

Enquiries to Committee Services
Direct Dial: 024 7637 6000
Direct Email: committee@nuneatonandbedworth.gov.uk

Date: 7th March, 2022

Our Ref: KB

Dear Sir/Madam,

A meeting of the **AUDIT & STANDARDS COMMITTEE** will be held in the Council Chamber, Town Hall, Nuneaton, on **Tuesday 15th March, 2022** at **6.00pm**

Please note that meetings will be recorded for future publication on the Council's website.

Yours faithfully,

BRENT DAVIS
Chief Executive

To: All Members of the
Audit & Standards
Committee

Councillors H. Walmsley (Chair), M. Rudkin
(Vice-Chair), B. Beetham, T. Cooper, L.
Downs, J. Hartshorn, L. Hocking, J.
Kennaugh, K. Kondakor, J. Singh, R.
Tromans, and Mr G. Sonola

A G E N D A

PART I - PUBLIC BUSINESS

1. ANNOUNCEMENTS

To advise the meeting participants of the procedure that will be followed by the Members of the committee.

A fire drill is not expected, so if the alarm sounds please evacuate the building quickly and calmly. Please use the stairs and do not use the lifts. Once out of the building, please gather outside the Virgin Money building (formally the Yorkshire Bank) on the opposite side of the road.

Exit by the door by which you entered the room or by the fire exits which are clearly indicated by the standard green fire exit signs.

If you need any assistance in evacuating the building, please make yourself known to a member of staff.

Please also make sure all your mobile phones are turned off or set to silent.

Chair to advise the meeting that the meeting will be recorded for future broadcast.

2. APOLOGIES - To receive apologies for absence from the meeting.

3. MINUTES – To confirm the minutes of the meeting of the Audit and Standards Committee held on 11th January, 2022, attached **(Page 5)**

4. DECLARATIONS OF INTEREST

To receive declarations of Disclosable Pecuniary and Other Interests, in accordance with the Members' Code of Conduct.

Declaring interests at meetings

If there is any item of business to be discussed at the meeting in which you have a disclosable pecuniary interest or non-pecuniary interest (Other Interests), you must declare the interest appropriately at the start of the meeting or as soon as you become aware that you have an interest.

Arrangements have been made for interests that are declared regularly by members to be appended to the agenda **(Page 11)**. Any interest noted in the Schedule at the back of the agenda papers will be deemed to have been declared and will be minuted as such by the Committee Services Officer. As a general rule, there will, therefore, be no need for those Members to declare those interests as set out in the schedule.

There are, however, TWO EXCEPTIONS to the general rule:

1. When the interest amounts to a Disclosable Pecuniary Interest that is

engaged in connection with any item on the agenda and the member feels that the interest is such that they must leave the room. Prior to leaving the room, the member must inform the meeting that they are doing so, to ensure that it is recorded in the minutes.

2. Where a dispensation has been granted to vote and/or speak on an item where there is a Disclosable Pecuniary Interest, but it is not referred to in the Schedule (where for example, the dispensation was granted by the Monitoring Officer immediately prior to the meeting). The existence and nature of the dispensation needs to be recorded in the minutes and will, therefore, have to be disclosed at an appropriate time to the meeting.

Note: Following the adoption of the new Code of Conduct, Members are reminded that they should declare the existence and nature of their personal interests at the commencement of the relevant item (or as soon as the interest becomes apparent). If that interest is a Disclosable Pecuniary or a Deemed Disclosable Pecuniary Interest, the Member must withdraw from the room.

Where a Member has a Disclosable Pecuniary Interest but has received a dispensation from Audit & Standards Committee, that Member may vote and/or speak on the matter (as the case may be) and must disclose the existence of the dispensation and any restrictions placed on it at the time the interest is declared.

Where a Member has a Deemed Disclosable Interest as defined in the Code of Conduct, the Member may address the meeting as a member of the public as set out in the Code.

Note: Council Procedure Rules require Members with Disclosable Pecuniary Interests to withdraw from the meeting unless a dispensation allows them to remain to vote and/or speak on the business giving rise to the interest.

Where a Member has a Deemed Disclosable Interest, the Council's Code of Conduct permits public speaking on the item, after which the Member is required by Council Procedure Rules to withdraw from the meeting.

5. PUBLIC CONSULTATION - Members of the Public will be given the opportunity to speak on specific agenda items or have their submitted statement read by an officer of the Council if notice has been received.
6. INTERNAL AUDIT REPORT – NOTICES ISSUED TO RESIDENTS (IN THE LAST TWO YEARS) – report of the Director – Finance and Enterprise attached **(Page 13)**
7. INTERNAL AUDIT REPORT – SECTION 106 AGREEMENTS (PLANNING OBLIGATIONS IN THE LAST FIVE YEARS) – report of the Director – Finance and Enterprise attached **(Page 23)**
8. INTERNAL AUDIT PLAN 2022 – 23 – report of the Director – Finance and Enterprise attached **(Page 45)**
9. ANY OTHER ITEMS - which in the opinion of the Chair should be discussed as a matter of urgency because of special circumstances (which must be

specified).

10. EXCLUSION OF THE PUBLIC AND PRESS - Under section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following item, it being likely that there would be disclosure of exempt information of the description specified in paragraph (i) and (iv) of Part I and II of Schedule 12A to the Act.
11. COMPLAINTS AGAINST MEMBERS: 3RD SEPTEMBER 2021 – 3RD MARCH 2022 report of the Monitoring Officer attached **(to follow)**

NUNEATON AND BEDWORTH BOROUGH COUNCIL

AUDIT & STANDARDS COMMITTEE

11th January 2022

A meeting of the Audit & Standards Committee was held on Tuesday, 11th January 2022 in the Council Chamber, Town Hall, Nuneaton. The meeting was recorded and live streamed.

Present

Councillor H. Walmsley – Chair

Councillors B. Beetham, L. Downs, J. Hartshorn, J. Kennaugh, K. Kondakor, and M Rudkin

Apologies were received for Councillors L. Hocking, R. Tromans and Mr G. Sonola

PART I – PUBLIC BUSINESS

ASC41 **Minutes**

RESOLVED that

- a) the minutes of the Audit and Standards Committee meeting held on 9th November 2021, be confirmed, and signed by the Chair; and
- b) the minutes of the Audit and Standards Sub-committee meeting held on 20th December 2021, be confirmed, and signed by the Chair

Councillor K. Kondakor requested that his vote against the approval of the Audit and Standards Sub-committee minutes be recorded in the minutes.

ASC42 **Declarations of Interest**

RESOLVED that the Declarations of Interest for this meeting are as set out in the Schedule attached to these minutes.

ASC43 **Mayoral Protocol**

The Director for Planning and Regulation presented the report and recommendations from the Constitution Review Working Party on the Mayoral Protocol.

RESOLVED that

- a) the Mayor's protocol as shown at Appendix A of the report be approved; and
- b) it be recommended to Council that the Constitution be amended accordingly.

ASC44 **The Code of Conduct**

The Director for Planning and Regulation presented the report and recommendations from the Constitution Review Working Party on the adoption of the code of conduct used by Warwickshire County Council with some minor modifications as at Appendix B of the Report.

SPEAKER: Michele Kondakor

RESOLVED that it be recommended to Council that the code of conduct as set out in Appendix A of the report be adopted, subject to the modifications recommended in Appendix B of the report.

ASC45 **Voluntary Councillor Recall Scheme**

The Director for Planning and Regulation presented the report and recommendation from the Constitution Review Working Party on the introduction of a local recall scheme for Councillors based on the provisions of the Recall of MPs Act 2015 that came into force on 4th March 2016.

RESOLVED that a joint letter be sent from the Chair of this Committee And the Leader of the Council to the Secretary of State for Levelling Up, Housing and Communities seeking the introduction of a national recall scheme for local Councillors.

Councillor K. Kondakor requested that his vote against the recommendation be recorded in the minutes.

ASC46 **E-Petitions Scheme**

The Director for Planning and Regulation presented the report detailing the recommendations made by the Constitution Review Working Party upon reviewing the Petitions Scheme and the introduction of an e-petition scheme for the Council

SPEAKER: Michele Kondakor

RESOLVED that

- a) an e-petition scheme be piloted using an online process developed by I.T or using Change.org

- b) Delegated authority be given to the Director – Planning and Regulation, in consultation with the Chair of Audit and Standards Committee and the Portfolio Holder for Finance and Corporate, to consult on a NBBC led e-petition scheme for the Council;
- c) the amended Petitions Scheme at appendix A of the report be approved; and
- d) it be recommended to Council that the constitution be amended accordingly

ASC47 **The Complaints Procedure**

The Director for Planning and Regulation presented to the committee recommendations from the Audit and Standards Sub-Committee which met on 20th December 2021 to review the complaints procedure used by this council and recommend changes.

SPEAKER: Michele Kondakor

RESOLVED that

- a) the Complaints Procedure be approved as shown at Appendix A of the report; and
- b) it be recommended to Council that the Constitution be amended accordingly

Councillor K. Kondakor requested that his vote against the approval of the Complaints procedure be recorded in the minutes

ASC48 **Exclusion of the Public and Press**

RESOLVED that under section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following item, it being likely that there would be disclosure of exempt information of the description specified in paragraph (i) and (ii) of Part I of Schedule 12A to the Act.

