

From: [REDACTED]@coinweb.lgo.org.uk
Sent: 25 June 2024 10:10
To: DDC Complaints; [REDACTED]
Subject: Confidential: Case ID - 24001693
Attachments: Complaint form.pdf

25 June 2024
Your ref: C23-136
Our ref: 24 001 693
(Please use this reference number when contacting us.)

Dear [REDACTED]

Complaint re [REDACTED]

We have received a complaint from this person about your Council. I attach details of the complaint if we have not already sent them, and thank you for providing any information you have already sent us about it.

We have decided to pass the matter to our Investigation team for further consideration. We will contact you as soon as we allocate the case.

Please send us the following documents within 10 working days so they are ready for the Investigator:

- Records of the Council's actions relating to its obligation to designate the site as a Local Nature Reserve..

Data protection

We cannot accept documents that include embedded documents, so please do not send us any information that includes them, but instead send them as attachments. If you share embedded information with us, we will delete it and ask you to resend it as attachments.

In the interests of fairness, we will normally send the complainant a copy of your comments and any evidence we rely on in reaching a decision. We do not usually share any information about a third party or which is confidential for another reason.

If you are sending information we should not disclose to the complainant:

- please clearly identify it and say why it should not be shared;
- send it separately from the information which can be shared;
- send a redacted and non-redacted version;
- please remember names and contact details of your own staff and those employed by other organisations are third party information; and
- if any documents contain details of individuals with whom the complainant has had no previous contact and which are not publicly available, please provide two copies: one with this personal information redacted; and a non-redacted version.

Yours sincerely,

[REDACTED]
Investigator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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Complaint summary

Complaint reference: 24 001 693

Date Received: 09/05/2024

1	Your name:	
2	Your address:	
3	Contact Telephone number:	
4	Email address:	
5	Representative: Telephone: Email:	
6	Requested service adjustments	
7	Which council, authority or care provider are you complaining about?	

	Dover District Council
8	Have you complained to the council, authority or care provider? Yes/No
9	<p>If you know, please say when you complained to the council, authority or care provider.</p> <p>13 September 2023</p>
10	<p>What do you think the council, authority or care provider did wrong?</p> <p>Dover District Council failed to designate Betteshanger Country Park a Local Nature Reserve as per the S106 Agreement it signed in August 2004, and which only came to light recently, and which arguably it still has an obligation to do so. A clear case of maladministration. The Council is unable to explain why it did not carry out its legal obligation and maintains that it now has no legal interest in the land, despite the terms of the S106 Agreement stating that the Agreement binds successors in title and runs with the land.</p>
11	<p>How has this affected you?</p> <p>I, along with hundreds of local people use and enjoy the exceptional and protected wildlife and large open space of Betteshanger Country Park as a place of peace and sanctuary. On 7th March 2024 Dover District Council granted planning permission for a 120-bed hotel and surfing complex in the country park which was bought by a property developer in Dec 2019. The country park was intended, with millions of pounds of public funding, to be a community park and nature reserve following the closure of the colliery in 1989. The Council's failure to designate the site as a nature reserve will now result in the loss and destruction of a site widely recognised to be of high biodiversity and loss of free public access to the majority of the park.</p>
12	What do you think the council, authority or care provider should do to put things right?

	Dover District Council should have designated Betteshanger Country Park a Local Nature Reserve. Now that planning permission has been granted for major development on the country park, it is difficult to see how this situation can be remedied.

From: [REDACTED]
Sent: 25 June 2024 10:15
To: [REDACTED]@coinweb.lgo.org.uk
Subject: RE: Confidential: Case ID - 24001693

Dear [REDACTED] – thank you for your email and enquiry. I confirm that the Council will respond as soon as possible but within the next 10 working days.

