

# MID KENT AUDIT

## Section 106 Income

### FINAL AUDIT REPORT

DECEMBER 2021

FINAL Assurance Rating:

**Weak**

<b>Audit Code</b>	A22-AR01	<b>Service</b>	ABC Developer Contributions
<b>Lead Auditor</b>	Andy Billingham	<b>Sponsor</b>	Simon Cole
<b>Audit Reviewer</b>	Ali Blake	<b>Director</b>	Ben Lockwood



# MID KENT AUDIT

## Summary Report

Our opinion based on our audit work is that the Section 106 process has **weak** controls in place to manage its risks and support achievement of its objectives. We provide the definitions of our assurance ratings at appendix II.

Our testing of the current controls in place found they are all either partially effective or ineffective at mitigating the following examined risks. Furthermore, the service has not yet implemented any controls to manage Risk 4:

1. Planning obligation details aren't fully recorded
2. Trigger points on agreements are missed
3. Failure to release and spend monies timeously
4. Monies not spent on intended purpose

The ineffectiveness of the monitoring system, and limited resources available, makes it difficult to have adequate oversight of s106 agreements. As such, the Service is unaware if all historic s106 obligations are met and funds collected. There is also limited information on whether all s106 funds have been spent within the required timescales and whether funds paid to 3rd parties are spent in accordance with the s106 agreement.

Furthermore, resilience in the s106 process is limited. There is only one officer responsible for s106 monitoring, a lack of documented procedures and a trigger point alert system that doesn't link to the s106 monitoring package.

The Service is aware of many of the weaknesses in controls and are in the process of building a new s106 monitoring system to improve the administration and income processes. However, it's likely that the new system won't be operational for another 6-12 months. Effective project planning and delivery will be crucial to ensuring the system is a success. As such, we have raised a recommendation in this report to support delivery and control of the project so that effective controls are designed into the system at the appropriate time.

# MID KENT AUDIT

## Next Steps

In this report we describe the 15 findings arising from our work, and responses from management. We note management has agreed to carry out certain actions for improvement. We will follow up these agreed actions as they fall due in line with our usual approach.

We have prioritised these as below:

<b>Critical (Priority 1)</b>	0
<b>High (Priority 2)</b>	6
<b>Medium (Priority 3)</b>	4
<b>Low (Priority 4)</b>	5
<b>Advisory</b>	0

We provide the definition of our priority ratings at appendix II.

## Independence

We are required by Public Sector Internal Audit Standard 1100 to act at all times with independence and objectivity. Where there are any threats, in fact or appearance, to that independence we must disclose the nature of the threat and set out how it has been managed in completing our work.

We have no matters to report in connection with this audit project.

## Acknowledgements

We would like to express our thanks to all those officers who helped completion of this work, in particular:

- Sharon Dimsdale, s106 Agreements Monitoring Officer
- Charlie Wanstall, Accounts Officer
- Jeremy Baker, Principal Solicitor and Deputy Monitoring Officer
- Rhonda Mickelborough, Legal Support Officer

# MID KENT AUDIT

## Distribution

Audit team and contact details	Report distribution list
<p><b>Head of Audit Partnership</b> Rich Clarke (rich.clarke@midkent.gov.uk)</p> <p><b>Deputy Head of Audit Partnership</b> Ali Blake (alison.blake@midkent.gov.uk)</p> <p><b>Senior Auditor</b> Andy Billingham (andy.billingham@midkent.gov.uk)</p>	<p><b>Draft and Final Report</b> Simon Cole, Head of Planning and Development Sharon Dimsdale, s106 Agreements Monitoring Officer</p> <p><b>Final Report Only</b> Tracey Kerly, Chief Executive Ben Lockwood, Deputy Chief Executive (s151)</p>

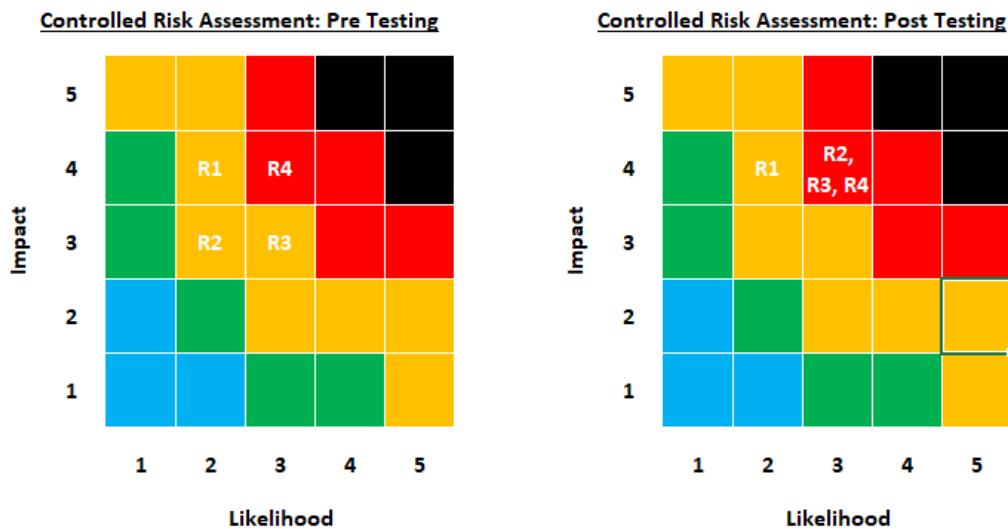
# MID KENT AUDIT

## Detailed Findings

Our work considers the objectives, risks and controls agreed with the service as in the review’s scope. We assessed each risk during planning as either **Critical**, **High**, **Medium**, **Low** or **Minimal** based on the controls reported and the service’s understanding of how well the controls work. We base our assessments on controlled risk and score using the Council’s Risk Framework.