Part II – Private Business

ASC49 **Referral of Investigation – Complaint 7/21**

The Monitoring Officer presented the Investigation Report to the committee for consideration.

RESOLVED that

- a) the Investigation Officer conclusion that there was no breach of the Members code of conduct be accepted; and
- b) the Monitoring Officer be instructed to write to the Subject Member and confirm that the Committee is satisfied that no further action is required and to provide a copy of the investigators final report to both the Subject Member and the Complainant.

ASC50 **Referral of Investigation 9/21**

The Monitoring Officer presented the Investigation Report to the committee for consideration.

RESOLVED that

- a) the Investigation Officer conclusion that there was no breach of the Members code of conduct be accepted; and
- b) the Monitoring Officer be instructed to write to the Subject Member and confirm that the Committee is satisfied that no further action is required and to provide a copy of the investigators final report to both the Subject Member and the Complainant.

Chair _____

Audit and Standards Committee - Schedule of Declarations of Interests – 2021/2022

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
	General dispensations granted to all members under s.33 of the Localism Act 2011			Granted to all members of the Council in the areas of: <ul style="list-style-type: none"> - Housing matters - Statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 - An allowance, payment given to members - An indemnity given to members - Any ceremonial honour given to members - Setting council tax or a precept under the Local Government Finance Act 1992 - Planning and Licensing matters - Allotments - Local Enterprise Partnership
	B. Beetham	Employed by The George Elliott Hospital; Warwickshire County Council – Camp Hill	Member of the following Outside Bodies: <ul style="list-style-type: none"> • Camp Hill Urban Village: Pride in Camp Hill Board • Committee of Management of Hartshill and Nuneaton Recreation Ground 	
	T. Cooper	None	Member on the following Outside Bodies: <ul style="list-style-type: none"> • Camp Hill Urban Village: Pride in Camp Hill Board • Committee of Management of Hartshill and Nuneaton Recreation Ground 	
	L. Downs	River Bars Limited; Coventry Plus Beyond the Plane	NBBC representative on the Armed Forces Covenant Meeting	
	J. Hartshorn	Employed by Nuneaton Library – Digital Inclusion – WCC (Senior Customer Service Assistant) COVID Community Testing – WCC – Team Leader (Casual)	Member of Nuneaton Conservatives	

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
	L. Hocking	Employed by Openreach	Member of: <ul style="list-style-type: none"> • Unite the Union • Communication Workers Union 	
	J. Kennaugh	County Councillor W.C.C. Employed by UK Flooring Direct Ltd.	Member of the W.C.C. Regulatory Committee Member of the Conservative Party Member of UNITE the Union Nuneaton and Bedworth representative for the Equality and Inclusion Partnership NBBC Representative on Warwickshire Race Equality Partnership	
	K.A. Kondakor	Electronic Design Engineer (self-employed, semi-retired) Statistical data analyst and expert witness (self-employed)	100PERCENTRENEWABLEUK LTD	
	M. Rudkin	Employee of Coventry City Council	Unite the Union	
	J. Singh			
	R. Tromans	RTC, Nuneaton AFL, Wellingborough	Warwickshire County Councillor Member of the following Outside Bodies: <ul style="list-style-type: none"> • Nuneaton Neighbourhood Watch Committee • Nuneaton Festival of Arts 	
	H. Walmsley	Chief of Staff to Julian Knight MP	Chartered Institute of Public Relations Member on the following Outside Bodies: <ul style="list-style-type: none"> • Friendship Project for Children • West Midlands Combined Authority Audit Group 	Dispensation to speak and vote

Audit and Standards Committee - Schedule of Declarations of Interests – 2021/2022

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
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	B. Beetham	Employed by The George Elliott Hospital; Warwickshire County Council – Camp Hill	Member of the following Outside Bodies: <ul style="list-style-type: none"> • Camp Hill Urban Village: Pride in Camp Hill Board • Committee of Management of Hartshill and Nuneaton Recreation Ground 	
	T. Cooper	None	Member on the following Outside Bodies: <ul style="list-style-type: none"> • Camp Hill Urban Village: Pride in Camp Hill Board • Committee of Management of Hartshill and Nuneaton Recreation Ground 	
	L. Downs	River Bars Limited; Coventry Plus Beyond the Plane	NBBC representative on the Armed Forces Covenant Meeting	
	J. Hartshorn	Employed by Nuneaton Library – Digital Inclusion – WCC (Senior Customer Service Assistant) COVID Community Testing – WCC – Team Leader (Casual)	Member of Nuneaton Conservatives	

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
	L. Hocking	Employed by Openreach	Member of: <ul style="list-style-type: none"> Unite the Union Communication Workers Union 	
	J. Kennaugh	County Councillor W.C.C. Employed by UK Flooring Direct Ltd.	Member of the W.C.C. Regulatory Committee Member of the Conservative Party Member of UNITE the Union Nuneaton and Bedworth representative for the Equality and Inclusion Partnership NBBC Representative on Warwickshire Race Equality Partnership	
	K.A. Kondakor	Electronic Design Engineer (self-employed, semi-retired) Statistical data analyst and expert witness (self-employed)	100PERCENTRENEWABLEUK LTD	
	M. Rudkin	Employee of Coventry City Council	Unite the Union	
	J. Singh			
	R. Tromans	RTC, Nuneaton AFL, Wellingborough	Warwickshire County Councillor Member of the following Outside Bodies: <ul style="list-style-type: none"> Nuneaton Neighbourhood Watch Committee Nuneaton Festival of Arts 	
	H. Walmsley	Chief of Staff to Julian Knight MP	Chartered Institute of Public Relations Member on the following Outside Bodies: <ul style="list-style-type: none"> Friendship Project for Children West Midlands Combined Authority Audit Group 	Dispensation to speak and vote

Internal Audit Report

Notices Issued to Residents

(In the last 2 years)

2021 - 22

Issued to:

Name	Title
Brent Davis	Chief Executive
Dawn Dawson	Director – Regeneration & Housing
Stephen Fitzgerald	Interim Director Finance Director (Interim)
Kevin Hollis	Director – Public Services
Phil Richardson	Director – Planning & Regulation
Ashley Baldwin	Head of Planning
Louise Castledine	Senior Contract Support Office – Housing Assets
Rachael Dobson	Head of Revenues & Benefits
Rachel Fleeson	Head of Safety & Environmental Health
Jade Fuller	Revenues Shared Services Manager
Glen McGrandle	Head of Waste & Transport
Nicola Topping	Head of Housing & Responsive Repairs
Jonathan White	Town Centres & Marketing Manager

Report status: Final

Report date: 27th January 2022

Prepared by: Nafeesa Shaikh

SECTION 1: EXECUTIVE SUMMARY

1.1 Introduction

1.1.1 This audit was requested by the Audit and Standards Committee (ASC) and forms part of the revised Audit Plan 2021 - 22.

1.2 Audit Scope

1.2.1 All Senior Managers were contacted at the start of the review, to provide a report/or register of all 'notices' issued in their service area in the past two years. The data received were then analysed, and a sample of 20 notices were selected and reviewed, focusing mainly on those notices that were issued to residents. The coverage of the review spanned over a two year period from November 2019 up to November 2021.

1.2.2 The objectives of the audit were to ensure that the notices were issued appropriately and in accordance with the statutory guidance and or Council's approved policies and procedures.

SECTION 2: DETAILED REPORT

2.1 Background

2.1.1 All Councils are responsible for ensuring compliance with a vast range of legislation which aim to protect Councils' finances, the public, the environment, quality of life for residents, businesses, and visitors within their area.

2.1.2 Nuneaton and Bedworth Borough Council (NBBC) is committed to using advice, guidance, and support as a first response to any breaches of legislation, where there is a clear willingness by the parties involved to resolve the matter, to avoid the need for further enforcement action.

2.1.3 All correspondence issued by NBBC will clearly differentiate between the legal requirements and good practice, and indicate the regulations contravened and the measures which will enable compliance. Follow up inspections are carried out on a risk and intelligence-led basis and where a similar breach is identified in the future, previous advice will be taken into account in considering the most appropriate enforcement action to take on that occasion. Compliance advice can be provided in the form of a verbal or written notification.

2.1.4 Statutory Notices are used in accordance with relevant legislation and such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default. The Notices will clearly set out actions which must be taken and the completion timescale. Breaches identified will be required to be corrected and/or specified activities prohibited until appropriate safeguarding measures have been put in place to prevent future infringements and or recurrence. Where a statutory notice is issued, an explanation of the appeals process for such notices will be provided to the recipient.

2.1.5 In some cases, fixed monetary penalty notices may be issued for low level offences and these mainly relate to parking or environmental or public health crime. When a fine is paid, the liability for the offence is discharged. Where the offender fails to settle their liability then alternative enforcement action will be considered, which may involve the use of bailiffs' service or direct prosecution.