Yours sincerely

[REDACTED]



Corporate Services Officer

Dover District Council
Council Offices, White Cliffs Business Park,
Whitfield, Dover, CT16 3PJ

Tel: [REDACTED]
Email: [REDACTED]@dover.gov.uk
Web: <http://dover.gov.uk/Home.aspx>



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Please note that I do not ordinarily work on Fridays

Dover District Council is a data controller under GDPR, your attention is drawn to our [Corporate Privacy Notice](#). This explains how we will use and share your personal information and protect your privacy and rights.

From: [REDACTED]@coinweb.lgo.org.uk [REDACTED]@coinweb.lgo.org.uk
Sent: Tuesday, June 25, 2024 10:10 AM
To: DDC Complaints <DDCComplaints@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK
Subject: Confidential: Case ID - 24001693

25 June 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us.)

Dear [REDACTED]

Complaint re [REDACTED]

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- if any documents contain details of individuals with whom the complainant has had no previous contact and which are not publicly available, please provide two copies: one with this personal information redacted; and a non-redacted version.

Yours sincerely,

Investigator

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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From: DDC Complaints
Sent: 10 July 2024 08:36
To: [REDACTED]@coinweb.lgo.org.uk
Subject: RE: Confidential: Case ID - 24001693

Dear [REDACTED]

Thank you for your email of 25 June where you requested records of the Council's actions relating to its obligation to designate the site as a Local Nature Reserve. Firstly, please accept my apologies for the delay in responding to you.

The Council responded to a request under the Freedom of Information Act from the complainant on 12 June 2023 and a request for an internal review on 23 June 2023. Unfortunately, no historical records of obligations to designate the land as a nature reserve are held by the Council.

Since receipt of applications to develop the land for leisure amenity (a hotel and wave pool) in 2023, local residents have sought to challenge the historical non-designation of the land as a local nature reserve.

The S.106 Agreement (dated 13 August 2004) containing the requirement for the designation of a nature reserve was entered into 20 years ago between the Council and SEEDA (the former owner). At this point in time, the land which was to be the subject of the designation was a former spoil site from the nearby Betteshanger colliery. The land was to be remediated by SEEDA and both SEEDA and the Council appear to have been in agreement as to the designation.

The Council has conducted a thorough search of its records and can find no evidence that the designation was considered further after the 2004 S.106 agreement was entered into. There are no longer any officers working at the Council that dealt with the application and that may have been able to assist in explaining why the Council did not proceed to designate the land.

There is disagreement between the current owner of the site and the complainant as to whether the Council is legally able now, some twenty years after the agreement between itself and SEEDA, to designate the land. The statutory designation regime exists to enable willing parties to agree to designation (or for the Council to designate land in which it has a legal interest) and there is uncertainty as to whether the Council is able to rely on a 20-year-old agreement to force the current landowner to accept designation of the land.

The Council has sought legal advice as to the status of the 2004 S.106 agreement vis a vis designation of the land and there is some doubt that, after 20 years of inaction, it would be possible to enforce the terms of the agreement in relation to designation. Furthermore, the Council is of the view that, as the land has changed ownership and the current landowner is unwilling to enter into such an agreement, the Council cannot force the landowner to enter into a new agreement (under the National Parks and Access to the Countryside Act 1949) when it does not agree to the designation.

Notwithstanding the Council's view as to designation of the land as a local nature reserve, it is considered that the ability of the public to enjoy the open space and wildlife present on the land will be preserved by imposing conditions and securing planning obligations (guaranteeing free public access to the Betteshanger Country Park and the long term management and maintenance of the land at the site for the benefit of the protected species and other flora and fauna present on the land) when granting the proposed permissions for hotel and wave pool schemes. Furthermore, as the designation as a local nature reserve does not trigger any legal or national policy protection for the land the Council is of the opinion that the land will be better controlled by the use of conditions and s106 obligations within the new planning permissions.

I trust that this is of assistance but if there is anything else that I can help with please let me know.