This detailed report sets out our results and findings from testing each agreed objective, risk and control. We also describe the effect of our findings on assessed risk.

The post-testing risk assessment takes into consideration the adequacy and effectiveness of the controls. We have increased the exposures for **2 (R2 and R3)** risks following our testing of the controls. Where these risks have increased it has taken them above the Council’s risk appetite and tolerance, as set out in the Council’s risk management framework.



## Control Assessment

The table below summarises our assessment of **control effectiveness** following our testing and how each control links to the risks:

Risk	Mitigating Control	Post Testing Control Effectiveness
1. Planning obligation details aren’t fully recorded	Roles and responsibilities	<b>Partially effective</b>
	Recording System	<b>Partially effective</b>
2. Trigger points on agreements are missed	Identify and act on trigger points	<b>Partially effective</b>

# MID KENT AUDIT

Risk	Mitigating Control	Post Testing Control Effectiveness
	Financial monitoring	Partially effective
	Enforcement/follow up	Partially effective
	Post development assessment	Ineffective
	Liaison	Partially effective
	Reporting	Partially effective
	Index calculations	Partially effective
3. Failure to release and spend monies timeously	S106 group	Ineffective
	Procedure for releasing monies	Partially effective
	Outstanding amounts reported at year end	Partially effective
	Unspent income returned to developer	Partially effective
4. Monies not spent on intended purpose	<i>No controls in place</i>	Unable to make an assessment

Of the **13** controls tested, **0** were found to be working effectively. The remainder of the report sets out in greater detail the evidence to support our conclusions along with our findings and action plan, including our recommendations.

## **Objective 1: To make sure development is appropriately supported with the necessary infrastructure**

### **Risk 1: Planning obligation details aren't fully recorded**

#### *Control 1: Roles and responsibilities*

The s106 Agreements Monitoring Officer (responsible officer) job description suitably defines responsibilities. Our discussions with the responsible officer confirmed she has been in post for two years and has over 20 years' experience within the Planning department. However, she hasn't received any specific training regarding monitoring s106 agreements and obligations. Although she has a good understanding of her role, this has been largely self-taught. The Service should investigate the possibility of training to enhance the skills in place and identify areas for improvement. (See R02)

We identified there is no resilience in place if the responsible officer is absent for an extended period. There are no documented procedures, aside from how to use the

# MID KENT AUDIT

monitoring system Acolaid and there is limited knowledge elsewhere in the service. (See R03)

## *Control 2: Recording system*

S106 obligations are currently recorded using a hybrid of Acolaid and Excel spreadsheets. The Service has acknowledged the recording system is inadequate and are investigating the possibility of implementing a new system (Arcus). We reviewed the Excel monitoring records and found that they are incomplete. The Service is currently unaware if all s106 obligations are completed. In addition, they are not aware whether funds have been collected for any of the agreements prior to 2010 and for 61 or the 245 agreements post 2010. (See R01 and R04)

We examined the procedure notes in place for recording agreements in Acolaid and they are up to date and clear/easy to understand. However, as noted prior, there are no other procedure notes in place to cover the elements of the process that exist outside of the system.

We tested a random sample of 10 agreements and found the following details were recorded correctly in Acolaid:

- Application number
- Address
- Applicant/Agent
- Development
- Date of s106 agreement
- Description of trigger points and amounts due
- Land charge applied

*Our initial testing did not look at whether s106 obligations had been completed and funds collected, this is covered later in the report under Risk 2: Control 1.*

We were unable to reconcile s106 records maintained by Legal Services to the monitoring records maintained by Planning, by a discrepancy of 14 agreements (in favour of the Planning records). The Planning records also don't include Legal's DC reference from 2010, making a historic reconciliation much harder. (See R05)

## **Conclusion**

During our planning of the audit we established that the controls in place to mitigate the risk of planning obligation details, as being only *partially effective*. This was reflected in the original risk assessment. Our testing has confirmed these control assessments to be true, therefore our risk assessment remains unchanged, and the service continues to be exposed to a risk that sits above the tolerance for the Council.