2.1.6 The types of enforcement notices that have been issued by NBBC, are outlined in Section 3.

2.2 Executive Summary

- 2.2.1 Our overall audit opinion is '**Significant**' assurance. Generally, controls are sound and operating effectively, as there were no major issues highlighted. Although the enforcement duty is dispersed over a range of service areas across NBBC, the actions taken by each service area were found to be appropriate and consistent with the relevant legislation or approved policy and procedures. Comprehensive audit trail also existed and maintained in support of the action taken for each notice issued.
- 2.2.2 The number of notices served and explanation for each notice type are given in more detail below. Test sampling consisted of twenty notices in total (one from each type) from the overall total notices served in the last two years. This includes penalty notices issued in relation to car park and waste crime offences, where the statistics provided also include some cases that may not all necessarily relate to residents of the Borough.
- 2.2.1 The results outlined in the report are based on tests carried out on a sample of areas only; there is no guaranteed assurance that all problems and weaknesses have been identified. However, we are satisfied that the extent of our work is sufficient to identify all material shortcomings. There is no audit action plan issued with this report.

3 Audit Findings

The main findings are as follows:

Notices issued by Tenancy Services – Housing

- 3.1.1 The Housing Officers (HO) from the Tenancy Services Team provide support and monitor all tenancy related matters including tenancy breaches related to ASB, as well as neighbour nuisances, estate issues including property abandonment.
- 3.1.2 Initially all tenants are given the opportunity to resolve matters for non-compliance with their tenancy agreement, though if the breach is serious or recurring and the property is being used for immoral, criminal, or illegal purposes, the Council will take action to end the rental agreement by issuing legal notices dependant on their tenancy status.
- 3.1.3 ASB covers a disparate range of conduct from tensions between neighbours to violent and intimidatory behaviour. This includes a wide series of unacceptable activity that causes an annoyance or disturbance to an individual, or their community or to their environment.
- 3.1.4 A high level of ASB is considered where a behaviour exhibited by an individual/or group of people is deliberately intimidating/threatening to others, causing serious distress either as a one-off or more persistently i.e., drug taking/dealing, graffiti, vandalism, verbal harassment, physical assault, racial harassment, domestic violence, improper unlawful activity.
- 3.1.5 For the most serious forms of anti-social and nuisance behaviour, the Council may be able to apply for possession using mandatory possession grounds or absolute grounds for possession and use of such processes are highlighted under the Housing Act and Anti-Social Behaviour, Crime and Policing Act 2014. The HO is responsible for carrying out an Equality Impact Assessment and a Public Sector Equality Duty Review before considering legal action. A decision to take possession proceedings in nuisance cases must be approved by the Tenancy Services Team Leader.
- 3.1.6 The Council's ASB Policy has recently been reviewed and approved by Individual Cabinet Member Decision (ICMD) on 2nd September 2021. The policy is also supported by the ASB Procedure, which outlines the Council's commitments to address ASB complaints effectively

and to resolve the issues by working in partnership with other support agencies and the Police.

- 3.1.7 A review of the data provided by Housing showed that a total of 163 notices had been issued to the Council’s tenants during the past two years. The table below provides a breakdown of the notice type, reasons for issue and case total;

Notice Type	Reasons for Issue	2019	2020	2021
Notice of Seeking Possession (NOSP)– Introductory Tenants	ASB	22	25	15
Notice of Possession of Proceedings (NPP) – Secure Tenants	ASB	3	4	6
Notice to Extend (NTE) Introductory Tenancy	ASB	0	2	1
Notice to Quit (NTQ)	- ASB - Property Abandonment - Property not used as principal home	28	23	14
Notice to Quit (NTQ) - Garage	Site earmarked for residential development	20	0	0
Total		73	54	36

- 3.1.8 A sample of five notices relating to ASB was selected and reviewed. Our findings showed that the ASB Policy was being complied with and the legal notices were issued in appropriate circumstances, to enable successful outcomes if the cases are progressed further to litigation stage.

Notices issued by Capital Projects, Property Services - Housing

- 3.1.9 Tenants are legally required, under their tenancy agreement, to allow the Gas Safe registered engineer, appointed by the Council as their landlord, access to the property to carry out maintenance and annual safety checks, under the Gas Safety (Installation and Use) Regulations 1998. If a tenant continues to refuse access after repeated attempts of contact, then formal legal action through the courts is considered due to the breach in tenancy, as the Gas Safety Regulations gives no powers to force entry to the property.

- 3.1.10 Our findings showed that in the past two years a total of 179 abatement notices under Section 80 of the Environmental Protection Act (EPA) 1990 had been served by the Council to its tenants in relation to the gas servicing requirement. The number of properties requiring a service in November 2021 was 4594, and 83 (1.81%) properties were overdue for servicing.

- 3.1.11 The EPA notices were being issued by the Private Sector Housing Team on behalf of the Capital Projects Team. It is understood that since the start of the Covid-19 pandemic no cases have progressed for Court action.

Notices issued by Environmental Health

- 3.1.12 The Environmental Health Team (EHT) are responsible for the enforcement of a number of functions which include food safety, pollution and noise control, health and safety, infectious disease control, drainage, water supplies, pest control and general nuisances, animal welfare and dog control.

3.1.13 The data provided by EHT showed that a total of 153 notices have been issued in the last two years. The data is summarised in the following table:

Notice Type (Legislation Act)	Reason	2019/20	2020/21	2021/22
Environmental Protection Act 1990 (EPA) - Section 80	Noise/Nuisance	7	16	10
Prevention of Pests Act 1949 (PDPA) -Section 4	Infestation of rats & mice	52	38	22
Local Government Act 1976 - Section 16	To obtain particulars of persons who interest in land i.e., confirming freeholder, leaseholder	0	0	8
	Total	59	54	40

3.1.14 A sample of three notices (one from each notice type in the table above) was selected and reviewed. Our findings confirmed that a satisfactory audit trail has been maintained on file by EHT, which demonstrated that pre-advisory actions were taken prior to the formal legal notices being issued. As a result of the legal notices being issued, appropriate remedial action was taken by the offending parties to address the breaches and avoid the risk of further enforcement action being taken against them.

Notices issued by Planning

3.1.15 The Council as the Local Planning Authority has a duty to ensure that the T&CPA 1990 is complied with. The vast majority of developments in the Borough takes place in accordance with planning rules, but investigations are also undertaken where breaches of planning control have been identified. The priority of the planning enforcement function is to protect amenities, safeguard the built environment and uphold local planning policy. Enforcement initially to try to resolve issues surrounding unauthorised development through negotiation and agreement but there may be occasions where it is necessary to take formal action to require a breach to be resolved. The National Planning Policy Framework (NPPF) - paragraph 58, sets out that Local Planning Authorities (LPA) should consider publishing a formal local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area.

3.1.16 NBBC have recently carried out a public consultation on a Draft Local Enforcement Plan which ran from 13 August to 5 November 2021 and is due be presented to Cabinet in January 2022 with a recommendation to adopt.

3.1.17 The following types of Planning notices are issued:

- Requisition for Information Notice (T&CPA 1990 - Section 330)
- Planning Contravention Notice (T&CPA 1990 -Section 171C)
- Breach of Condition Notice (T&CPA 1990 – Section 187A)
- Enforcement Notices (T&CPA 1990 -Section 172)
- Stop Notices (T&CPA 1990 -Section 183)
- Temporary Stop Notice (T&CPA 1990 -Section 171E)
- 215 Notice (T&CPA 1990 -Section 215)
- Discontinuance Notice (T&CPA 1990 (Control of Advertisements Regulations 1992)
- Remedial Notice – Anti-social Behaviour Act 2003
- Listed Building Enforcement Notice & Conservation Area Notice (S38-46 of the Planning (Listed Buildings & Conservation Areas) Act 1990)

3.1.18 The data provided by Planning showed that a total of 76 formal enforcement notices had been issued in the past two years, and the information is summarised in the table below:

Notice Type	2019	2020	2021
Formal notices			
Enforcement Notice Section 172 - Town & Country Planning Act 1995	8	2	3
Section 215 Notice - Town & Country Planning Act 1990	3	1	
High Hedge Remedial Notice, Anti-Social Behaviour Act 2003	-	-	1
Requisition for information notices			
Section 330 Notice - Town & Country Planning Act 1990	9	9	40
Total	20	12	44

3.1.19 A sample of three notices was selected and reviewed. Our findings showed that each enforcement notice has been issued in accordance with planning legislation and Council's Enforcement procedure. Clear notes were recorded and correspondence and inspection reports, evidential photographs (of the planning conditions breaches) have been maintained on file in support of the enforcement action taken. The five cases reviewed relate to:

- **Sec 215 T&CPA Notice issued Oct 2019**
Untidy land (rubble) in green belt and notice issued to ascertain nature/purpose of land used
- **Sec 172 T&CPA Enforcement notice issued Sep 2020**
Storing of three metal shipping containers at rear of residential property for commercial use.
- **High Hedge Remedial notice - issued May 2020**
Ongoing complaint from 2018/19 and 2 year timeframe given and should hedge height exceed limit then enforcement action to commence.
- **Requisition for information T&CPA Notice - issued June 2021**
Sighting of static vans, portable toilet on land without planning permission
- **Requisition for information Section 330 T&CPA Notice - issued June 2021**
Unauthorised window replacement to property which is within the Abbey Conservation Area

Notices issued by Recovery Services - Revenues (Council tenant rent arrears)

3.1.20 Housing rent arrears are dealt with by the Revenues Enforcement Team (RET), in accordance with the Rent Arrears Policy. All arrears' actions are based on a staged escalation process to coincide with the 'Pre-Action Protocol Possession Claims by Social Landlords' (came into force on 13 January 2021). The aims of the protocol are to encourage more pre- contact and exchange of information between landlords and tenants, to avoid taking the litigation route. The arrears recovery procedure has been uploaded as parameters on the CX Housing system to enable the correct stages of recovery action to be followed. Each rent account record provides a clear audit trail of arrears actions taken.