Yours sincerely



Corporate Services Officer

Dover District Council

Council Offices, White Cliffs Business Park,
Whitfield, Dover, CT16 3PJ

Tel: [REDACTED]

Email: [REDACTED]@dover.gov.uk

Web: <http://dover.gov.uk/Home.aspx>



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From: [REDACTED]@coinweb.lgo.org.uk [REDACTED]@coinweb.lgo.org.uk>

Sent: Tuesday, June 25, 2024 10:10 AM

To: DDC Complaints <DDCComplaints@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK>

Subject: Confidential: Case ID - 24001693

25 June 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us.)

Dear [REDACTED]

Complaint re [REDACTED]

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Yours sincerely,


Investigator

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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[REDACTED]

From: [REDACTED]@coinweb.lgo.org.uk
Sent: 06 August 2024 10:35
To: DDC Complaints; [REDACTED]
Subject: Confidential: Case ID - 24001693

Some people who received this message don't often get email from [REDACTED]@coinweb.lgo.org.uk. [Learn why this is important](#)

06 August 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Thank you for your email of 10 July.

This complaint is still awaiting allocation to an Investigator.

We will contact you again when the complaint is allocated to an investigator.

Please accept our apologies for the delay.

Yours sincerely

[REDACTED]
Team Co-ordinator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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From: [REDACTED]
Sent: 06 August 2024 10:38
To: [REDACTED]@coinweb.lgo.org.uk
Subject: RE: Confidential: Case ID - 24001693

Dear [REDACTED] – thank you very much for keeping us informed.
Yours sincerely
[REDACTED]



Corporate Services Officer
Dover District Council
Council Offices, White Cliffs Business Park,
Whitfield, Dover, CT16 3PJ
Tel: [REDACTED]
Email: [REDACTED]@dover.gov.uk
Web: <http://dover.gov.uk/Home.aspx>



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From: [REDACTED]@coinweb.lgo.org.uk <[REDACTED]@coinweb.lgo.org.uk>
Sent: Tuesday, August 6, 2024 10:35 AM
To: DDC Complaints <DDCComplaints@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK>
Subject: Confidential: Case ID - 24001693

Some people who received this message don't often get email from [REDACTED]@coinweb.lgo.org.uk. [Learn why this is important](#)

06 August 2024

Your ref: C23-136
Our ref: 24 001 693
(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Thank you for your email of 10 July.

This complaint is still awaiting allocation to an Investigator.

We will contact you again when the complaint is allocated to an investigator.

Please accept our apologies for the delay.

Yours sincerely

[REDACTED]

Team Co-ordinator

[REDACTED]

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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[REDACTED]

From: [REDACTED]@coinweb.lgo.org.uk
Sent: 16 August 2024 11:34
To: DDC Complaints; [REDACTED]
Subject: Confidential: Case ID - 24001693
Attachments: Investigation notification letter to BinJ.pdf

16 August 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Please see the attached letter.

Yours sincerely

[REDACTED]
Team Coordinator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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Local Government &
Social Care
OMBUDSMAN

16 August 2024

[REDACTED]
Managing Director
Dover District Council
Council Offices
White Cliffs Business Park
Whitfield
DOVER
CT16 3PJ

Your ref: C23-136

Our ref: 24 001 693

(Please quote our reference when contacting us and, if using email, please put the number in the email subject line)

If telephoning please contact: [REDACTED]
email address: [REDACTED]@coinweb.lgo.org.uk

Dear [REDACTED]

Complaint by [REDACTED]
[REDACTED]

This letter is to formally notify you that we are proposing to investigate [REDACTED] complaint.


The case has been allocated to [REDACTED] whose contact details are set out above. Details of the complaint were sent to you when we wrote to you on 25 June.

You do not need to take any action at present. However, if you would like to raise any issues about our proposed investigation or if you see a way of resolving the complaint, please contact the Investigator as soon as possible.

