


Non-Executive Report of the: Audit Committee 28 June 2016	 TOWER HAMLETS
Report of: Chris Holme (Service Head Resources and Economic Development)	Classification: Unrestricted
Independent Review of s106 Management Arrangements	

Originating Officer(s)	Chris Holme (Service Head Resources and Economic Development), and Andy Simpson (Business Improvement & s106 Programme Manager)
Wards affected	N/A

Summary

- As part of their report on the Council's accounts for 2013/14, and report to those charged with the Authority's governance (ISA 260 report), the external auditors raised issues regarding the arrangements for managing s106 receipts and payments.
- The Council agreed, in response to the issues raised, that an independent review be commissioned to assess current processes, checks and balances, and monitoring arrangements – to provide assurance that payments are made in accordance with agreements and aligned to original planning consents.
- The review was undertaken by Grant Thornton UK LLP, and completed in March. Their review report is attached (Appendix 1).
- Officers welcome the review findings, and in response to the recommendations, have set down a series of improvement actions, and progress to date in their implementation. These are also attached (Appendix 2).

Recommendations:

The Audit Committee is asked to:

- Consider the findings of the independent review of s106 management arrangements and comment on the improvement plan

1. REASONS FOR THE DECISIONS

- 1.1 KPMG, the Council's external auditor presented their final report to those charged with governance (ISA260) 2013/14 to Audit Committee in September 2015. A specific recommendation of that report was that the Authority should independently review its arrangements in relation to s106 receipts and payments. In the interests of good governance and transparency the outcome of that review is now being reported back to Committee, and Members consideration being sought on the improvement action plan and progress to date on its implementation.

2. ALTERNATIVE OPTIONS

- 2.1 That Committee doesn't consider the independent review, nor comment on the action plan.

3. BACKGROUND

- 3.1 In September 2015, KPMG presented to this Committee their report on the audited accounts for 2013/14, along with consideration for those charged with governance of the Authority of arrangements to secure economy, efficiency and effectiveness in its use of resources. The ISA 260 report took account of matters raised in the PwC Best Value Inspection, the Mayoral election judgment of April 2015, and other matters raised by DCLG, the Commissioners, Members and the public.
- 3.2 An area of concern raised with KPMG related to the administration of s106 payments. The matters referred to them, and their consideration of them is set out below:

Area	Consideration
<p>Section 106 Queries have been raised with us as to the operation of s106 payments. In particular:</p> <ul style="list-style-type: none"> ■ whether s106 agreements are in accordance with the original planning consents; ■ whether payments have been made in accordance with the agreements (in particular some agreements in relation to public art were raised with us); ■ whether payments are being made on a timely basis; and ■ the delay in concluding the review of a funding arrangement relating to the delivery of projects funded by certain s106 monies 	<p>As a consequence of the issues raised we extended our work in this area. In particular we extended our testing of payments and traced a sample of items from original planning consents through to current payments. We also enquired about the payments made in relation to public art and the review of the funding arrangement.</p> <p>With the exception of the items of public art our testing indicated the s106 payments were in accordance with the agreements, which aligned to the original planning consents. In the case of public art there were five items identified where s106 payments had been made on the basis that a piece of public art would be commissioned and displayed. In two cases (a payment of £90,000 and an initial payment of £10,000) the monies do not appear to have been used for a piece of public art. For the remaining three, no payments have yet been made in relation to the schemes. We reviewed the papers in relation to the £90,000 scheme and note that the change in how the £90,000 was to be used followed the procedures laid down and included obtaining the specific consent of the developers to the change proposed by the Authority.</p> <p>Payments to date have been made in accordance with the timescales agreed with developers, although we note some, with significant balances remaining, are reaching the time limits set out in agreements and some instances where payments were made in advance of the receipt of s106 monies by temporarily using other s106 monies.</p> <p>In relation to the funding arrangement this was reviewed in 2011 and the outcome of the review delayed within the then Mayor's office. We have not been able to establish the reason for the delay. We note that recently the current Mayor has authorised the funding agreement to continue. We have raised a recommendation in relation to s106 in Appendix 1, recommending that an independent review of the processes, controls and overall monitoring should be undertaken</p>