3.1.21 For cases with significant arrears due to either nil benefit claims, or where the tenants are considered vulnerable adults i.e. mental health, disabilities, addiction cases, then the RET will refer the cases to the Financial Inclusion Support Officers (FISO) to engage with the tenants to resolve issues. This includes liaising with external support agencies, undertaking benefit checks, completing detail assessments, and setting up instalment plans to give the

tenants every opportunity to reasonably pay. At each and every stage of the recovery process a telephone call to the customer is required in an endeavour for further contact or obtain payment. However, if FISO are involved at any stage FISO, all enforcement action will cease until 14 days after their case has been closed before any further arrears action can recommence

3.1.22 Where claimants have not made effort to reduce arrears and are not engaging with the Council’s Team, the Council can seek to apply for an Alternative Payment Arrangement (APA) Managed Payment to Landlord (MPTL) applying on the Universal Credit Landlord online portal. If there is no improvement in arrears, then the Enforcement Team will take the first step in the legal process of issuing a ‘Notice of Proceedings for Possession (NPP) for probationary tenancies and ‘Notice of Seeking Possession (NOSP)’ for secure tenancies.

3.1.23 The Coronavirus Act 2020 provided protection to social and private tenants by delaying when landlords can evict tenants. The provisions in the Act increased the notice periods landlords were required to provide to tenants when seeking possession of a residential property between 26 March 2020 and 30 September 2021. Between 1 June 2021 and 30 September 2021, notice periods were required to be at least four months except in the most serious cases. From 1 October 2021, all notice periods returned to the pre-pandemic position

3.1.24 A total of 479 notices had been issued by RET to tenants for non-payment of tenancy rent as follows:

Notice Type	2019	2020	2021
Notice of Seeking Possession (NOSP) – Introductory Tenants	95	92	144
Notice of Possession of Proceedings (NPP) – Secure Tenants	34	34	27
Notice to Quit	-	-	1
Notice to Quit (NTQ) - Garage	20	0	32
Total	149	126	204

3.1.25 A sample of ten current tenant rent arrears cases was selected for review. Our findings showed that the recovery action was reasonable, and every effort has been made by the Council to assist tenants in managing their payment prior to the legal notices being issued in each case. Court proceedings have been limited due the ongoing pandemic.

Car Park Penalty Notices

3.1.26 Car Park penalty charge notices (PCN) are issued by the Civil Enforcement Officers (CEO’s) where a vehicle has not displayed a valid car park ticket or when the vehicle has exceeded the parking time limit. The protocol is to allow 10 mins from when the time breach has been identified before the PCN is fixed to the windscreen or handed to the driver.

3.1.27 A review of the PCN report obtained from the Car Park system as at 05/11/21), showed a total of 4495 notices were issued under the following contraventions:

Contravention Code	Contravention	2019/2020	2020/2021
81	Parked in a restricted area	18	10
82	Parked after payment expired	644	247
83	Parked without clear display	2305	849
86	Parked beyond the bay markings	229	41

87	Disabled person's parking	114	33
90	Re-parked in the same place	1	-
91	Wrong class of vehicle	4	-
Total		3315	1180

Approximately 78% of the issued PCN remained at 'Upheld' status as follows:

<u>Contravention Code</u>	<u>Contravention</u>	<u>2019/2020</u>	<u>2020/2021</u>
81	Parked in a restricted area	14	2
82	Parked after payment expired	596	230
83	Parked without clear display	1710	626
86	Parked beyond the bay markings	208	37
87	Disabled person's parking	78	26
90	Re-parked in the same place	1	-
91	Wrong class of vehicle	3	-
Total		2610	921

3.1.28 Analysis of payments received in relation to carpark fines was as follows:

	Payment period	Payment Timeframe	2019/20	2020/21
Contravention in Normal Bay				
Car Park Fine £25 50% discount due to early payment	Paid within 14 days	0-14 days	£47,180	£16,456
Standard Car Park Fine £50	Paid within 28 days	0-28 days	£13,210	£5282
Car Park Fine £75 50% increase	Extension of 28 days	Paid between 29 – 57 days	£2,745	£1928
Car Park Fine £83 inc. £8 warrant fee	Further extension of 14 days	Paid between 58 – 71 days	£11472	£8598
Contravention in Disabled Bay				
Car Park Fine £35 50% discount due to early payment	Paid within 14 days	0-14 days	£1990	£535
Standard Car Park Fine £70	Paid within 28 days	0-28 days	£740	£280
Car Park Fine £105 50% increase	Further 28 days	Paid between 29 – 57 days	£105	£105
Car Park Fine £113 Inc. £8 warrant fee	Further 14 days	Paid between 58 – 71 days	£38	£113
Total			£77,480	£33,297

Penalty notices issued for Waste Crime

3.1.29 In an effort to tackle environmental crime, the Council contracted enforcement company 3GS in January 2019 to deliver services enforcing against waste crime. 3 x enforcement officers patrol the Borough daily and are equipped with bodycam and investigate environmental crime and issue fixed penalty notices (FPN) for littering, fly-tipping and unauthorised waste disposal. The FPN's are issued to someone who has committed an

environmental offence and offers offenders an opportunity to waive a prosecution in Court by paying a penalty fee.

3.1.30 Under the contract, 3GS provide all relevant equipment, personnel, and processes to complete the service and their payment for delivering the service is offset by the income generated by issuing notices. Any surplus made after covering costs is then split 50/50 with the Council. 3GS manage the whole FPN process with regard to issuing, tracking, complaints resolution and financial management. Where it appears that an offender has failed to pay an issued FPN, 3GS will compile a prosecution case file for use by the NBBC Legal Team.

3.1.31 The table below show an analysis of FPN's issued by 3Gs in the past two financial years. In total 2216 FPNS have been issued with the highest offence being 'Cigarette littering' with 1722 FPN's (78%) followed by 'Spitting' at 165 (7%):

Breach Reason	2019/20	2020/21	Total
ASB – Alcohol			0
Dog fouling	4	2	6
Dog not on lead	1	6	7
Dog Prohibited on Land			0
Dog on lead and not Directed			0
Flyposting	2		2
Fly - tipping	9	71	80
Littering – Chewing Gum	3	1	4
Littering – Cigarette	1310	412	1722
Littering – From vehicle			0
Littering – Litter	28	117	145
Littering – Spitting	131	34	165
Littering – Urinating	9	20	29
Waste – Duty of Care - residential	6	14	20
Waste – Duty of Care - commercial	11	23	34
Waste – Duty of Care – commercial receptacle	2	-	2
Total	1516	700	2216

3.1.32 A review of 3GS financial data provided to the Waste Management Team shows that 3GS made an operating loss in 2019 and 2020 due to the Covid-19 pandemic lockdown restrictions and staff being placed on furloughed etc. During a 7-month period in the current year (April – Oct 21) a total of 965 FPNs have been issued by 3GS; the details have been summarised in the table below for information:

FPN's issued 2021				
Period	FPNs Issued	FPNs Paid	Amount paid	Repayment %
April 2021	94	54	£6600	57.45%
May 2021	145	104	£9660	71.72%
June 2021	204	115	£11,650	56.37%
July 2021	213	140	£14,190	65.73%
August 2021	135	102	£11,460	75.56%
September 2021	87	58	£7700	66.67%
October 2021	87	53	£5440	60.92%
Total	965	626	£66,700	64.87%

3.1.33 A summary of litter successful prosecutions dealt by the Legal Services were as follows:

Period sent to Court	Proved in absence	Pleaded Guilty	Dismissed
February 2021	39	4	0
March 2021	7	6	2
Total	46	10	2

Acknowledgement

We would like to take this opportunity to thank all Officers involved for their assistance during the course of this review.

Internal Audit Report

Section 106 Agreements (Planning Obligations – In The Past 5 Years)

2021/22

Name	Title
Audit & Standards Committee	ASC
Brent Davis	Chief Executive
Philip Richardson	Director – Planning & Regulation
Kevin Hollis	Director – Public Services
Stephen Fitzgerald	Interim Director - Finance
Ashley Baldwin	Head of Planning (HP)
Kelly Pearson	Technical Conditions & Monitoring Officer (TCMO)
Lesley King	Finance Business Partner (FBP)
Wendy Davies-White	Solicitor

Report status: Final (V2)
Report date: 1st March 2022
Prepared by: Sophie Pavier-Smith

SECTION 1: EXECUTIVE SUMMARY

1. Introduction

This audit was requested by the Audit and Standards Committee (ASC) and forms part of the revised Audit Plan 2021 – 22.

