

ARGYLL & BUTE COUNCIL

Internal Audit Section

INTERNAL AUDIT REPORT

CUSTOMER DEPARTMENT	DEVELOPMENT AND INFRASTRUCTURE SERVICES
AUDIT DESCRIPTION	SYSTEM BASED AUDIT
AUDIT TITLE	Section 75 Planning Obligations
AUDIT DATE	April 2014

2014/2015



1. BACKGROUND

Section 75 of the Town and Country Planning (Scotland) Act 1997 empowers planning authorities to enter into planning obligations with persons having an interest in land to restrict or regulate the development or use of land. An agreement entered into under Section 75 of the 1997 Act is a voluntary agreement between the land owner and the Council, or any other person having an interest in the land. It is recognised that positive obligations (including developer contributions) can be encompassed within this provision.

The majority of Section 75 (s75) planning obligations in Argyll and Bute Council are straightforward single issue planning obligations which create obligations in relation to such matters as road or visibility splay improvements or tie ownership of a dwelling house erected upon a croft to the remainder of the croft land. Other obligations may include the construction of affordable dwellings, financial contributions to deliver affordable housing, or the provision of infrastructure off site.

A review was undertaken of the processes followed in regard to the s75 planning obligation entered into in respect of the application for planning permission made by Drum Development Company (Waitrose). The planning application was a Local Application for the Erection of a Class 1 food store, petrol filling station, associated access, parking landscaping and all associated ancillary development on land south of Hermitage Academy, Cardross Road, Helensburgh. Following conclusion of the s75 planning obligation £868,000 was deposited with Argyll and Bute Council as a result of the Section 75 obligation. A further £20,000 was retained by Barr for the 'Gateway Project', construction was undertaken by Barr Construction during Waitrose build. In terms of the Section 75 planning obligation there are express timeframes in which the developers contributions paid require to be expended on projects (10 years and 15 years). If projects are not complete and funds unutilised within the agreed timeframes any unspent part of the contribution and accrued interest is required to be returned to the Landowner.

The Waitrose s75 planning obligation was unprecedented in Argyll and Bute in terms of the financial contributions that required to be made by the Applicant and the variety of mitigation measures that required to be addressed to make the development acceptable. It is considered that the mitigation contributions required maximised the funding opportunity arising from the application for the development.

A further four Section 75 obligations were reviewed using Argyll & Bute Council's website (Planning Section). Whilst guidance and procedures were in place and were being followed they could benefit from being updated and consolidated.

2. AUDIT SCOPE AND OBJECTIVES

This report has been prepared as a result of the Internal Audit review of Section 75 (s75) Planning Obligations within Development & Infrastructure, Planning as part of the 2014/2015 Internal Audit programme.

The main objective of the audit was to ensure:

- Compliance with Section 75 legislation and Guidance
- Compliance with Council policies and procedures
- Governance and Monitoring procedures were fit for purpose
- Income /Use of Funding verification

3. RISKS IDENTIFIED

- Failure to maximise funding opportunities arising from Development applications
- Council or applicant does not comply with terms of Section 75 obligation
- Reputational loss to Council
- Processes not fit for purpose resulting in un-necessary delays and stifling economic development

4. AUDIT OPINION

The level of assurance given for this report is substantial in terms of the process in place surrounding the majority of single issue s75 obligations, however in terms of the Waitrose development monitoring and governance arrangements require to be improved.

Level of Assurance	Reason for the level of Assurance given
High	Internal Control, Governance and the Management of Risk are at a high standard with only marginal elements of residual risk, which are either being accepted or dealt with.
Substantial	Internal Control, Governance and the Management of Risk have displayed a mixture of little residual risk, but other elements of residual risk that are slightly above an acceptable level and need to be addressed within a reasonable timescale.
Limited	Internal Control, Governance and the Management of Risk are displaying a general trend of unacceptable residual risk and weaknesses must be addressed within a reasonable timescale, with management allocating appropriate resource to the issues.
Very Limited	Internal Control, Governance and the Management of Risk are displaying key weaknesses and extensive residual risk above an acceptable level which must be addressed urgently, with management allocating appropriate resource to the issues.