# MID KENT AUDIT

## **Risk 2: Trigger points on agreements are missed**

### *Control 1: Identify and act on trigger points*

Our testing confirmed that although there is a monitoring record used by the service, there are no trigger points or alerts built into the process. Instead, the Officer uses her Outlook calendar to prompt when a trigger point is due or needs following up. Registering trigger points outside of the monitoring system carries an increased risk that triggers will be missed, and access to these notifications will solely appear for the Officer only, and are not accessible by anyone else. Our testing of this process was made more difficult as it is not possible to perform a targeted search in Outlook to check if triggers are registered. **(See R01 and R06)**

The responsible officer confirmed she is planning to contact developers with an introductory letter once they sign the s106 agreement and has designed a template. However, this is not planned to be implemented until the new monitoring system before is live. The introductory letter will strengthen the trigger point process by placing onus on the developers to pro-actively contact the Council when a trigger point is reached and therefore, in the absence of other controls, implementing this sooner rather than later would be provide a greater degree of control over the process. **(See R07)**

We intended to test a sample of 10 completed agreements to confirm registered trigger alerts, however its unknown how the previous responsible officer did this. We did test whether trigger and action dates were added to Acolaid and found the following:

- Trigger dates fully recorded for 1/10.
- Action dates and funds received fully recorded for 6/10. **(See R01 and R04)**

We also tested five incomplete agreements to ensure triggers had been set up in Outlook and found no issues.

### *Control 2: Financial monitoring*

Finance maintains a financial monitoring spreadsheet to reflect incoming and outgoing s106 receipts and perform a year-end reconciliation. The spreadsheet is sent to the responsible officer monthly to review and apply any changes to the planning monitoring records. The current format of the financial monitoring records makes it very difficult to perform a check and reconciliation across the various records being maintained. In fact, we found that the only way to check the records was by undertaking a line-by-line check, which is both time consuming and carries the risk of error or missing records.



# MID KENT AUDIT

The service should spend some time with finance officers to better design and implement a more efficient and effective process, including a better way to highlight and apply changes. **(See R01 and R08)**

## *Control 3: Enforcement / follow up*

There are no documented enforcement procedures in place, however, we noted that there is currently a 'live' enforcement case being progressed. As there is enforcement action currently happening, having a clear documented procedure would help ensure a consistent approach is followed and that enforcement cases are appropriately compiled. This is particularly important if the Service identifies historic obligations not met or if developers dispute payment. **(See R09)**

## *Control 4: Post development assessment*

Officers don't conduct post development reviews for completed agreements. Reviews should be conducted to ensure all aspects of the agreement are met. Acolaid also has the function to show when an agreement is complete so the applicable land charge can be removed, however this isn't being used. As the service is unaware if all historic agreements are complete and doesn't use the complete function in Acolaid it is likely there are land charges which are incorrectly still applied. As this initial control is not in place, we did not extend our testing further, however, there would be value in the service undertaking a check on the application of land charges to ensure accuracy and completeness. **(See R10)**

## *Control 5: Reporting*

All Councils must produce an annual Infrastructure Funding Statement in line with the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019. The statement must be compiled before 31st December each year. We reviewed the latest statement and found the contents were in line with legislation and published online before the deadline, however it wasn't approved by Cabinet until 25<sup>th</sup> February 2021.

## *Control 6: Index calculations*

Indexation ensures monies collected doesn't lose value before it's spent. Acolaid doesn't have the function to perform indexation calculations therefore officers use Excel spreadsheets and an external BCIS website. We walked through the process and its sound with all developers asked to confirm they're happy with the final calculations.

We tested a random sample of five completed agreements and found:

1. Indexation clauses included in 5/5 agreements.
2. Indexation occurred in 4/5 cases.

# MID KENT AUDIT

We investigated the missing indexation with the service and confirmed that the indexation wasn't applied as the payment was made direct to the Legal department. It is therefore likely that the officers were not aware that the indexation needed to be applied so it was missed. (See R11)

## **Conclusion**

Our testing found the controls in place are only partially effective at mitigating the risk that trigger points are missed. Consequently, we have re-assessed this risk and have increased the likelihood and impact. Where this risk has increased, it now sits above the tolerance levels set within the risk management framework for the Council.

## **Risk 3: Failure to release and spend monies timely**

### *Control 1: s106 group*

There currently isn't a s106 officer group which integrates with the other services involved. This means there is no oversight of s106 processes in particular the use of s106 monies. The Service may choose to address this by re-introducing an oversight group. (See R12)

### *Control 2: Procedure for releasing monies*

There is no agreed, documented procedure for releasing funds internally or externally to 3rd parties. Funds are also not currently released to the NHS at their request. When funds are released to 3rd parties, they don't include a covering email advising what they must be spent on to ensure it's in line with the original s106 agreement. There is also no follow up to confirm where the funds are spent. (See R13)

### *Control 3: Outstanding amounts reported at year end*

We confirmed outstanding s106 monies are annually reported in the Council's Statement of Accounts. Officers provided evidence the figures reconciled to the Council's financial monitoring system (Efin), however we were unable to reconcile the figures to the s106 financial monitoring spreadsheet (see R08).