2. Audit Scope

To provide assurance that the Planning Service arrangements for the recording and monitoring of the s106 agreements are meeting the needs of the Council, and to ensure that all s106 income due is calculated accurately, collected and is spent in accordance with the terms of the Agreement.

Objectives

The purpose of the audit was to ensure that;

- A legal agreement is in place and signed by all parties summarising the planning obligations purpose, value and trigger points, and included in the relevant planning approval;
- All s106 agreements have been recorded in an accurate and timely manner.
- Effective mechanism is in place to ensure that contributions are collected as per the agreements;
- Invoices are correctly calculated/raised, including indexation uplift where relevant;
- Income received is correctly accounted for;
- S106 funds are spent in line with relevant agreements and time limits, and any unspent/uncommitted monies have been returned in accordance with the terms of the Agreement.

Key potential risks

The key risks considered were: -

- The terms of the s106 agreement are not adhered to.
- Failure to recover and utilise all contributions secured
- Clawback of income from s106 contributors.

3. Summary of Findings

OVERALL AUDIT OPINION

Overall, Internal Audit can give '**Satisfactory Assurance**' on the controls in place for s106's arrangements.

Detailed findings are set out in Section 3.

The key controls included within the scope of the review have been assessed as follows:

Key Controls	Assurance	No. Of Recs			
		Priority			
		1	2	3	4
1) A legal agreement is in place and signed by all parties summarising the planning obligations purpose, value and trigger points.	Substantial	-	-	-	-
2) All s106 agreements have been recorded in an accurate and timely manner.	Satisfactory		1		
3) Effective process is in place to ensure that contributions are collected as per the agreements.	Limited		2	2	
4) Invoices are correctly calculated/raised, including indexation uplift where relevant.	Limited – historical invoices Satisfactory – current arrangement		2	1	
5) Income receive is correctly accounted for	Substantial	-	-	-	-
6) S106 funds are spent in line with relevant agreements and time limits....	Satisfactory	-	-	-	-
7) Other observations			1		
Total		-	6	3	-

Assurance Level	Definition
Significant	There is a sound system of internal controls that are being consistently applied
Satisfactory	There is basically a sound system of internal controls although there are some minor weaknesses and/or there is evidence that the level of non-compliance may put some minor systems objectives at risk.
Limited	There are some weaknesses in the adequacy of the internal control system and/or the level of non-compliance puts some of the systems objectives at risk.
No Assurance	Control is weak leaving the system open to significant error or abuse and/or there is significant non-compliance with basic controls.

SECTION 2: DETAILED REPORT

Key Audit Contacts:

Ashley Baldwin (HP), Kelly Pearson (TCMO), Wendy Davies-White (Solicitor), Lesley King (FBP - Capital), Julian Webb (Open Spaces Capital Project Officer (OSCPO), and Matthew Crossley (Open Spaces Planning Officer (OSPO))

Date of Last Review and Opinion: April 2017 - 'Limited Assurance'

1. Background

- 1.1 Planning obligations, also known as Section 106 agreements (s106) (based on that section of The Town and Country Planning Act 1990 (as amended)), are private legal agreements made between local authorities and developers and can be attached to a planning permission to make acceptable development which would otherwise be unacceptable in planning terms. They are used to help offset the pressure of new developments with improvements to local infrastructure and facilities, which can either be provided on-site or off-site.
- 1.2 NBBC's requirements for planning obligations are set out in the Council's adopted Borough Plan (BP- 2011 - 2031 (adopted 2019)). The BP is supported by an Infrastructure Delivery Plan (IDP (updated Dec.21) that identifies specific projects which are needed in the Borough to help deliver the development set out in the BP. Monies received through S106 agreements are ringfenced to go towards those projects set out in the IDP.
- 1.3 Where an agreement is necessary this will set out the timetable for compliance for each obligation, what the contribution is to be spent on and the timeframe in which the Council must spend it. Developers are required to notify the Council when they reach key stages of a development. Where these stages trigger payment of a financial obligation, an invoice is issued for the amount due. There are usually provisions in the s106 agreement for this amount to be index linked.
- 1.4 Depending on the age of each individual s106 agreement, the Council has between 5 and 10 years within which to spend the money. If it is not used and or committed to the specified projects the money can be clawed back, with interest, by the contributor. Not all signed s106 agreements come into fruition; a proportion generally falls away as some developments may not occur and the triggers have not been reached.
- 1.5 This audit review covered a 5-year period from 2017/18 to 2021/22 (up to 31/10/21). A report extracted from the Legal Services (IKEN) system showed that in the past five years a total of 37 s106 agreements and 5 s106 Deeds of Variation (DoV's) were signed between the Council and developers. Contributions totalling approximately £3.029m were collected from developers from all active s106 agreements (not just from those that were signed during the five years). All the monies received have either been spent (including transferred to 3rd party bodies) or allocated to specific uses (i.e., none remain unallocated by the Council). The balance of monies retained (allocated but unspent) as at 31/10/2021 was approximately £2.519m. No refunds had been made during the review period in relation to any financial s106 obligations; however, there was one case (Whitburn Road - £20,449.78 received in 2020/21) where the contribution was in the process of being returned to the contributor as the s106 agreement conditions have not been fully discharged.

- 1.6 Any proposals to spend the contributions are required to be included within a Business Case (BC), and submitted to the Corporate Asset Management Team (CAMT) for approval, and subsequently included within the Capital Programme via a report to Cabinet for a formal authority to drawdown/spend the s106 receipts.
- 1.7 Since 2019/20 the Community Infrastructure Levy (CIL) regulations require the planning authorities to publish an Infrastructure Funding Statement (IFS) each year before the end of that calendar year (31st December). They also recommend that Local Authorities (LAs) publish the raw data (s106 agreements) that informed the IFS. The IFS provides a summary of all developer contributions within the Borough for the previous financial year, to give communities a better understanding of how developer contributions have been used and or intended to be used in future to deliver infrastructure within their area. An IFS must also report on CIL; however, the Council has not implemented CIL at the current time; therefore, it is not included. The 2019/20 and 2020/21 IFS's have been approved/adopted by the Council, and published on its website.

2. Executive Summary

- 2.1 Our overall audit opinion is '**Satisfactory**' Assurance in respect of the controls in place for the monitoring of s106 agreements. However, there are a number of areas for improvement, especially in relation to documented procedures, monitoring and recording of trigger points, invoicing, and access to s106 information by internal departments and Members.
- 2.2 It is acknowledged that there has been substantial improvement in the recording and monitoring of s106 agreements since this area was last audited in 2016/17. However, s106 agreements monitoring system is still very much driven by manual processes and, therefore, susceptible to errors, omissions and inefficiencies.
- 2.3 As at 31/10/2021 a total of 51 s106 agreements, with a total value of £565,479, were RAG (Red, Amber, Green) rated RED (i.e., the 5-year time limits have expired), and 5 more (totalling approximately £184,888) were marked Amber (i.e., nearing their expiry dates). These funds have already been committed to specific projects, and there is a clause written in the s106 terms and conditions which states that developer cannot request a claw back on any spent and or allocated funds; however, it is not entirely risk free. We understand that one of the main reasons for the delay in utilising the RED areas s106 receipts was that until May 2021 there was no capacity in the Parks and Green Spaces (GS) team to deliver the projects. However, it is positive to note that following the re-structure of the Parks team in late 2020, two new posts (approved by the Management Team (MT)) have been created; i.e., Greenspace Infrastructure Officer (GIO) and Capital Projects Officer (CPO); the latter is specifically to deliver s106 projects for Parks and GS. From our discussions with the CPO, there is evidence to show that various plans and active programme have been developed, to deliver the RED areas projects as a priority. Therefore, although there are risks of the funds being returned, the Council now has plans in place along with capacity to deliver s106 projects.
- 2.4 In respect of confirming that the monies due to NBBC were spent as intended, our examination of the 'Master S106 Money' spreadsheet maintained by the Finance Business Partner (FBP – Capital) provided a good account of the funds received, committed and spent, and where any monies were unspent RAG ratings have been used and correctly reflected each agreement's status. Several other spreadsheets/sub-spreadsheets were maintained which tracked projects and linked/reconciled back to the main 'Master 106 Money' spreadsheet. Regular

reports (on the update of the Capital Programme) are produced and presented to CAMT, though it is understood that there is no formal regular reporting to members on the s106 planning obligations and progress, other than the information reported annually in the IFS.