This framework for internal audit ratings has been developed and agreed with Council management for prioritising internal audit findings according to their relative significance depending on their impact to the process. The individual internal audit findings contained in this report have been discussed and rated with management.

A system of grading audit findings, which have resulted in an action, has been adopted in order that the significance of the findings can be ascertained. Each finding is classified as High, Medium or Low. The definitions of each classification are set out below:-

High - major observations on high level controls and other important internal controls. Significant matters relating to factors critical to the success of the objectives of the system. The weakness may therefore give rise to loss or error;

Medium - observations on less important internal controls, improvements to the efficiency and effectiveness of controls which will assist in meeting the objectives of the system and items which could be significant in the future. The weakness is not necessarily great, but the risk of error would be significantly reduced if it were rectified;

Low - minor recommendations to improve the efficiency and effectiveness of controls, one-off items subsequently corrected. The weakness does not appear to affect the ability of the system to meet its objectives in any significant way.

5. FINDINGS

The following findings were generated by the audit:

- 5.1 Argyll & Bute Council's Local Plan - Planning Gain allows the Council to secure developers contributions (planning gain) via s75 planning obligations.
- 5.2 Argyll & Bute Council follows national policy and guidance as contained in the Scottish Planning Policy and the Planning Obligations and Good Neighbour Agreements Circular 3/2012, this is transposed into the Local Development Plan and associated supplementary Guidance.
- 5.3 In terms of the Scottish Government 'Planning Obligations and Good Neighbour Agreements Circular 3/2012, Argyll & Bute Council's processes comply in the following areas:
 - S75 obligations are identified and progressed in a timely and transparent manner;
 - Potential development area schedules are included in the local plan;
 - Within the policies in the local plan there is reference that section 75 planning obligations may be entered into;
 - There is drafting templates in terms of s75 obligations for use in circumstances that are likely to be repeated;
 - Monitoring takes place to ensure that obligations are met.
- 5.4 If a planning application is considered relevant for s75 obligation Planning & Regulatory Service work closely with Legal Services in terms of progressing the signing of the relevant paperwork with the applicant. Correspondence is held on the Electronic Document Management system and on the Council's website.
- 5.5 Internal written guidance/procedures in relation to s75 Planning are provided in notes contained in a memo dated July 1997. Other documented procedures and processes that are in place in relation to s75 planning obligations are fragmented and out of date.
- 5.6 In relation to the procedural guidance contained within the memo dated 1997 the Waitrose planning obligation was completed one day over the internal guidance of 4 months. A further four s75 obligations were reviewed and documents held on the Planning section of the website were reviewed. The s75 obligation for a development in Dunoon was found to have been

negotiated over a two year period, delayed due to mitigating circumstances on the part of the applicant. It was found that there are no documented guidelines around the circumstances in which s75 negotiations should continue beyond the guidance period.

- 5.7 The speed of determining planning applications which are subject to s75 planning obligations is monitored on a quarterly and annual basis by the Scottish Government. In 2013/14 (most up to date figures) Argyll and Bute Council entered into 11 legal obligations for Local Applications out of 1,072 applications determined. The time taken to conclude these was an average of 30.3 weeks from the date of validation of the application for planning permission. The National average is 48.8 weeks so Argyll and Bute are performing above average in terms of the time taken to conclude such applications.
- 5.8 The Waitrose development proposal did not comply with the Councils Development Plan without mitigation therefore became subject to s75 planning obligation. The s75 planning obligation contained the mitigation in terms of impact on the open space protection area, impact on business & industry allocation and impact on town centre. The Waitrose s75 planning obligation was unprecedented in Argyll and Bute in terms of the financial contributions that required to be made by the Developer. The s75 planning obligation set out 11 separate projects which will require to be undertaken by several different departments within the Council. In terms of the s75 planning obligation there are express timeframes for the developers contributions paid in respect of the projects to be expended (10 years and 15 years). If the projects are not complete and funds not utilised within the timeframe the unspent money and accrued interest is required to be returned to the Landowner.
- 5.9 Scottish Government Circular 3/2012: Planning Obligations and Good Neighbour Agreements states that; *“Planning authorities should have mechanisms and procedures in place for confirming that infrastructure and facilities to be provided under planning obligations are delivered. Planning authorities should designate a responsible officer for this purpose”*. The Head of Planning and Regulatory Services is the officer responsible for ensuring compliance with s75 planning obligations. Authority is delegated to the four Area Team Leaders and the Development Manager where necessary. The majority of s75 obligation monitoring is straightforward for single issue obligations and there is a process in place to ensure the obligation is fulfilled. There was a project plan in place to assign tasks to Council departments and to deliver the mitigation required in respect of the Waitrose Agreement and expend the Developers contributions. There was evidence that the Developer had complied with their obligations under the Waitrose Agreement and that the payment of contributions had been monitored. There was evidence of a monitoring and reporting framework, however, there were weaknesses in the reporting lifecycle in place in respect of the Waitrose Development.
- 5.10 Monies received were treated in accordance with s75 Planning obligations. Strategic Finance (Treasury) has deposited the income received in a separate interest bearing account. A temporary loan has been created and interest applied. Strategic Finance has a clearly documented flowchart outlining processes to be followed in terms of receipt and draw down of funds upon verification of use as per s75 Planning obligations.

