

Agenda Item No: 5
Report To: Audit Committee
Date of Meeting: 29th November 2022
Report Title: S106 Mid-Kent Audit Report 2021 – Update on progress in responding to remedial actions
Report Author: Simon Cole
Job Title: Assistant Director - Planning and Development



Summary: This report provides an update in respect of progressing the actions set out in the Mid-Kent Audit Review of the S106 Process during 2021 since April and other related work streams.

Key Decision: NO

Significantly Affected Wards: N/A

Recommendations: **The Committee is recommended to:-**

- I. **Note** the progress made in responding to the agreed actions; and
- II. **Consider** whether receipt of a final report from the Assistant Director Planning and Development regarding any outstanding remedial actions is needed.

Policy Overview: N/A
Financial Implications: The Audit identified weaknesses in the controls related to the collection and spending of S106 income, which the actions seek to address.

Legal Implications: No specific implications.

Equalities Impact Assessment: Not required.

Other Material

Implications: N/A

**Exempt from
Publication:** **NO**

**Background
Papers:** The Final audit report.

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Introduction and Background

1. The Committee received a report at the April meeting prepared by Alison Blake the Interim Deputy Head of Audit Partnership setting out the findings of the Mid-Kent Audit of the S106 monitoring process carried out during the summer of 2021. A copy of the full report finalised in December 2021 was appended to that report and a presentation was provided by the Assistant Director – Planning and Development summarising the 15 recommendations and 22 actions set out in the Audit report and the progress made at that time.
2. An opportunity was also taken to update the Committee on the complementary recommendations of the Overview and Scrutiny Committee S106 Task Group, which had presented its findings to Cabinet in November 2021.
3. The Committee resolved to receive a further update on progress, which this report will address.

Progress in respect of the Mid-Kent Audit Actions

4. Good progress has been made in responding to the MKA actions since April, which are summarised in Appendix 1 to this report. Regular meetings have been held with the auditors to review progress, the most recent taking place on 24th October.
5. At the time of writing two outstanding actions due to be completed by the 31st December 2022 were being addressed in accordance with the timescales agreed with MKA. These are action 10.1 preparing post-development reviews and action 15.2 developing controls to mitigate the risk associated with S106 funding not being spent in accordance with the agreement. These actions will be completed by 31st December.
6. Three actions, 4.2, 6.1, and 7.2 are outstanding pending further improvements to the new Arcus planning software launched in the summer in order to fully enable the monitoring functionality. Officers are working with Arcus to resolve these issues and additional data migration and upgrading of the system as it stands is due to occur in the week commencing 21st November. This will require testing by officers to ensure the necessary monitoring functionality to achieve the MKA recommendation has been achieved or whether additional work needs to be specified with the software supplier. This is expected to be resolved by the time of the next MKA review in April 2023 when officers expect all of the MKA actions to have been completed by this time.

Update in respect of the O&S S106 Task Group Recommendations

7. The O&S S106 Task Group made 8 recommendations for improving the S106 process, which were agreed by Cabinet in November 2021. Updates on progress have been provided to the Committee in May and September of this year. A summary of the recommendations and a note on progress can be found in Appendix 2 of this report.
8. The September update included a processing mapping exercise of the whole S106 process from the plan making stage, through planning applications and finally implementation and monitoring, which responds to recommendation 1.
9. Officers are now progressing the remaining recommendations, including the arrangements for two S106 workshops for Parish Councils and Urban Community Forums to be held virtually on 24th November and 1st December, which will be based around a new S106 Handbook setting out the process in more detail. There will be a question and answer session and the workshops will be recorded and made available for later viewing.
10. Recommendation (v), which refers to the new planning software providing information on the council's website about what Section 106 monies are available to individual parishes, will require further improvements to Arcus, which are anticipated to be in place by next April (as noted in paragraph 6 above).
11. Recommendation (vi) identifies the preparation of a S106 Supplementary Planning Document (SPD) to provide an up to date list of what is expected of developers within a single document to provide clarity for all parties involved in the Section 106 process as a matter of priority.
12. This document will be informed by the Stodmarsh nutrient neutrality mitigation credits once the strategic wetland solution is finalised, enabling residential development within the Stour catchment to proceed. In addition, new developer contributions for Biodiversity Net Gain as required by the Environment Act 2021, the Council's forthcoming guidance note on climate change mitigation and requests from infrastructure providers to review their heads of terms to reflect rising costs are all expected within the next few months. It would be prudent therefore to wait for further information before preparing the SPD. It is anticipated that this will be available during next year and drafting of the SPD can proceed during the summer of 2023.
13. Recommendation (vii) calls for the use of standardised wording for S106 agreements and the greater use of templates for consistency. The standard S106 Heads of Terms template that accompanies Planning Committee reports (known as Table 1) is being updated and revised and this will be finalised ready for inclusion in Planning Committee reports from January 2023. In addition the S106 Officer Project Group are currently reviewing recent examples of S106 agreements to establish some standard wording for use in future S106 agreements.

Proposal

14. I recommend the Committee note the progress made towards the Mid-Kent Audit Actions and in the O&S S106 Task Group recommendations and invite the Committee to consider amending its work programme to schedule a future update (or updates) on progress towards fulfilling agreed actions if needed.

Implications and Risk Assessment

15. The audit report sets out the possible risks arising from the findings, but these are accompanied by short-term remedial actions which have been agreed by the Service's management for implementation.

Next Steps in Process

14. Mid Kent Audit will continue to monitor progress and this will form part of interim and annual reporting to Members as part of overall summaries.