The Investigator will consider the case and then contact you either to make enquiries or to send you a draft decision for comment. The Investigator may decide there are good

reasons not to investigate **all** the complaint that has been put to us. The investigator will also look at whether there are any restrictions as to why we cannot investigate certain parts of the complaint.

Yours sincerely

A large black rectangular redaction box covering the signature of the Team Co-ordinator.A smaller black rectangular redaction box covering the name of the Team Co-ordinator.

Team Co-ordinator

From: DDC Complaints
Sent: 22 August 2024 09:34
To: [REDACTED]@coinweb.lgo.org.uk
Subject: RE: Confidential: Case ID - 24001693

Dear [REDACTED] – please accept my apologies for the delay in acknowledging your letter and for advising the Council about the investigator. We will now wait to hear from them.

Kind regards
[REDACTED]



Corporate Services Officer

Dover District Council
Council Offices, White Cliffs Business Park,
Whitfield, Dover, CT16 3PJ

Tel: [REDACTED]
Email: [REDACTED]@dover.gov.uk
Web: <http://dover.gov.uk/Home.aspx>

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From: [REDACTED]@coinweb.lgo.org.uk [REDACTED]@coinweb.lgo.org.uk
Sent: Friday, August 16, 2024 11:34 AM
To: DDC Complaints <DDCComplaints@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK>
Subject: Confidential: Case ID - 24001693

16 August 2024

Your ref: C23-136
Our ref: 24 001 693
(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Please see the attached letter.

Yours sincerely

[REDACTED]
Team Coordinator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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From: [REDACTED]@coinweb.lgo.org.uk
Sent: 10 September 2024 16:23
To: DDC Complaints; [REDACTED]
Subject: Confidential: Case ID - 24001693

Some people who received this message don't often get email from [REDACTED]@coinweb.lgo.org.uk. [Learn why this is important](#)

10 September 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Thank you for speaking with me about this complaint.

My initial thoughts are that I am likely to find fault (failure to keep records) and I need to decide whether it likely to happen again.

To do this, I will need to check the Council's current s106 practices and procedures. Can you ask an officer familiar with the case and the Council's s106 procedures to call me on the number below?

Yours sincerely

[REDACTED]
Investigator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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From: DDC Complaints
Sent: 11 September 2024 15:07
To: [REDACTED]@coinweb.lgo.org.uk
Subject: RE: email fr LO re officer contact

Dear [REDACTED] – certainly, [REDACTED] contact details are [REDACTED].
Kind regards
[REDACTED]



Corporate Services Officer
Dover District Council
Council Offices, White Cliffs Business Park,
Whitfield, Dover, CT16 3PJ
Tel: [REDACTED]
Email: [REDACTED]@dover.gov.uk
Web: <http://dover.gov.uk/Home.aspx>

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From: [REDACTED]@coinweb.lgo.org.uk [REDACTED]@coinweb.lgo.org.uk
Sent: 11 September 2024 15:01
To: DDC Complaints <DDCComplaints@DOVER.GOV.UK>
Subject: RE: email fr LO re officer contact

Dear [REDACTED]

thank you for your email.

Tomorrow morning will be fine.

Can you send me [REDACTED] contact number, just in case I miss her call.

thanks

[REDACTED]
Investigator

From: DDCComplaints@DOVER.GOV.UK
Subject: RE: Confidential: Case ID - 24001693 To: [REDACTED]@coinweb.lgo.org.uk"
[REDACTED]@coinweb.lgo.org.uk); Date Sent: 11/09/2024 14:52:37

Dear [REDACTED] – I have found out that the officer who will be able to assist with this is [REDACTED], Planning Policy and Projects Manager. She is in meetings this afternoon but has offered to call you tomorrow morning between 9 and 10. Is that suitable?