- 2.5 We established that prior to 2019/20 financial year, some s106 contributions were under-collected because the relevant indexation uplift was not applied to the agreed sum on invoicing, as stipulated in the signed s106 agreement. It is understood that when a query was raised in late 2018 about the indexation not being applied to invoices Planning reviewed their procedures and corrected this. Therefore, some relevant s106 receipts up to (and including) 2018/19 may have been affected. To ensure that the Council, the communities and relevant 3rd party bodies (that the Council collected the contributions on behalf of) are not losing out on the full benefit of the planning obligations that have been secured, it is recommended that the affected invoices are identified and recalculated, and relevant developers re-invoiced for the balances still owing.
- 2.6 Communication between internal teams (i.e., Planning Enforcement, s106 Monitoring, Parks & GS etc.) is understood to be intermittent at times (partly due to a lack of/or less face-to-face interactions between teams while staff were required to work from home whenever possible in the last two years because of the Covid-19 pandemic rules and restrictions), and therefore it may need re-enforcing/formalising to minimise the risks of delays in collecting s106 contributions due, assist in the delivery of infrastructure projects to the community on time, and ensure that the Council is meeting its duty in discharging obligations.
- 2.7 Our review did not identify any issues with the s106 debts recovery arrangement as there were no outstanding invoices on the Debtors system CIVICA.
- 2.8 Although there were a number of issues highlighted by this review, the audit opinion reflects the historical nature of the issues and improvements that have been implemented since the previous audit was completed.

3. Findings

The main findings and issues arising are outlined in Section 3 – Action Plan below:

S106 Agreements

- Test result showed that 2 of the 42 s106 agreements (including DoV's) signed by the Council and developers in the past five years (31/04/2017 to 31/10/2021) were not recorded on Planning's s106 Monitoring spreadsheet. Of the two agreements that were not recorded, one related to 2020/21 financial year, and therefore, was not included in the figures reported in the IFS 2020/21. The reason the item was not picked up by the s106 Monitoring team because a different procedure was followed.
- Of a sample of five s106 agreements checked to confirm that a signed agreement existed, that the obligations were calculated and recorded correctly within the agreement, and that a valid agreement was in place before a decision notice was issued, all were found to be in place, signed by the relevant parties, and figures successfully verified with the relevant (internal) service area. All the agreements were scanned/ uploaded onto Flare and the relevant box denoting s106 was ticked.
- Currently, there were no formal documented procedures available to assist the relevant staff (especially new starters) on how to operate/administer the s106

monitoring system. This issue was experienced by the current Technical Conditions & Monitoring Officer (TCMO) when they joined in 2015/16. The lack of appropriate procedures affected the system's effectiveness historically.

S106 Monitoring

- Currently, the Planning service do not utilise a technical solution for the monitoring of s106 agreements. Therefore, the system is not as effective/efficient as it could be, and susceptible to error/omission and data corruption.
- At present, the monitoring of s106 agreements is carried out on an ad-hoc basis; therefore, there is a risk of some sites fallen through the process and trigger points for payment being missed and obligations due not collected timely.
- The dates the triggers were hit were not always recorded on the s106 Monitoring spreadsheet in all cases. Therefore, it has not be possible to establish whether the ten sampled invoices were raised promptly, or whether a late-payment penalty should have been added to the invoice, where developer failed to notify/pay the Council promptly when the relevant trigger points have been hit.
- A review of Planning's s106 Monitoring spreadsheet showed seven s106 developments which were either completed/or near completion but were waiting for the Certificate of Practical Completion (CPC) and Certificate of Final Completion (CFC) to be issued/relevant conditions to be discharged before the Leisure and OS contributions could be released to the Council (cases detailed in Appendix A – Table).

Income & Expenditure

- The initial testing of a sample of ten invoices showed that five (50%) were incorrectly charged as the relevant indexation uplift was not applied as provided under each of the signed s106 agreement. All five invoices related to 2017/18. When the test sampling was expanded further (on large receipts only), it was found that this problem also affected one other invoice issued by NBBC in 2018/19. Therefore, the Council has been under-collecting on some s106 receipts up to 2019/20 financial year.

Access to s106 information

- Currently, the Council has not published the S106 agreements online as recommended by the CIL regulations, following the requirement to publish the IFS annually from 2019 onwards.
- Internally, although s106 agreements are scanned and stored on Content Manager (CM)/TRIM as part of the planning application file upload, they are not easily identifiable because the document title, though has planning application number and s106 in the title, does not contain the name of the development/location for easy identification. Older s106 agreements were scanned onto CM/TRIM as part of the entire planning files; therefore, would not show up in any search result when using 's106 agreement' as a key word search.

Acknowledgement

We would like to take this opportunity to thank all the Officers involved for their assistance during the course of this audit

SECTION 3: ACTION PLAN

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
Key Risk - Failure to recover and utilise all contributions secured						
Key Control 2 – Effective process is in place for the recording and monitoring of s106 agreements						
1	<p>When a relevant planning application is received, consultation responses are sought from various external and internal parties to enable them to request a s106 contribution if required. This can include external responses from the Police, NHS, Warwickshire County Council (WCC) and internal teams such as Parks and Green Spaces.</p> <p>Once all the negotiations have been concluded, s106 agreement signed by the parties concerned and finalised by Legal Services, an email is sent (by the Solicitor) to advise the various teams on the circulation list (e.g., Planning, Parks, Land Charges etc.) of this, with copy of the signed agreement attached.</p> <p>Currently, the Planning service record any signed s106 obligations on a spreadsheet. The Technical Conditions & Monitoring Officer (TCMO (0.5 fte)) is responsible for the recording, monitoring of s106 agreements and collecting contributions when they become due.</p> <p>On receipt of the signed s106 agreement, the TCMO records the details of the agreement on the s106 Monitoring</p>	2	<p>(i) The feasibility of having an integrating s106 monitoring software with the new planning system should be explored with the system supplier.</p> <p>The Management needs to ensure that all the relevant teams (i.e., Planning, Finance, Leisure, Parks & Green Spaces) are involved in the new system planning & implementation process, and relevant staff members provided with access to the system as commensurate to their respective roles and needs.</p> <p>(ii) In the interim, to safeguard the document from data loss/corruption, a consideration should be given to maintaining the s106 Monitoring Spreadsheet (Planning) in CM/TRIM, with access</p>	Agreed	Director – P&R/HP/ Director – Public Services	End March 22

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
	<p>spreadsheet, and set up various trackers to track the conditions for discharge and trigger points for payment. A reference number is assigned to the record for easy identification. A separate document folder is then created (electronically) for that record number, to maintain the s106 agreement and all related future documents and correspondence received.</p> <p>As the system is a manual process, the lack of automated/technical solution means that it is susceptible to errors/ omissions, data corruption and inefficiencies.</p> <p>The income potential for the Council from s106 obligations is huge; therefore, there may be a need to review the current resource arrangement for the s106 monitoring, or invest in a technical solution. We are aware that the Council has recently purchased Civica Cx Regulatory Services, which is the replacement for Civica APP (Flare) used by Planning, and the system is in the process of being implemented.</p>		restricted to the relevant Officers only.			
2	A report was sought from the Legal Services IKEN system of all 106 matters finalised during the last five-years (from 2017/18 to 2021/22 (up to 31/010/21)), and this showed that a total of 42 106 agreements (including 5 DoV's) were	2	(i) The two s106 agreements should be added onto the Planning's s106 monitoring spreadsheet as soon as possible.	Agreed	TCMO	With immediate effect

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
	<p>signed between the Council and developers. We reconciled these to the records held on the Planning's s106 Monitoring spreadsheet, and this highlighted 2 s106 agreements that were not listed. These were;</p> <p>(i) Chilvers Coton Methodist Church, Edward Street, Nuneaton - Planning application ref 034566</p> <p>s106 agreement date: 23/10/2017; and</p> <p>(ii) Land At North Warwickshire and South Leicester College, Hinckley Road, Nuneaton</p> <p>s106 agreement date: 15/10/2020</p> <p>In relation to the s106 agreement for the Land At North Warwickshire and South Leicester College, the planning application was originally refused permission by the Council's Planning Committee on 24/10/2019. The owner then submitted an appeal to the Secretary of State; the appeal was won and the development was approved subject to the s106 agreement. The TCMO was not made aware of this outcome; therefore, the item was missed being recorded on the s106 Monitoring spreadsheet, and subsequently excluded from the IFS 2020/21 reporting.</p>		<p>(ii) A process should be established to ensure that the TCMO is notified of all appeals outcome regarding s106 agreements. This should be reflected in the procedures raised in Point 4 below.</p> <p>(iii) The IFS 2020/21 should be amended to include the s106 agreement for Land At North Warwickshire and South Leicester College, Hinckley Road, Nuneaton.</p>	<p>Agreed</p>	<p>Planning /Legal Team</p> <p>HP</p>	<p>As soon as possible</p> <p>As soon as possible</p>