### *Control 4: Unspent income returned to developer*

All s106 receipts not spent in the agreed period should be returned to the developer. This time frame can vary depending on the original s106 agreement. The monitoring records for historic s106 agreements do not include this timeframe, therefore, it's not possible to determine whether (or how many) agreements might have expired or be close to expiring. We are aware that the service is aware of this, and have been working to trace agreements back, however, this work is not complete. (See R01 and R14)

# MID KENT AUDIT

We tested the five oldest cases detailed on the financial monitoring spreadsheet and found the Council is holding funds totalling £3,500 for the 75 High Street development, which should be returned. (See R14)

## **Conclusion**

There is no joint process or documented procedures to oversee the release of s106 funds. Our testing also identified one instance where funds should have been returned to the developer. We therefore consider there is an increased impact to the risk.

## **Risk 4: Monies not spent on intended purpose**

The Service identified the above risk, which isn't currently mitigated. S106 receipts must be spent in accordance with the s106 agreement, however, the Service doesn't know where monies paid to 3rd parties go. This risk could be mitigated by introducing the following:

1. Covering emails with each fund transfer to advise where monies should be spent.
2. Regular meetings with 3rd parties to discuss where monies are spent.
3. 3rd party protocols. (See R15)

# MID KENT AUDIT

## Recommendations and Action Plan

01 - s106 project management		High (Priority 2)
<p><b>Finding Description:</b> We have identified a number of key weaknesses within the existing s106 process. The service is exploring the options around purchasing and implementing a new s106 system. As such, it's imperative that this system is appropriately scoped, designed and that implementation is closely controlled to ensure that the intended improvements are achieved.</p> <p><b>Cause:</b> Internal controls are not designed into the system and implemented affectively.</p> <p><b>Effect:</b> If controls are not designed into the system and implemented effectively, existing issues and weaknesses will not be addressed.</p> <p><b>Recommendation:</b> Put in place a project team and apply the Councils project management approach to plan, deliver and oversee design and implementation of the S106 system.</p>		
Management Response		
<p><b>Response Type:</b> Agreed</p> <p><b>Response Comments:</b> New software is going live on 4<sup>th</sup> July 2022 any work in advance on non software matters that can be undertaken will be done.</p>		
Agreed Action		
Put in place a project team.		
<p><b>Responsible officer:</b> Dan Carter</p>	<p><b>Implementation date:</b> 31 March 2022</p>	
Apply project management approach to delivery of the s106 software.		
<p><b>Responsible officer:</b> Dan Carter</p>	<p><b>Implementation date:</b> 31 October 2022</p>	

03 - Lack of s106 monitoring resilience		High (Priority 2)
<p><b>Finding Description:</b> There are no resilience arrangements in place to provide cover if the s106 Agreements Monitoring Officer is absent for an extended period. There is a lack of additional officer knowledge and documented procedures.</p> <p><b>Cause:</b> Inadequate oversight of the monitoring of s106 agreements.</p> <p><b>Effect:</b> Monitoring of s106 agreements won't take place potentially resulting in missed trigger points, uncollected funds and delays in spending funds.</p>		

# MID KENT AUDIT

**Recommendation:** 1. Identify/train an additional officer to provide cover.  
2. Develop detailed procedures outlining all processes. These should be saved on a shared drive.

## Management Response

**Response Type:** Proposed Alternative

**Response Comments:** Procedure notes are the priority. Consideration will be given to additional capacity at later date after new system implemented

## Agreed Action

Procedure notes will be developed and shared.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
28 February 2022

Review need for extra resource in August 2022.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 August 2022

## 04 - Trigger points on agreements are missed

High (Priority 2)

**Finding Description:** The Service's s106 agreement monitoring records are incomplete and don't detail if all trigger points have been met.

Our testing of 10 complete agreements found the following:

- Trigger dates fully recorded on Acolaid for 1/10.
- Action dates and funds received fully recorded on Acolaid for 6/10.
- Who obligations should be paid to recorded in 5/10.

**Cause:** Inadequate s106 monitoring records

**Effect:** The Service doesn't know if developers have fulfilled their s106 obligations for agreements prior to 2010 or for 61 agreements post 2010.

**Recommendation:** Review all completed agreements to ensure trigger points are met and complete records are held.

## Management Response

**Response Type:** Proposed Alternative

# MID KENT AUDIT

**Response Comments:** Post 2010 records can be reviewed. Pre 2010 most will be complete and any issues should have manifested by now so low priority.

## Agreed Action

Review post 2010 records.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 March 2022

Review pre 2010 records

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 August 2022

## 10 - Post development reviews

**High (Priority 2)**

**Finding Description:** Officers confirmed post development assessments, to ensure all aspects of the s106 agreement are completed, aren't carried out.

**Cause:** Lack of established process and officer resources.

**Effect:** s106 agreements not completed.

**Recommendation:** Introduce post development reviews.

## Management Response

**Response Type:** Proposed Alternative

**Response Comments:** Medium – agree it is needed but not as high – potential role for proposed Quality Monitoring Officer (some S106 take more than 10 years to reach completion)

## Agreed Action

Introduce post development reviews

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 December 2022

## 14 - Returning unspent s106 monies

**High (Priority 2)**

**Finding Description:** There isn't an agreed documented process in place for returning unspent s106 monies.

The Council's monitoring records don't detail spend by dates so the Council is unaware of the exact date without referring to the original agreement.

# MID KENT AUDIT

We tested five completed agreements and found one case (75 High Street) where funds weren't spent within the required time scale and should be returned. The Council is in the process of returning it.