3.3 KPMG set out their findings and recommendation as set down below.

Issue and Recommendation	
<p>S106 arrangements Our consideration of s106 arrangements highlighted that:</p> <ul style="list-style-type: none"> ■ the spreadsheet to record s106 receipts and payments did not cast; ■ that certain items appear not to have been paid strictly in line with the original agreements; ■ there were funds relating to one scheme that we tested that were close to the deadline for spending the s106 funds, and the plans in place would not be completed before the deadline; and ■ there were instances where payments were made in advance of receiving s106 monies, temporarily utilizing other s106 funds. <p>Recommendation The Authority should independently review its arrangements in relation to s106 receipts and payments to ensure they are effective and there are robust processes, controls and monitoring arrangements in place to ensure payments are made in accordance with agreements and aligned to original planning consents</p>	<p>Agreed - An independent review of the arrangements in relation to s106 receipts and payments will be undertaken to ensure effective and robust processes, controls, monitoring and reporting arrangements are in place, in accordance with agreements and aligned with the planning consents.</p> <p>Responsible officer: Chris Holme Due Date: March 2016</p>

- 3.4 In accordance with the recommendation for an independent review, an outline brief was prepared and provided to KPMG for their consideration. KPMG's comments were incorporated before the Council went out to procurement in December.
- 3.5 Grant Thornton were selected as the preferred bidders for the review which commenced in February 2016. Fieldwork involved a desktop review of the council's processes, policies and documents as well as financial and project data. This desktop review was complemented by a range of qualitative interviews with both operational and strategic officers dealing with s106 funding and programming processes. The review was finalised in March 2016.

4. S106 PRIORITISATION

- 4.1 The Council's approach to securing planning obligations, and methodology in calculating contribution requirements are set out in the S106 Planning Obligations Supplementary Planning Document (SPD 2012) <http://modern.gov.towerhamlets.gov.uk/ieListDocuments.aspx?CId=320&MId=3417&Ver=4>. This document formalises that contributions are generally secured for the following themes; Affordable Housing, Education, Community & Leisure Facilities, Employment and Enterprise, Health, Sustainable Transport, Environmental Sustainability and Public Realm & Public Open Space.
- 4.2 In order to agree and if necessary prioritize the Council's s106 requests, the proposed s106 package of a development was reported to the Council's Planning Contribution Overview Panel (PCOP). PCOP being an internal, cross directorate officer-led panel set up by Cabinet in 2004 as having authority, under delegated powers, to discuss the acceptability of the applicant's s106 offer and the apportionment of financial planning obligations, monitor the implementation and expenditure of s106 agreements and monies, and ensure delivery in accordance with the terms of the relevant agreement.
- 4.3 Following agreement of the s106 package on major developments, and when planning permission had been granted, S106 monies are then paid in installments at key stages during throughout the construction lifecycle (for example upon commencement of completion of the development).

5. REVIEW FINDINGS AND IMPROVEMENT ACTIONS

- 5.1 Central to the review were the following areas of council process around s106 payments & programming.
- 5.1.1 *Recording s106 Income and Expenditure*
- The council's current processes in place regarding the accurate recording of s106 income and expenditure.

5.1.2 *Ring-fencing & Programming s106*

- The council's current processes in relation to the ring-fencing and programming of s106 contributions to ensure teaming and lading does not occur.

5.1.3 *Governance & Decision Making*

- The council's current governance and decision making structures in relation to the management of s106 contributions, particularly with regard to processes around any variations to s106 agreements in terms of what money can be expended on.

5.1.4 *Monitoring & Reporting*

- The council's current processes in relation to the monitoring of s106 contributions to ensure monies are spent in accordance with conditions including within the required timelines (and any escalation thereof)
- The suitability of monitoring and reporting both within the department, to executives and any relevant committees.

