a summary of all financial and non-financial developer contributions relating to S106 agreements within the area. Per the Council's IFS for the financial year 2021/22, the total money received from S106 agreements during the reported year was £2.668m and £3.403m was spent.
- 1.7 Following agreement with management, the purpose of this audit was to provide independent assurance that there are adequate and effective arrangements for the management and allocation of S106 funds, and that they are robust and transparent.

### Overall Audit Opinion

- 1.8 Based on the work performed during this audit, we can provide overall **substantial assurance** that there are effective controls in operation for those elements of the risk management processes covered by this review. These are detailed in the Assurance by Risk Area Table in section 2 below.

- 1.9 In arriving at our overall opinion, we concluded that there is a robust framework in place for the collection and allocation of S106 funds. The Council has adequate policies and procedures in place to govern these processes and has developed template documentation to maintain consistency e.g., demand notices and application forms. We confirmed that there are clear reporting lines in place to ensure that the Leadership Team and the Audit Committee are informed of S106 activity and to enable transparency of the work completed by the S106 Programme Manager and the Finance Team.
- 1.10 However, we reviewed a sample of five instances where S106 funds were collected by the Council and identified that in one case, the Satisfaction letter was not issued to the developer as confirmation of payment. We provide below a summary of our observations and findings from each of the assurance areas reviewed within this audit.
- 1.11 The Council has a set of policies and procedures in place governing the collection and allocation process of S106 funds, which was updated in July 2023 by the S106 Programme Manager. We reviewed the S106 Contribution Collection procedure document and confirmed that it is robust, clearly describing each stage of the process including the monitoring and maintenance of the S106 register.
- 1.12 We reviewed the S106 Fund Allocations procedure document and confirmed that the criteria for the assessment of proposed projects is outlined, to ensure that funds are allocated to projects with appropriate justification, which contribute to the developments and benefit the local community. We confirmed that the procedure document adequately describes the fund allocation process, including the procedure to allocate funds to external bodies, appraisal of internal S106 funding bids and the transfer of funds.
- 1.13 The Council is the collection authority for the NHS Hertfordshire and West Essex Integrated Care Board (ICB). We confirmed that the Council has a separate procedure document for NHS Contribution transfers, which adequately outlines the indexation, receipt, and payment authorisation process.
- 1.14 On an annual basis, the S106 Programme Manager produces an Infrastructure Funding Statement, which provides a summary of the income and expenditure of the financial contributions the Council has secured through Section 106 Agreements for the previous financial year. There are three separate files uploaded onto the Council's website to support the Infrastructure Funding Statement:
- Developer agreements - lists the S106 agreements entered into in each financial year.
  - Developer agreement contributions - lists the contributions in S106 agreements signed in each financial year and identifies their relevant primary purpose as per the legislation requirements.
  - Developer agreement transactions - lists the transaction status of the individual contributions of the S106 agreements signed in each financial year as per the legislation requirements.

- 1.15 The annual Infrastructure Statement for 2022/23 was in the process of being drafted during the audit fieldwork, which will be presented at the Audit and Governance Committee at the end of November 2023.
- 1.16 We reviewed the Council's Infrastructure Statement for 2021/22 and confirmed that the total contribution and allocation of S106 funds was reported for the past five years. In 2021/22, the Council received £2,668,065.92 and spent £3,403,446.03. We confirmed that the report outlined each of new S106 agreements signed in the year, including the application reference, location, date of S106 and total funding for the Council (which will increase depending on the indexation rate).
- 1.17 The report further outlined details of the amount of monitoring fees the Council had charged for S106 planning obligations (under the Community Infrastructure Levy Regulations 2019), which totalled £14,640 across the 17 agreements. We confirmed that the report provided an in-depth breakdown of where the S106 funds (revenue and capital) were allocated and how this has contributed to developments to benefit the local community. Furthermore, the report also outlined details of projects which have been triggered for payment and the amounts received. Therefore, we confirmed that the report enables transparency of the amount of S106 contributions received and to local developments.
- 1.18 Alongside the annual Infrastructure Statement, the S106 Programme Manager produced an in-year S106 Update report which was reviewed by the Leadership Team in October 2022 and reported to the Audit and Governance Committee in November 2022. We confirmed that an update to the S106 contributions between April 2022 and September 2022 was provided, outlining that £738,370.42 was collected triggered from three separate developments. Through a review of email correspondence, we confirmed that the report was reviewed by the Head of Communications, Strategy & Policy, Deputy Chief Executive, and the Executive Member for Planning & Growth, prior to its delivery at the Audit Committee meeting.
- 1.19 Overall, we confirmed that Council has clear reporting lines to ensure that the Leadership Team and the Audit and Governance Committee are kept up to date on S106 financial and non-financial contributions. A S106 application form is sent to the S106 Programme Manager by the Legal Team at the Council. Based on the payment terms outlined on the legal agreement, the S106 Programme Manager populates a template spreadsheet which details the financial contributions, indexation dates and triggers.
- 1.20 The master S106 register is updated to reflect the details of the development outlined in the legal agreement. When a payment is triggered, the Retail Price Index (RPI) charge is calculated based on the rates available on the Office for National Statistics website. A demand notice is issued to the developer which is signed by the S106 Programme Manager as a reminder of the payment.
- 1.21 Once the payment is received, a S106 Satisfaction letter is issued to the developer as an acknowledgement of the payment received, which is saved onto the local drive to maintain audit trail. The payment is allocated to a project led by the Council, outlined in the legal agreement e.g., children's park, development of a leisure centre.