**Cause:** Lack of strategic oversight

**Effect:** The Council may be in breach of s106 agreements and possess funds that should be returned.

**Recommendation:** Agree and introduce a documented process for returning unspent monies.

Enhance monitoring records to show spend by date and introduce a traffic light system to highlight when funds are nearing said date.

Return funds held for 75 High Street totalling £3,500.

## Management Response

**Response Type:** Proposed Alternative

**Response Comments:** This example has been discussed with legal and there are no legal requirements to return funds so it is low risk. However we have looked into returning it and cannot find the payee details, so Sharon to contact applicant and ask for evidence they paid funds in first instance.

## Agreed Action

Agree and introduce a documented process for returning unspent monies.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 August 2022

Enhance monitoring records to show spend by date and introduce a traffic light system to highlight when funds are nearing said date.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 August 2022

Continue investigation into returning funds held for 75 High Street.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 December 2021

# MID KENT AUDIT

## 15 - Monies not spent on intended purpose

High (Priority 2)

**Finding Description:** The Service has identified a risk, which it currently isn't mitigating. When the Service hands monies over to 3rd parties they do not know if monies are spent in agreement with the s106 agreement.

The service doesn't have any protocols in place with 3rd parties, doesn't send covering emails outlining use of the s106 monies or retrospectively review records.

The Council's Infrastructure Funding Statement is also incorrect if 3rd parties don't provide information back to the Council on how contributions have been spent that reported year and how they intend to spend future contributions.

**Cause:** Lack of officer oversight

**Effect:** The Council could suffer reputational damage if monies they collect and hand over aren't used in line with the s106 agreement.

**Recommendation:** Develop controls to mitigate the risk s106 monies aren't spent on their intended purpose.

### Management Response

**Response Type:** Agreed

### Agreed Action

Phase 1 agree a terms of reference for a s106 group at first meeting March 22

**Responsible officer:**  
Simon Cole

**Implementation date:**  
31 March 2022

Phase 2 - Based on discussions at Phase 1 develop controls to mitigate the risk s106 monies aren't spent on their intended purpose.

**Responsible officer:**  
Simon Cole

**Implementation date:**  
31 December 2022

## 05 - Reconciliation of s106 agreements between Legal and Planning records

Medium (Priority 3)

**Finding Description:** Legal records show there are 342 s106 agreements based on their DC codes. Planning records show 356 so the two records don't reconcile.

Legal allocate DC reference numbers to all agreements and these aren't detailed on Planning records from 2010.



# MID KENT AUDIT

**Cause:** Officer oversight

**Effect:** Either Legal or Planning have inaccurate records which could result in agreements not being monitored and obligations missed.

**Recommendation:** Perform a regular reconciliation between Legal and Planning records to identify discrepancies.

Include DC reference numbers in Planning records to aid reconciliation.

## Management Response

**Response Type:** Agreed

**Response Comments:** This issue is known, the DC codes list has been reviewed and errors corrected with notes made. Sharon keeps a list which is checked every time a new S106 is signed.

## Agreed Action

Ongoing reconciliation between Legal and Planning records to identify discrepancies. Include DC reference numbers in Planning records to aid reconciliation.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 December 2021

Once the new system is in place there will be a box for the DC code, it is recorded on acolaid now in account number box but I will go back over all old records and check they are there.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 August 2022

## 06 - Trigger Point Alert System

**Medium (Priority 3)**

**Finding Description:** There is no trigger point alert system linked to the system that monitors s106 agreements. The s106 Agreements Monitoring Officer relies on Outlook to monitor trigger points, which carries a risk that information isn't copied across correctly or trigger points are missed especially if the responsible officer is absent for an extended period. There is also no targeted search facility in Outlook to check trigger points have been added.

We tested a random sample of 10 complete s106 agreements but couldn't verify whether trigger points were registered as officers didn't know how the previous s106 Agreements Monitoring Officer did this.

**Cause:** Inadequate s106 monitoring system.

# MID KENT AUDIT

**Effect:** Missed trigger points and/or uncollected funds.

**Recommendation:** Introduce trigger point alerts linked to the s106 monitoring system.

## Management Response

**Response Type:** Agreed

## Agreed Action

This will be implemented within new system. A new letter could help with this and possibly a spreadsheet in Teams.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 July 2022

## 08 - Financial monitoring spreadsheet

**Medium (Priority 3)**

**Finding Description:** The s106 Agreements Monitoring Officer doesn't have regular meetings with Finance to discuss payments received. The financial monitoring spreadsheet details payments received but the changes aren't highlighted meaning it takes a while for the s106 Agreements Monitoring Officer to identify them.

We were unable to reconcile the monitoring spreadsheet to the financial monitoring system Efin.

**Cause:** Lack of communication between Finance and the s106 Agreements Monitoring Officer

**Effect:** Delays in identifying received payments

**Recommendation:** Introduce monthly meetings with Finance to go through the financial monitoring spreadsheet to easily identify received payments and ensure integrity and accuracy of records.