5.2 The final report is attached as Appendix 1. It highlights a number of positives to provide assurance concerning governance arrangements, given the size of the s106 portfolio. However, it does identify a number of weaknesses, which officers acknowledge and, in line with the review recommendations, are actively progressing improvements. The improvement plan, along with progress to date is attached as Appendix 2.

5.3 The review report sets out eleven recommendations covering each of the above areas. These are:

5.3.1 *Recording s106 Income and Expenditure;*

- The Council should consider procuring integrated s106 and CIL Software.

5.3.2 *Ring-fencing and Programming s106*

- Should the Council forward-fund projects using the General Fund, an audit trail should specify that the money used is from the Council's General Fund or reserves
- The Council should consider the requirement to adopt the capital estimate process to gain Cabinet approval for Capital expenditure previously approved as part of the Capital Programme.
- The Council should review the RCDA procedure and investigate whether a more streamlined process which enables more rapid delegated funding approval
- The Council should build flexible capacity within the s106 programme team and directorates in order to maintain pace with the Capital Programme.

5.3.3 Governance and Decision Making

- The Infrastructure Delivery Steering Group (IDSG) should clarify the distinction between those charged with governance and those with responsibility for delivering the programme.
- The Council should consider grouping small projects together into programme level PIDs for approval and monitoring purposes.
- The Council should consider receipting income and notifying developers of discharge of obligation in every case as standard procedure.

5.3.4 Monitoring and Reporting

- Bi-annual exception reports to PCOP should be integrated with the s106 Portfolio Summary Report to form part of the standard report to the IDSG.
- The Council should further develop its reporting on time-limited contributions.
- PCOP's agenda should include a regular item for monitoring and reporting non-financial agreements.

5.4 A key recommendation is the need for more integration between the Council's planning and financial systems. This was a development already in progress, as part of the work facilitating the implementation of the Community Infrastructure Levy. However full implementation is programmed to follow essential upgrades to existing planning, income and financial systems.

5.5 Since the report was published, the former Planning Contributions Overview Panel has been replaced by the new Community Infrastructure Levy and s106 governance arrangements as agreed by the Mayor in Cabinet on the 5th January. The arrangements aim to improve transparency and accountability of decision-making

5.6 The review recommendations have been accepted by officers, and the deadline for full implementation of all 11 improvement actions is by the end of the current calendar year. Committee is asked to review and comment upon the actions.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

6.1 Following concerns raised by the council's auditors (KPMG) during the audit of the 2013-14 accounts, this report provides an update to the Audit Committee on the subsequent independent review that has been undertaken into the Council's arrangements for managing Section 106 receipts and payments.

6.2 Appendix 1 of this report contains the final report into the review that was undertaken by Grant Thornton, with a summary of the action plan included as Appendix 2. This details the progress that has been made against the various improvement recommendations that were made following the review, several of which had already been addressed as part of the new Infrastructure Delivery Framework (IDF) that came into effect from April 2016 (see below).

- 6.3 Following the introduction of the Community Infrastructure Levy (CIL) system in April 2015, the council reviewed its procedures for managing the allocation and reporting processes for both CIL and the remaining elements of the Section 106 planning process. Over recent years, Section 106 resources have been allocated to schemes following consideration by the officer Planning Contributions Overview Panel (PCOP). On 5th January 2016, the Mayor in Cabinet approved the proposals for the introduction of an Infrastructure Delivery Framework to replace the PCOP process. The new system involves an officer 'Infrastructure Delivery Steering Group' providing recommendations to an 'Infrastructure Delivery Board', which in turn will propose funding allocations for ultimate approval by the Mayor in Cabinet.
- 6.4 A report on the Governance proposals for the Infrastructure Delivery Framework is scheduled to be considered by the Mayor in Cabinet on 26th July 2016. That report will seek approval for a number of complementary processes to be adopted to enable the IDF process to operate in an effective and transparent manner, and will address several of the recommendations that were highlighted in the Grant Thornton review, and that are summarised in Appendix 2.
- 6.5 To assist the monitoring process, an IT system that will support the programme management of both Section 106 and CIL contributions has recently been procured. It is anticipated that the database will be fully functional by the end of 2017. The cost of the system, including the initial data migration, is estimated at £26,000, funded from the 4% administration 'top-slice' which the council can retain from CIL receipts. After initial external support with the data migration process, the system will be maintained by council staff within existing resources.
- 6.6 Most section 106 agreements have expiry conditions associated with them and it is essential that all necessary requirements are met to mitigate the risk of clawback of contributions by developers. A total of £4.1 million of section 106 contributions are due to expire by February 2018. Conditions vary between agreements, with some requiring that the funding is committed by the expiry date, while others specify that the resources have to be fully spent. The Council takes a pro-active approach to the management of contributions, ensuring that any that are due to expire within a two year period are reported to the monthly Infrastructure Delivery Steering Group where action is taken to accelerate the utilisation of these funds before expiry. In addition to the IDF reporting framework, financial data in respect of both CIL and Section 106 will be included in future quarterly Corporate Revenue and Capital Budget Monitoring reports that are considered by Cabinet.