Kind regards
[REDACTED]

Corporate Services Officer

Dover District Council
Council Offices, White Cliffs Business Park,
Whitfield, Dover, CT16 3PJ
Tel: [REDACTED]
Email: [REDACTED]@dover.gov.uk
Web: <http://dover.gov.uk/Home.aspx>



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Sent: 10 September 2024 16:23
To: DDC Complaints <DDCComplaints@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK>
Subject: Confidential: Case ID - 24001693

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10 September 2024

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Complaint re [REDACTED]

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To do this, I will need to check the Council's current s106 practices and procedures. Can you ask an officer familiar with the case and the Council's s106 procedures to call me on the number below?

Yours sincerely

[REDACTED]
Investigator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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This e-mail, including any attachments, is intended for the above addressee(s) only and may contain marked material up to RESTRICTED and should be handled accordingly.

If you are not the intended recipient (or authorised to receive it on behalf of the addressee), please notify the sender immediately by return e-mail and then delete the message without copying it or disclosing it to anyone.

Precautions have been taken to ensure that this is a virus-free message but recipients are responsible for carrying out their own checks. This Council accepts no responsibility for loss or damage to any hardware, software or data resulting from this e-mail.

All GCSx (Government Connects Secure Extranet) traffic may be subject to recording and/or monitoring in accordance with relevant legislation.

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[REDACTED]

From: [REDACTED]@coinweb.lgo.org.uk
Sent: 12 September 2024 14:25
To: DDC Complaints; [REDACTED]
Subject: Confidential: Case ID - 24001693
Attachments: Draft decision.pdf; Draft decision cover to BinJ.pdf

Categories: [REDACTED]

12 September 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Please see the attached letter.

Yours sincerely

[REDACTED]
Investigator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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Local Government &
Social Care
OMBUDSMAN

12 September 2024

[REDACTED]
Managing Director
Dover District Council
Council Offices
White Cliffs Business Park
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If telephoning please contact: [REDACTED]
email address: [REDACTED]@coinweb.lgo.org.uk

Dear [REDACTED]

Complaint by [REDACTED]
[REDACTED]

Thank you for your officers' assistance with my enquiries about this complaint. I attach my draft decision statement for you to consider.

Your chance to comment

Before I make a final decision, I welcome comments from your Council on what I say in the draft decision statement. You should also seek comments from anyone involved in the issues complained of. This includes anyone who is alleged to, or appears to, have done something or failed to do something in connection with the complaint.

Any comments from others involved in the complaint may be sent with your own response, but should be in their original form, such as the original letter or email.

Any comments from current employees should be sent through your Council. Ex-employees and contractors can send comments directly to me if they prefer. If they do, I expect them to send you a copy, or explain to me why they do not wish to.

I have found fault and so it is important you respond to my recommendations within the time limit.

Please send me any comments by 26 September 2024. If I have heard nothing by then, I will assume you agree with what I have set out in the draft decision statement, and I will proceed on that basis. Please would you also confirm whether you agree with the draft recommendations and the proposed timescales for completion. Please let me know if there will be any issue completing the proposed remedy.

I am also sending my draft decision statement to the complainant for their comments. I will consider the comments of both sides before making a final decision.

Publishing our decision

We publish our final decision statements on our website. We use false names so they do not reveal details that could identify people involved. However, we sometimes use the job titles of senior council officers. If you are concerned that publishing our decision will identify people involved, please let me know as soon as possible.

Data protection

In the interests of fairness, we may send the complainant an unredacted copy of your comments and any evidence that we rely on in reaching a decision. We will not share any information about a third party or which is confidential for another reason. If you are sending information which should not be disclosed:

- please clearly identify it and say why it should not be shared;
- send it separately from the information which can be shared;
- send a redacted and non-redacted version;
- please bear in mind that names and contact details of your own staff and those employed by other organisations are third party information;
- if any of your documents contain details of individuals with whom the complainant has had no previous contact and which are not publicly available, please provide two copies: one that has this personal information redacted and a non-redacted version.

Confidentiality

The law says we must investigate in private. Please remind anyone consulted not to discuss our draft findings with the press, or publish any of our communications in the public domain, including social media. Thank you for your cooperation.