## Management Response

**Response Type:** Agreed

## Agreed Action

A spreadsheet focusing on the month rather than a full account of every contribution paid would help focus and prevent error. Will explore having an email with receipts within month, or highlighting payments within month.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 January 2022

# MID KENT AUDIT

12 - Lack of governance to oversee use of s106 receipts	Medium (Priority 3)
<p><b>Finding Description:</b> There is a lack of governance in place to oversee the use of s106 receipts. Officers independently review applications and issuance of funds.</p> <p><b>Cause:</b> s106 group disbanded as not deemed necessary by previous management.</p> <p><b>Effect:</b> Lack of joined up review and discussion</p> <p><b>Recommendation:</b> Improve governance to oversee the use of s106 receipts. This could involve re-forming the s106 group</p>	
Management Response	
<p><b>Response Type:</b> Proposed Alternative</p> <p><b>Response Comments:</b> A high risk as disbanding of the S106 working group has not assisted identification of any potential clawbacks of money (thus dictating priority proposals for S106 spend by other departments) or early discussion of projects coming forward where S106 monies will be relied upon by the project sponsor. In addition the relationship to project management group and management team sign off needs strengthening to ensure that S106 spend would be lawful and assumptions are not made when projects are signed off. In some instances projects have been signed off at management team level without any details being identified by the project sponsor in terms of relationship to the S106 agreement. This hints at a potentially confusing process with too many strands to project sign off and review and rationalisation would be welcome.</p>	
Agreed Action	
<p>We will improve governance to oversee the use of s106 receipts by re-forming the s106 group.</p>	
<p><b>Responsible officer:</b> Simon Cole</p>	<p><b>Implementation date:</b> 31 March 2022</p>

02 - Training/Development	Low (Priority 4)
<p><b>Finding Description:</b> There is no s106 training/development in place for the s106 Agreements Monitoring Officer.</p> <p><b>Cause:</b> Inadequate succession planning.</p> <p><b>Effect:</b> Ineffective or inadequate monitoring of s106 agreements. Areas of best practice not obtained.</p>	

# MID KENT AUDIT

**Recommendation:** Investigate training/development opportunities for the s106 Agreements Monitoring Officer

## Management Response

**Response Type:** Agreed

## Agreed Action

Sharon will be trained and giving training on the new system. Sharon to look for training courses or contact officers from adjoining Councils to share information.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 July 2022

## 07 - Introduction letter

**Low (Priority 4)**

**Finding Description:** The s106 Agreements Monitoring Officer is planning to send introduction letters to developers to introduce herself and advise of the developer's responsibilities. The introduction of the letter is delayed pending the implementation of a new s106 agreement monitoring system. There is no definitive date as to when the system will be enabled therefore the letter should be introduced immediately.

**Cause:** The s106 Agreement Monitoring Officer is waiting for the introduction of a new monitoring system.

**Effect:** The s106 Agreement Monitoring Officer has highlighted an area for improvement. Delayed implementation will result in a delay in improving the s106 agreement monitoring process.

**Recommendation:** Introduce the introduction letter immediately.

## Management Response

**Response Type:** Agreed

**Response Comments:** We would wish the new system to be developed to help automate this.

## Agreed Action

Wording for letter to be agreed by officers.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
25 December 2021

Letter to be automated once new system in place.

**Responsible officer:**  
Sharon Dimsdale

**Implementation date:**  
31 July 2022

# MID KENT AUDIT

09 - Enforcement procedures		Low (Priority 4)
<p><b>Finding Description:</b> There are currently no documented enforcement procedures for agreements that aren't adhered to.</p> <p>The Service is currently unaware if all historic agreements are met. If they discover unfulfilled agreements a documented process will ensure a consistent agreed approach.</p> <p><b>Cause:</b> Lack of oversight</p> <p><b>Effect:</b> An inconsistent approach to follow up action, which hasn't been agreed by management. This could result in challenges from developers.</p> <p><b>Recommendation:</b> Agree and document enforcement action procedures.</p>		
Management Response		
<p><b>Response Type:</b> Proposed Alternative</p> <p><b>Response Comments:</b> It is extremely rare for breaches to end in litigation in the courts and the number of challenges from developers is also very low. If there is an issue where there is a breach where we have been unsuccessful in resolving with the developer then we would as a last resort discuss with legal with the intention of enforcing a claim in the courts. We agree a process needed.</p>		
Agreed Action		
<p>Jeremy Baker, Sharon Dimsdale, Dan Carter and Roland Mills will agree a protocol and meet as and when needed.</p>		
<p><b>Responsible officer:</b> Sharon Dimsdale</p>	<p><b>Implementation date:</b> 31 March 2022</p>	

11 - Indexation		Low (Priority 4)
<p><b>Finding Description:</b> Our testing found indexation wasn't received for 1/5 tested agreements (17/1357/AS).</p> <p><b>Cause:</b> Payment was made directly to Legal Services who didn't check as a matter of course for indexation.</p> <p><b>Effect:</b> Insufficient funds received.</p> <p><b>Recommendation:</b> Investigate possibility of retrospectively charging for indexation. Inform all parties who receive s106 monies to check for indexation.</p>		

# MID KENT AUDIT

## Management Response

**Response Type:** Disagreed

**Response Comments:** Potentially disproportionate response to very small sums of money

## 13 - Procedure for releasing monies

Low (Priority 4)

**Finding Description:** There is no documented agreed process in place for releasing s106 funds.

A covering email/letter isn't sent with the release of s106 monies to 3rd parties advising what the funds have to be spent on.