7. LEGAL COMMENTS

- 7.1 The Council is responsible for preparing and publishing its Statement of Accounts, accompanied by the Annual Governance Statement. The Council is also responsible for putting in place proper arrangements to secure

economy, efficiency and effectiveness in its use of resources. This is the Council's Best Value Duty (or value for money).

- 7.2 The Council is also required to appoint auditors for the purposes of forming an opinion on the financial statement; reviewing the Annual Governance Statement; and the auditors are required to report whether, in their opinion, the Council's financial statements present a true and fair view of the financial position, its expenditure and income for the year and whether they have been properly prepared in accordance with the CIPFA Code of Practice on Local Authority Accounting. The auditors are also required to reach a formal conclusion on whether the Council has put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources.
- 7.3 KPMG are the Council's auditors and in reporting to the Council, KPMG are required to comply with an International Standard on Auditing (ISA260) and which sets out their responsibilities for communicating with those charged with governance in an audit of financial statements. The report (known as the ISA260) summarises the key issues identified during the audit of the financial statements and advises of any recommendations for action.
- 7.4 In the ISA260 for 2013/14, KPMG made certain recommendations including relation to section 106 planning obligations. As a result of these, the Council commissioned for an independent review to be undertaken to assess current processes, checks and balances, and monitoring arrangements and to provide assurance that payments are made in accordance with agreements and aligned to original planning consents. Grant Thornton UK LLP were appointed to undertake this independent review and this report advises of their review.
- 7.5 Whilst the report of Grant Thornton UK LLP highlights a number of positives to provide assurance concerning governance arrangements, it does identify a number of weaknesses and which officers have acknowledged. Eleven (11) recommendations were made and which have been accepted and are being progressed. All these recommendations are capable of being carried out within the Council's powers.
- 7.6 When making decisions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). There are no direct equality implications arising from this report.

8. ONE TOWER HAMLETS CONSIDERATIONS

- 8.1 Maximisation of S106 contributions and their effective utilisation are key to mitigating the impacts of development on local residents and ensuring key facilities and services are provided where they are needed, helping to reduce inequality and fostering cohesion.

9. **BEST VALUE (BV) IMPLICATIONS**

9.1 KPMG will reassess s106 arrangements as part of the 2015/16 on the Council's arrangements for securing economy, efficiency and effectiveness in its use of resources as part of the Annual Audit Letter.

10. **SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

10.1 There are no SAGE implications arising out of this report.

11. **RISK MANAGEMENT IMPLICATIONS**

11.1 There are no specific risk management implications

12. **CRIME AND DISORDER REDUCTION IMPLICATIONS**

12.1 There are no crime and disorder reduction implications.

Linked Reports, Appendices and Background Documents

Linked Report

- Review of s106 programme management processes – Grant Thornton - March 2016 (App1)

Appendices

Appendix 1 – Review of s106 programme management processes – Grant Thornton
Appendix 2 – Improvement Action Plan

**Local Government Act, 2000 (SECTION 97)
LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT**

Brief description of "background papers"	Name and telephone number of holder and address where open to inspection
S106 programme working files	Andy Simpson, Ext. 1376