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
3	<p>Developers are under legal obligation to notify the Council as and when the relevant triggers have been hit. However, the s106 developments progress monitoring is carried out by the TCMO, through email communication with the developers and or site visits themselves (the latter only when it is necessary to do so, especially during the Covid-19 and social distancing rules and restrictions). Through this process, the TCMO is aware of when triggers have been hit and when payments are due.</p> <p>At present, the progress monitoring is carried out on an ad-hoc basis, rather than based on a scheduled programme. Therefore, there is a risk of some sites fallen through the process and trigger points for payment being missed and obligations due not being collected timely.</p>		<p>We recommend that a planned approach is introduced for the s106 agreements monitoring, to ensure the process is effective. For example;</p> <ul style="list-style-type: none"> • 3 – 6 monthly contact – for new agreements; • Quarterly contact for developments newly started • Monthly - for developments that are near to hitting triggers etc. <p>Also, consideration should be given to using indicators (e.g., RAG traffic light system) to highlight those developments that are near to hitting triggers, to ensure that regular contact is made with them.</p>	<p>Integrating these recommendations can be considered.</p> <p>The Planning Service will be reviewing the monitoring fee with a view to creating additional monitoring resources.</p>	Director – P&R/HP/TCMO	End March 22
4	<p>The current format of the Planning’s Monitoring spreadsheet does not lend itself to easy data sorting and filtering (e.g., on active/closed items etc.) to obtain a quick clear view on the current active entries, and or for progress report to be generated from it easily as and when required.</p>	3	<p>The current spreadsheet format needs reviewing. For example, on the Payments tab, instead of striking through the closed entries (i.e., where the contributions have been collected), a ‘Status’ column should be introduced, and use ‘Active’ or ‘Closed’ to denote the status of the records. This will enable the closed and</p>	Agreed	TCMO	With immediate effective

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
			active cases for each development to be isolated easily when a progress report is required on the active contributions, without further manual intervention.			
5	<p>Currently, there were no documented procedures available to assist the relevant staff involved in the process (especially for new starters) on how the system should be administered. This issue was experienced by the TCMO when they took up their current position in 2015/16. The lack of formal working procedures had caused some operational difficulties for the new postholder, and subsequently this impacted, historically, on the system's effectiveness.</p> <p>It is acknowledged that the current s106 monitoring system (set up by the TCMO) has greatly improved and expanded over the years, using their knowledge/ experience acquired over time. There are some procedure notes maintained by the TCMO; however, these are mainly in hand-writing format. It would, therefore, be useful/valuable for these procedures to be formally documented, to assist future staff/ensure smooth hand-over/business continuity.</p>	3	The procedures for the s106 monitoring system should be formally documented, stored in a central location, maintained up to date, and made available to the relevant staff involved in the system's administration.	Agreed	PPO/TCMO	End March 22

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
6	<p>It is understood that as there was no key contacts list maintained (e.g., for developers, WCC, 3rd party bodies beneficiaries of s106 contributions etc.) the difficulty arose when the former Head of Planning left the Authority and the knowledge went with them. We understand that this impacted on the operation at the time, resulting in some delay in invoicing the developers, notifying the relevant beneficiaries that the triggers have been hit/contributions have been received by the Council etc.</p> <p>Currently, the TCMO manages their contact with developers via outlook calendar reminders.</p> <p>Reliance on a process managed by one person could impact on business continuity in the event that the key officer is not available/or off on long term sick.</p>	3	<p>Consideration should be given to recording the key contact details on the s106 Monitoring spreadsheet (Planning).</p>	Agreed	TCMO	With immediate effect
7	<p>From our discussions with the relevant teams, we understand that currently, the channel of communication between internal teams (on s.106 matters) has been intermittent at times, and could benefit from a more formal approach, for example, through regular information sharing/update on s106 active developments progression etc., which would assist in raising awareness, prompt action, and project planning.</p>	2	<p>(i) The Council needs to ensure that the channels of communication between internal teams and with developers are effective. For example, it could be in form of;</p> <ul style="list-style-type: none"> regular scheduled meetings between relevant teams, to discuss 	<p><u>Planning Service comment</u></p> <p>(i) The s106 team actively communicates regularly with Parks & Green Spaces Team and FBP to provide up-to-date progress on invoicing and collecting of financial obligations</p>	All relevant Teams	On-going

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
	<p>A review of the s106 Monitoring spreadsheet (Planning) showed approximately seven developments that have either been completed and or near completion, and waiting for the relevant conditions to be inspected/discharged, CPC/CFC issued and adoption of land taking place before the OS related contributions could be released. The expected contributions from these sites could be well in excess of £1m.</p> <p>Close/effective working with developers and internal teams is crucial in unlocking s106 funds to deliver infrastructure projects for the community promptly and ensure that the Council is meeting its duty to monitor the discharge of obligations.</p> <p>Appendix A – Table (at the end of this report) provides a summary of the seven cases highlighted above.</p>		<p>the developments progress and or any issues that are stopping the funds being unlocked;</p> <ul style="list-style-type: none"> providing regular progress report of all active s106 developments to the relevant teams for information/action. <p>(ii) Consideration should be given to setting up a s106 focus group/working party</p>	<p>to feed into their budget/forecasting</p> <p>Quarterly report on active sites have been requested and it is aimed that the TCMO (0.5 fte) will provide this within available resources.</p> <p>See Point 3 – we will look to review the s106 agreement monitoring fee, with a view to creating additional monitoring resources.</p> <p>In the last Service review, it was intended that the Enforcement Assistant post would provide support to the monitoring of s106 sites. However, this post was filled briefly but has been vacant for some time, which would have impacted on this audit.</p> <p><u>Director – PS comment</u> (ii) Head of Services to set up a s106 forum (with</p>	<p>Relevant Directors/ HP</p>	

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
			to provide strategic lead/ assist in unblocking any issues that delay the collection of planning obligations/delivery of the infrastructure projects to the communities.	Planning, Parks, Leisure, Housing and Legal teams) <u>HP – comment</u> Agreed		
Key Risk: The Council fails to collect all the contributions it has secured						
Control: Invoices are correctly calculated/raised, including indexation uplift where relevant						
8	<p>A sample of ten s106 contributions received during the past five years were randomly selected and reviewed. Our findings showed that of the ten invoices reviewed: -</p> <ul style="list-style-type: none"> • five (50%) were incorrectly charged, as each amount invoiced did not include the relevant indexation uplift as stipulated by the agreement. These were: <ul style="list-style-type: none"> (i) Freer Street – Planning app. ref: 032407 – s106 agreement date: 09/12/2014 <p>OS contribution: Original sum £23,658 Invoice amount: £23,658 (received 28/03/17) RPI index uplift: £994.58 not claimed</p>	2	The affected invoices should be identified, recalculated, and relevant developers re-invoiced for the balances still owing, as soon as possible.	Agreed In progress - TCMO and FBP are currently reviewing the developments of 150 plus dwellings	Director – Planning & Regulation /HP	With immediate effect

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
	<p>(ii) Bramcote Hospital – Planning app ref: 033160 – s106 agreement date: 09/10/2015</p> <p>Parks & GS Contribution: Original sum £37,999 Invoice amount: £37,999 (received 28/03/2017) RPI index uplift: £4,096.55 not claimed</p> <p>(iii) Bramcote Hospital as (ii) above</p> <p>To use towards Off-site Affordable Housing provision in Whitestone Ward</p> <p>Original sum: £200,000 Invoice amount: £200,000 (received 28/03/2017) RPI index uplift: £21,561.34 not claimed</p> <p>(iv) Lower Farm, Weddington, Nuneaton – Planning app. ref: 032336 & 034528 – s106 agreements dates: 23/05/2014 and 12/10/2017 (Supplemental s106)</p> <p>Cycleway Contribution: Original sum £232,401 Invoice amount: £232,401 (received 04/08/2017) Baxter Index uplift</p>					

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
	<p>Unable to re-calculate the uplift forgone as this index no longer existed (replaced by a new index)</p> <p>(v) Lower Farm, Weddington, Nuneaton as above</p> <p>Healthcare Contribution: Original sum £244,824 Collected on behalf of Warwickshire CCG Invoice amount: £244,824 (received 04/08/2017) RPI index uplift: £6,956.85 not claimed</p> <p>When the test sampling was expanded further (on large receipts only), it was found that the issue also affected one contribution invoiced in 2018/19. This relates to:</p> <ul style="list-style-type: none"> 032992 -Land at site 31B007 – Long Shoot (Bellway Phase 2) – Agreement date: 15/03/2016 <p>50% (of £503,750.09) OS Contribution due upon 25% Occupation of Dwellings – invoice sent 19/10/2018</p> <p>Invoice amount £251,875 (received 07/12/2018)</p>					

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
	<p>BCIS index uplift (Oct 18: 316 - Mar 16: 275) = $41 \times 275 / 100 = 14.909\%$</p> <p>£37,552.28 not claimed</p> <p>Therefore, Council has been under-collecting on some s106 planning obligations up to 2019/20 financial year. Therefore, potentially the Council, communities and certain s106 beneficiaries may not fully benefit from the planning obligations that the Council has managed to secure from developers.</p>					
9	<p>Lower Farm, Weddington, Nuneaton – Planning app. ref: 032336 & 034528 – s106 agreements dates: 23/05/2014 and 12/10/2017 (Supplemental s106)</p> <p>The original planning permission was granted based on a development of up to 400 dwellings. The developer later submitted a re-plan (Drop-in development application - 034528), which led to an increase from the original 400 approved to up to 414 dwellings (14 additional units). The Deed of Variation signed on 12/10/17 shows that there were no requests for additional monies from any of the consultees on this application. Therefore, any contributions in the original s106 agreement which were on a per property</p>	2	<p>The planning permission 034528 (for 414 dwellings) needs verifying that it has been implemented. If it has, then the relevant invoices should be recalculated (with indexation), and the developer re-invoiced for the outstanding balances where relevant.</p>	<p>In progress</p> <p>It is understood the 034528 permission for 414 dwellings was implemented. We are currently confirming the number of dwellings and 1, 2+ bed numbers with developer. Recalculations (via Finance team) can be made to determine correct figures. Following this, liaising with developer for re-invoicing can be done where needed.</p>	Planning/TCMO	