**Cause:** Lack of strategic oversight

**Effect:** Without a documented process an inconsistent approach may be taken.

The Council is unaware where funds are spent and if this is in line with the s106 agreement.

**Recommendation:** Agree and document process for releasing s106 monies.

## Management Response

**Response Type:** Proposed Alternative

**Response Comments:** There is a process and an approval to spend monies form. The approval form has been revamped during its 10 year life to make it slicker and avoid unnecessary calls on legal services time in terms of alignment with terms of S106. Some overlap with governance arrangements in terms of S106 working group and project management group need review to ensure S106 spend is not an afterthought and/or proposed spend is not revealed to those signing off projects as potentially falling outside the terms of the S106 agreement and those matters on which the monies can be lawfully spent. Maybe need a process for checking what money spent on.

## Agreed Action

Agree and document process for releasing s106 monies.

**Responsible officer:**  
Simon Cole

**Implementation date:**  
31 March 2022

# MID KENT AUDIT

## Appendix I: Audit Brief (As Originally Issued)

### About the Service Area

Section 106 (s106) of the Town and County Planning Act 1990 allows the Council and developers to form planning obligations as part of the planning application process. This involves negotiating a contribution from the developer at key points in the development process, which are referred to as trigger points.

s106 agreements are drafted when it is considered that a development will have significant impacts on the local area that cannot be moderated by means of conditions attached to a planning decision. They are used to support the provision of services and infrastructure such as affordable housing, highways, education, health and recreational facilities.

### About the Audit

We complete all our work in full conformance with [Public Sector Internal Audit Standards](#), [CIPFA's Local Government Application Note](#) and the [Institute of Internal Audit's International Professional Practices Framework](#).

This includes the internal auditors' [Code of Ethics](#) that commits us to work with integrity, objectivity, confidentiality and competence.

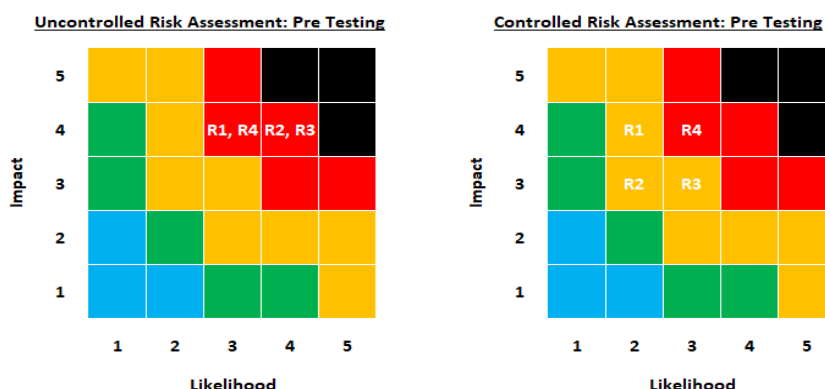
This audit seeks to provide assurance over the controls and procedures in place to manage s106 agreements.

We have agreed the following 4 risks in relation to s106 agreements:

- 1) Planning obligation details aren't fully recorded.
- 2) Trigger points on agreements are missed.
- 3) Failure to release and spend monies timeously.
- 4) Monies not spent on intended purpose.

We used the risk assessments detailed below to guide the testing we will undertake.

# MID KENT AUDIT



No existing controls are in operation for R4 so we are unable to test this area. We will however work with the service to understand what controls can be introduced.

Our findings in this review will contribute towards the **internal controls** aspect of the Head of Audit Opinion, to be issued in June 2022.

## Evaluation Criteria

We will assess s106 performance against the Town and Country Planning Act 1990 and the National Planning Policy Framework.

## Audit Testing

Audit Tests	Sample Size
Evaluate responsible officer job description	N/A
Confirm responsible officer is suitably trained/ experienced	N/A
Evaluate trigger points alert system	N/A
Test sample of agreements for action taken on past trigger points	10
Test sample of incomplete agreements to ensure triggers points set up	5
Review recording system procedure notes	N/A
Evaluate financial monitoring process	N/A
Confirm s106 balances to the general ledger	1
Sample test whether agreements are recorded correctly	10
Reconcile s106 Legal records to monitoring spreadsheet	N/A
Walkthrough enforcement action process	1
Test enforcement action is taken	5
Evaluate process for reviewing completed s106 agreements	N/A
Test a sample of completed agreements to confirm review took place	5
Review meetings held between services with involvement of s106 process and test meeting notes	3
Evaluate and verify the reporting process in line with legislation	N/A
Walkthrough index calculation process	1



# MID KENT AUDIT

Audit Tests	Sample Size
Test agreements to ensure provision for indexing and its occurred	5
Evaluate process for releasing s106 monies	N/A
Test a sample of cases to confirm the correct release of monies	10
Confirm outstanding developer contributions are reported	N/A
Reconcile EOY financial statement to capital grants and s106 monitoring sheet	1
Evaluate the process for returning unspent s106 monies	N/A
Test a sample of cases where monies have been collected to ensure that they have been used before the agreed deadline	5

## Audit Resources

Based on the objectives, scope and testing identified we expect this review will need 21.00 days' work to complete.