- 1.22 We selected a sample of five S106 contributions collected by the Council and confirmed the following for all instances:
- The payments were collected per the details of the trigger and allocated to intended projects per the S106 legal agreement.
  - Where applicable, the Council notified its counterparts of the S106 application form.
  - The template spreadsheet was populated, which details the trigger description, trigger date, RPI and payment date. We re-performed the calculations for the RPI and verified the correctness of the computation.
  - A demand notice was sent to the developers in a timely manner, as a reminder of payment once the trigger for payment had occurred.
  - Payment remittance was retained to evidence the payment received, which matched the amounts outlined in the template spreadsheet of calculations.
- 1.23 However, in one instance we identified that the satisfaction letter was not issued to the developer as confirmation of payment received, so we have raised a recommendation.
- 1.24 S106 Funds can be allocated externally to projects led by other local authorities or to NHS organisations, where the Council is the collecting authority. For external allocations to local authorities, an application form is completed by the local authority which is checked against the S106 legal agreement to confirm project eligibility and alignment to legal requirements. Approval is sought from the Deputy Chief Executive and the Executive Member for Planning & Growth. If successful, the applicant is advised of the outcome and is requested to complete a Use Agreement Form with bank details for funding transfer. A Payment Authorisation Form is completed by the S106 Programme Manager and signed off by the Deputy Chief Executive.
- 1.25 The allocation process for NHS organisations involves the Council notifying the ICB of the contributions triggered for payment. The S106 Programme Manager calculates the RPI and issues the demand notice to the developer. Once the payment is received, an NHS Agreement form is issued to the ICB for sign-off and confirm bank details for the transfer. The Agreement form is countersigned by the Deputy Chief Executive and a Payment Authorisation form is completed by the S106 Programme Manager, which is sent to the Finance Team to finalise the payment process.
- 1.26 We selected a sample of five S106 contributions which were allocated to schemes by the Council in 2022/23 to confirm whether the Council's S106 funds allocation process was followed in line with agreed procedures. Our sample consisted of three payments made to NHS organisations and two payments to local authorities. For the samples tested, we confirmed the following:
- NHS Transfers (3)
- A notification email was sent to the ICB to inform on the S106 payment received from developer.
  - The NHS Agreement form was completed, and dual signatory was evidenced by the Deputy Chief Executive and the ICB.
  - A Payment Authorisation form was completed and signed by the Head of Service or Deputy Chief Executive.
  - The Finance Team were notified of the payment for the transfer process and the Master S106 schedule was updated to reflect the payment.

Local Authority (2)

- The application form was retained and signed by the responsible officer at the local authority and by the Deputy Chief Executive.
- Minimum of three quotes were provided to demonstrate an economic appraisal was completed by the local authority.
- Approval from the Executive Member for Planning & Growth was evidenced.
- The Use Agreement form was completed and signed by the Head of Service/Deputy Chief Executive.
- Payment Transfer form was completed and signed by Head of Service.

1.27 In all five instances above, we verified that the payments were made in line with the application form through a review of remittance statements.

1.28 Once funding gaps are identified by Officers or Councillors, a bid is put forward for the allocation of S106 funds to Council funded schemes. This is checked against the S106 legal agreement to ensure the project qualifies for the funding, which is reviewed and approved by the Deputy Chief Executive. We reviewed a sample of three internal allocations and verified that the amount requested was correctly allocated by the Finance Team on the Councils finance system, Advance and in line with the legal agreement. We also confirmed that correctness of the transfers through a review of the Capital Financing Summary, which detailed the three transfers.

1.29 We were advised that at the end of each financial year, the S106 Programme Manager and the Finance Business Partner conduct a reconciliation exercise to confirm that all allocations made by the S106 Programme Manager match the information held by the Finance Team. We reviewed the reconciliation file for 2022/23 S106 funds and confirmed that discrepancies were rectified, and the figures balanced.

1.30 The S106 Programme Manager reports to the Head of Communications, Strategy & Policy on a weekly basis to provide an update on S106 collected and allocated funds. A new Executive Member for Planning & Growth was elected in May 2023, who has oversight of the S106 activity alongside the Head of Communications, Strategy & Policy.