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
	<p>basis were to be carried through and those that were on a site basis were not.</p> <p>All of the s106 contributions, except for the OS Maintenance Contribution (which has not hit the trigger yet), have been collected based on 400 Dwellings (i.e., those contributions that were calculated on per property basis). Therefore, the s106 contributions on the additional units appear to be outstanding.</p>			<p>WCC were responsible for some of their calculations and invoicing. WCC will be provided with the confirmed dwelling number information to recalculate their elements should they need to do so.</p> <p>The OS Maintenance Contribution has not yet hit the trigger point. Once it does meet this, the up to date calculations and relevant indexing will be applied.</p>		
	Access to information					
Key Risk: If members do not have easy access to agreed planning obligations, which would be of interest to them, this reduces their ability to effectively engage/involve in the decision making process on the infrastructure needs within their ward and address any concerns raised by their constituents						
	Other observations					
10	All the planning applications processed/dealt with by NBBC are accessible to the public via the Council's website under the planning pages 'Search Planning application' function; however, currently the s106 agreements are not published online (as the Council charges for providing this information), as recommended by the CIL regulations, following the requirement to publish the IFS annually from 2019 onwards.	2	<p>(i) The s106 agreements should be published online (following the government's guideline on how to 'Publish your developer contributions data') and made available/accessible to the public free of charge.</p> <p>(ii) Consideration should be given to including the name</p>	<p>Agreed</p> <p>Agreed</p>	Planning/ Business Support Admin Team	With immediate effect

	Observation(s)	Priority	Recommendation(s)	Management Action(s)	Person Responsible	Action Date
	<p>Therefore, there is a risk of non-compliance with the relevant regulations.</p> <p>It is understood that elected members and officers have access to Content Manager (CM)/TRIM, and therefore to s106 agreements, which are held on the system. However, not all scanned s106 agreements can easily be located via using 's106 agreement' in the title search, as some older agreements were scanned in as part of an entire file; therefore, they would not show up individually.</p> <p>It has been noted that there is no consistent standard used in the s106 document title on CM. Although it is appreciated that the planning application number and the word s106 agreement are used as standard, the development name or location is not given for easy identification/location of a particular s106 agreement.</p>		<p>of the s106 development/site as part of the document title as standard in CM/TRIM, for ease of location, and</p> <p>(iii) regular progress report of all active s106 developments should also be provided to members for information (linked to Point 7 (i))</p>	<p>See comment in Point 7 (i)</p>		

Observations with priority 5 (these observations are for the attention of management as recommended best practice and do not require a formal management response)

	Observation(s)
	None.
	Recommended best practice(s)
	None

Definition of Priority ratings:

Priority	Definition
1	Priority 1: Serious weakness in the design of controls or consistent non-compliance with controls that could lead to a significant loss or damage to the Authority's assets, information or reputation that requires immediate action.
2	Priority 2: Fundamental weakness in the design of controls or consistent non-compliance with controls that could lead to a significant loss or damage to the Authority's assets, information or reputation.
3	Priority 3: Weakness in the design of controls or inconsistency in compliance with controls that could cause limited loss of assets or information or adverse publicity or embarrassment.
4	Priority 4: Minor weakness in the design of controls or inconsistency in compliance with controls that could result in inefficiencies
5	Priority 5: Recommended best practice only.

Appendix A

Table 1: Development sites awaiting Cert. of Practical Completion & Cert. Final Completion to be issued

No	Development Site	Plan. app. ref.	S106 date	Details	Date Last action recorded
1	Lower Farm, Weddington, Nuneaton	032336 Up to 400 Dwellings 034528 DoV Up to 414 Dw.	23/05/2014 12/10/17	£1,185.45 – per 1 bed £1,693.63 – per 2+ bed Provide Open Space (OS) – prior to occupation of 50% of Dwellings RPI index-linked	Last contact by Planning Enforcement August 21
2	31B007 The Long Shoot (Bellway Phase 2), Nuneaton	032992	15/03/2016	On site OS Land – To provide the OS Land in each Housing Parcel of the Development in accordance with the OS Scheme prior to the Occupation of more than 50% of the Dwellings within the relevant Housing Parcel of the Development..... (NB: for OS Financial Contribution: See Action Plan – Point 8)	11/02/2020
3	Land at Weddington Road & Church Road, Nun.	030775 035183	17/02/2012	Play & OS 100% payable upon CFC being issued BCIS index-linked	Due Oct/Nov 21?
4	Rear of 130 – 194 The Long Shoot, 162 Long Shoot/ Callendar Farm	032578	04/03/2016 31/07/2018 DoV	OS Contribution 100% payable upon 50% occupation of Dwellings £202,926.93 RPI index-linked	Recorded on Monitoring sheet as 'Payment due in May 22'
5	Land at Weddington Road, Nuneaton	033758	18/05/2016	On-Site Maintenance Contribution £15,458.77 (BCIS index-linked) 100% payable upon CFC being issued	No details
6	Land at Hill Farm Plough Hill Road, Nun.	033156	03/11/2017 DoV	OS Maintenance Contribution £50,030	Date payable confirming 02/11/2021
7	Land at Plough Hill Golf Centre, Plough Hill Rd, Nuneaton	034600	10/11/2017	On-Site Maintenance Contribution £18,929.10 (RPI index-linked) 100% payable upon OS CFC being issued	Not recorded Site appears to have started in Oct 2020

NUNEATON AND BEDWORTH BOROUGH COUNCIL

Report to: Audit and Standards Committee (15th March 2022)

From: Interim Director - Finance & Enterprise

Subject: Internal Audit Plan 2022-23

1. Purpose of Report

The purpose of this report is to set out the proposed Internal Audit Plan for 2022-23.

2. Recommendations

That the Internal Audit Plan at Appendix A be approved.

3. Background

3.1. That the approach taken to develop the Audit Plan is sound.

3.2. That the breadth of the Plan is sufficient to allow the Head of Audit and Governance to give an opinion on the overall control environment.

4. Body of Report

4.1. The Public Sector Internal Audit Standards (PSIAS) require an annual internal audit plan to be developed using a risk-based assessment process. The assessment process used at Nuneaton and Bedworth Borough Council (NBBC) considers factors such as: -

- The extent of change and development;
- Staffing issues, e.g., potential inadequate training, high vacancy levels or extensive delegation;
- The complexity of the system;
- Previous audit reports/agreed action plans and the length of time since the last review;
- Frauds detected or investigated;
- The sensitivity of the system, for example the impact to the authority of something going wrong; and
- The value and volume of transactions.

4.2. From the assessment, a risk score is allocated to each system, which is then used to prioritise audits and determine the frequency of each review. Scores of 100 or below are deemed to be too low a risk to warrant a review; 101 to 200 are medium risk which require a review every 3 to 5 years and scores of 201 or more are high risk and will be reviewed every 2 years. On completion of each review the assessment is updated to ensure that it remains reasonable and is based on sound judgement.

4.3. There are some high-profile areas such as data quality and asbestos management that require an annual review. For the key financial systems there is a three-year rolling programme in place which is reflective of the high value and volume of transactions within each system. No VFM reviews have been included; however, if any are being requested during the financial year, we will look to accommodate them where possible, in consultation with the Audit and Standards Committee.

4.4. In developing the 2022/23 plan, it has been assumed that the impact on services from the pandemic will reduce as lockdown restrictions are lifted. If this is not the case, and as a result we find it difficult to complete some of the proposed audits a revised plan will be presented to this Committee for approval.

4.5. Follow-up reviews are completed 6 to 12 months after the final audit report has been issued to ensure that all agreed actions have been addressed as planned.

5. Appendices

Appendix A – 22/23 proposed audit plan

6. Background Papers (if none, state none)

None

Appendix A

Annual Audits

- Data Quality
- Transport (Driver Checks)
- Asbestos Management
- Water Bodies

Deferred Audits from 21/22

- Emergency Planning
- Health & Safety (exc. Asbestos Management and Fire Risk Management)
- Resource Management (HR and Training)

Planned 22/23 Audits

- Customer Feedback (Complaints & Compliments)
- Electoral Services
- External Grants and Funding
- HEART (Home Environmental Assessment & Response Team)
- Leaseholder Management
- Licensing (Taxi, Alcohol, temp event notice, gambling licences/permits)
- Sports Development
- Council wide audit of the purchase of goods and services and the operation of the relevant systems and controls

Financial Systems

- Creditors
- General Ledger
- Payroll

Follow-up Audits

- Cemeteries & Crematorium
- CCTV
- Community Centres
- Community Groups Funding
- Council Tax
- Delegated Authority Procedure
- Housing Lettings
- Land Charges
- Mobile Phones
- NNDR
- S106 Monies (Planning Obligations)
- Street Naming and Numbering