## Audit Timeline

- Fieldwork Begins 12 July 2021
- Draft Report Issued 16 August 2021

## Audit Resources and Timeline Outturn

We completed this engagement in 1 day longer than originally planned owing to the nature of the issues identified. Additionally, we extended the timeline to allow sufficient time to discuss the issues.

## Disclaimer and Report Distribution

There are inherent limits to internal audit's work. All control systems, no matter how well designed, are vulnerable to risk of failure. This might arise, for example, following poor judgement, human error, deliberate subversion or unforeseeable circumstances. Our assessment of controls covers the period set out in scope detailed in the *About the Audit* section. As a historical review it may not provide assurance for future periods. This may be, for example, where control design becomes inadequate in changed circumstances or compliance with procedures weakens over time.

It is the responsibility of management to develop and preserve sound risk management, internal control and governance. Internal audit work cannot substitute for management's responsibilities over system design and operation. We plan our work in line with relevant Standards and our agreed Audit Charter(s) to maximise the reasonable assurance we can

# MID KENT AUDIT

provide. However, internal audit procedures alone, even when conducted with due professional care, cannot guarantee detection of fraud or error or eliminate risk of failure. We prepare and deliver this document for and to the individuals and organisations named on the front cover and in the *Report Distribution List* section. We may use all or part in reporting to Members. We can accept no liability to any third party who claims to use or rely, for whatever reason, on its conclusions or any extract. Recipients should not share this document, in whole or part, without seeking permission of the Head of Audit Partnership. This includes where the document is subject to a statutory request under, for example, the Freedom of Information Act 2000.

# MID KENT AUDIT

## Appendix II: Assurance & Priority level definitions

### Assurance Ratings

Full Definition	Short Description
<p><b>Strong</b> – Controls within the service are well designed and operating as intended, exposing the service to no uncontrolled risk. There will also often be elements of good practice or value for money efficiencies which may be instructive to other authorities. Reports with this rating will have few, if any, recommendations and those will generally be priority 4.</p>	<p>Service/system is performing well</p>
<p><b>Sound</b> – Controls within the service are generally well designed and operated but there are some opportunities for improvement, particularly with regard to efficiency or to address less significant uncontrolled operational risks. Reports with this rating will have some priority 3 and 4 recommendations, and occasionally priority 2 recommendations where they do not speak to core elements of the service.</p>	<p>Service/system is operating effectively</p>
<p><b>Weak</b> – Controls within the service have deficiencies in their design and/or operation that leave it exposed to uncontrolled operational risk and/or failure to achieve key service aims. Reports with this rating will have mainly priority 2 and 3 recommendations which will often describe weaknesses with core elements of the service.</p>	<p>Service/system requires support to consistently operate effectively</p>
<p><b>Poor</b> – Controls within the service are deficient to the extent that the service is exposed to actual failure or significant risk and these failures and risks are likely to affect the Council as a whole. Reports with this rating will have priority 1 and/or a range of priority 2 recommendations which, taken together, will or are preventing from achieving its core objectives.</p>	<p>Service/system is not operating effectively</p>

# MID KENT AUDIT

## Finding, Recommendation and Action Ratings

**Priority 1 (Critical)** – To address a finding which affects (negatively) the risk rating assigned to a Council strategic risk or seriously impairs its ability to achieve a key priority. Priority 1 recommendations are likely to require immediate remedial action. Priority 1 recommendations also describe actions the authority **must** take without delay.

**Priority 2 (High)** – To address a finding which impacts a strategic risk or key priority, which makes achievement of the Council's aims more challenging but not necessarily cause severe impediment. This would also normally be the priority assigned to recommendations that address a finding that the Council is in (actual or potential) breach of a legal responsibility, unless the consequences of non-compliance are severe. Priority 2 recommendations are likely to require remedial action at the next available opportunity, or as soon as is practical. Priority 2 recommendations also describe actions the authority **must** take.

**Priority 3 (Medium)** – To address a finding where the Council is in (actual or potential) breach of its own policy or a less prominent legal responsibility but does not impact directly on a strategic risk or key priority. There will often be mitigating controls that, at least to some extent, limit impact. Priority 3 recommendations are likely to require remedial action within six months to a year. Priority 3 recommendations describe actions the authority **should** take.

**Priority 4 (Low)** – To address a finding where the Council is in (actual or potential) breach of its own policy but no legal responsibility and where there is trivial, if any, impact on strategic risks or key priorities. There will usually be mitigating controls to limit impact. Priority 4 recommendations are likely to require remedial action within the year. Priority 4 recommendations generally describe actions the authority **could** take.

**Advisory** – We will include in the report notes drawn from our experience across the partner authorities where the service has opportunities to improve. These will be included for the service to consider and not be subject to formal follow up process.