1.31 We were advised by the S106 Programme Manager that a Member Briefing session is to be held with the Executive Members of the Council on the S106 funds collection and allocation process, covering legislation and eligibility criteria for schemes in December 2023. The aim of this exercise is to enable the Members to inform on the development gaps in the local area, which may qualify for S106 allocations. We were informed by the S106 Programme Manager that the briefing is completed after each district elections to notify newly elected Member of the process.

1.32 For definitions of our assurance levels, please see Appendix B.

**Summary of Recommendations**

1.33 We have made one low priority recommendation to enhance the control environment.

1.34 Please see Management Action Plan at Appendix A for further detail.

**Annual Governance Statement**

1.35 This report provides reasonable levels of assurance to support the Annual Governance Statement.



## 2. ASSURANCE BY RISK AREA

2.1 Our specific objectives in undertaking this work, as per the Terms of Reference, were to provide the Council with assurance on the adequacy and effectiveness of internal controls, processes, and records in place to mitigate risks in the following areas:

Risk Area	No	Limited	Reasonable	Substantial
<b>Governance Arrangements</b> - an appropriate oversight, scrutiny and review structure is not in place to monitor the management of S106 agreements to ensure the process is transparent and follows a consistent procedure that delivers the required social and community benefits.				
<b>Policies &amp; Procedures</b> - The Council does not have policies and procedures in place for the management of S106 contributions. Procedure documents are not comprehensive and therefore contributions are collected and allocated incorrectly.				
<b>Collection of S106 Funds</b> – There is inadequate consideration and scrutiny for the collection of S106 funds. Projects are not regularly monitored to ensure that demand notices are issued at agreed intervals, whereby an indexation is added to the payment prior to collection. Therefore, payment is not collected, and the Council faces financial loss.				
<b>Release of S106 funds</b> – There is a robust framework in place for the allocation of funds to agreed projects following appropriate evidence of the completion of the terms of the agreement, leading to effective use of collective funds.				
<b>Reporting and Monitoring</b> – The Council has clear reporting lines to ensure that Management Committees are kept up to date on S106 financial and non-financial contributions which demonstrate effective monitoring and scrutiny.				

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

<b>Overall</b>				
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2.2 See definitions for the above assurance levels at Appendix B.

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
1.	<p><b>Lack of confirmation issued to the developer to evidence receipt of S106 payment</b></p> <p>Once a payment trigger has occurred per the legal agreement, the S106 Programme Manager issues a demand notice to the developer as a reminder. Payment is made to the Council via BACs transfer, which is detailed on the demand notice. A satisfaction letter is issued to developers as confirmation of payment.</p> <p>We selected a sample of five S106 contributions which were collected by the Council in 2022/23 to confirm whether the Council's S106 funds collection process was followed in line with agreed procedures.</p> <p>We identified that in one instance we identified that the satisfaction letter was not issued to the developer as confirmation of payment received. We were advised by the S106 Programme Manager that this was a one-off exception and was missed in error.</p>	Low	The S106 Programme Manager should put together a formal checklist of all the checks and required steps to be followed for the collection and allocation of S106 contributions. This will also be effective for training purposes and will ensure compliance to procedures.	<p><b>Management Comments:</b></p> <p>We will develop a formal checklist of all checks and required steps to be followed for the collection and allocation of S106 contributions.</p> <p><b>Responsible Officer:</b></p> <p>S106 Programme Manager</p>	30 <sup>th</sup> November 2023

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<p><u>Associated Risk</u>                      Where confirmation of payments are not issued to developers, there is a lack of official documentation that the developer has fulfilled their financial obligations. This can lead to legal issues faced by the Council in the event of a formally dispute.</p>				

Assurance Level	Definition
<b>Substantial</b>	A sound system of governance, risk management and control exists, with internal controls operating effectively and being consistently applied to support the achievement of objectives in the area audited.
<b>Reasonable</b>	There is a generally sound system of governance, risk management and control in place. Some issues, non-compliance or scope for improvement were identified which may put at risk the achievement of objectives in the area audited.
<b>Limited</b>	Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited.
<b>No</b>	Immediate action is required to address fundamental gaps, weaknesses or non-compliance identified. The system of governance, risk management and control is inadequate to effectively manage risks to the achievement of objectives in the area audited.

Priority Level		Definition
Corporate	<b>Critical</b>	 Audit findings which, in the present state, represent a serious risk to the organisation as a whole, i.e., reputation, financial resources and / or compliance with regulations. Management action to implement the appropriate controls is required immediately.
Service	<b>High</b>	 Audit findings indicate a serious weakness or breakdown in control environment, which, if untreated by management intervention, is highly likely to put achievement of core service objectives at risk. Remedial action is required urgently.
	<b>Medium</b>	 Audit findings which, if not treated by appropriate management action, are likely to put achievement of some of the core service objectives at risk. Remedial action is required in a timely manner.
	<b>Low</b>	 Audit findings indicate opportunities to implement good or best practice, which, if adopted, will enhance the control environment. The appropriate solution should be implemented as soon as is practically possible.