6. CONCLUSION

The level of assurance given for this report is substantial in terms of the process in place surrounding the majority of single issue s75 obligations, however in terms of the Waitrose development monitoring and governance arrangements require to be improved. There was evidence of a monitoring and reporting framework, however, there were weaknesses in the reporting lifecycle in place in respect of the Waitrose Development to ensure that the projects are complete within the agreed timeframe mitigating the risk that unutilised funds require to be returned to the Landowner. There were a number of recommendations for improvement identified as part of the audit and these are set out in Appendix 1. There are 3 high recommendations which are reported to the Audit Committee. Appendix 1 sets out the action management have agreed to take as a result of the recommendations, the persons responsible for the action and the target date for completion of the action. Progress with implementation of actions will be monitored by Internal Audit and reported to management and the Audit Committee.

Thanks are due to staff within Planning, Legal Services and Strategic Finance for their co-operation and assistance during the Audit and the preparation of the report and action plan.

APPENDIX 1 ACTION PLAN

Findings	Risk Impact	Rating	Agreed Action	Responsible person agreed implementation date
1. Procedures and Processes		High/ Medium or Low		
Internal written guidance/procedures in relation to s75 Planning are provided in notes contained in a memo dated July 1997. Other documented procedures and processes that are in place in relation to s75 planning obligations are fragmented and out of date.	Management assurance is undermined.	High	Review existing procedural guidance and produce updated and consolidated hand book including full process mapping	Development Manager, Development & Infrastructure March 2015
2. Reporting		High/ Medium or Low		
If projects are not complete and funds not utilised within the timeframe any unspent part of the contribution and accrued interest is required to be returned to the Landowner. There was evidence of a monitoring and reporting framework, however, there were weaknesses in the reporting lifecycle in place in respect of the Waitrose Development.	Failure to comply with Section 75 Guidance prepared by the Scottish Government Council is exposed to legal challenge and reputational damage. Management assurance is undermined. Resources required to	High	6 monthly highlight Reports to be produced	Development Manager, Development & Infrastructure December 2014

	be repaid impacting in performance levels.			
3. Completion Exceptions		High/ Medium or Low		
<p>Within the memo dated 1997 the guidance given states that s75 obligations should be completed within a 4 month timeframe. Five s75 obligations were reviewed and documents held on the Planning section of the website reviewed. The s75 obligation for a development in Dunoon was found to have been negotiated over a two year period, delayed due to mitigating circumstances on the part of the applicant. There were no documented guidelines around the circumstances in which s75 negotiations should continue beyond the 4 month period.</p>	<p>Failure to comply with Section 75 Guidance prepared by the Scottish Government</p> <p>Council is exposed to legal challenge and reputational damage.</p>	High	New guidance to be produced as part of finding no 1	<p>Development Manager, Development & Infrastructure</p> <p>March 2015</p>

Contact Details

Name Moira Weatherstone

Address Kilmory, Lochgilphead, Argyll, PA31 8RT

Telephone 01546 604394

Email moira.weatherstone@argyll-bute.gov.uk

www.argyll-bute.gov.uk

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