Yours sincerely

A black rectangular redaction box covering the signature of the investigator.

Investigator

Enc: Draft decision statement

The Ombudsman's draft decision

Summary: X complained the Council failed to use its powers to ensure land was protected for nature conservation purposes. Based on the evidence we have seen so far, we found fault because records were missing from the Council's planning register that should have explained what happened. We recommend the Council takes action to avoid similar fault happening again.

The complaint

1. The person that complained to us will be referred to as X.
2. X complained the Council failed to ensure open space land had statutory protection for nature conservation purposes.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
4. It is our decision whether to start, and when to end an investigation into something the law allows us to investigate. (Local Government Act 1974, sections 24A(6) and 34B(8), as amended)
5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

What I have and have not investigated

6. The original section 106 agreement that was aimed at creating statutory protection for the site X complained about was decided more than nearly two decades ago. Because of the fault I find below, I cannot know why the Council did not protect the site. Because the passing of time, it is unlikely further investigation by me will result in a clear finding of what happened.
7. We can investigate whether a similar fault might happen again, so this investigation will focus on the Council's current section 106 processes.

DRAFT

How I considered this complaint

8. I read the complaint and discussed it with X. I read the Council's response to the complaint and spoke to an officer. I have considered our guidance on remedies published on our website.
9. I have given the Council and X an opportunity to comment on my draft decision and will take account of any comments I receive before making a final decision.

What I found

Planning law and guidance

10. Councils should approve planning applications that accord with policies in the local development plan, unless other material planning considerations indicate they should not.
11. Planning considerations include things like:
 - Access to the highway;
 - Protection of ecological and heritage assets; and
 - The impact on neighbouring amenity.
12. Planning considerations do not include things like:
 - Views over another's land;
 - The impact of development on property value; and
 - Private rights and interests in land.
13. Councils may impose planning conditions to make development acceptable in planning terms. Conditions should be necessary, enforceable and reasonable in all other regards.
14. Councils may approve applications, subject to a planning condition requiring the applicant to enter into a separate planning agreement. Council powers and appeal rights relating to these agreements are found in the Town and Country Planning Act 1990. The agreements are usually referred to as 'section 106' agreements. The agreements are in the form of a deed, which is a form of contract that is legally binding on the parties that sign it.
15. A party to section 106 agreement can apply to modify or discharge an obligation within it. An application to modify or discharge a section 106 agreement may only be made after five years after the agreement came into force.
16. Land can be protected by statutory powers for nature conservation purposes, and these include:
 - Sites of Special Scientific Interest;
 - Special Areas of Conservation;
 - Special Protection Areas;
 - 'Ramsar' sites for wetland protection;
 - National Nature Reserves; and
 - Local Nature Reserves.
17. Every local planning authority must keep a record of applications for its area. The register should, amongst other things, include copies of:

- the site address, the application reference, the site plan, the date of the application, the name of the application, description of the decision including details of conditions, details of appeals, the application, including plans and drawings;
- planning agreements and obligations connected with the application.

What happened

18. The Council approved a planning application on land in its area. The approval included a condition requiring a section 106 agreement. Amongst other things, the agreement required the Council to protect land for the purpose of nature conservation using its statutory powers. This did not happen.
19. X complained to the Council about its failure to protect the land. The Council responded to say it did not know why the land had not been protected, but as the land was not in its ownership or control, it could not insist that happened now.
20. The Council explained that the section 106 agreement required certain works to be carried out to 'trigger' the designation of the land but the records the Council needed to explain what happened were either missing or unclear. The Council accepted it had failed to retain records it was required to keep and it could not speculate on what the records might have contained. The Council apologised to X for the fault.
21. The Council said it took legal advice and concluded that it did not now have the power to protect the land as it had once intended.
22. I spoke to an officer about its current practices relating to section 106 monitoring. The officer told me:
 - there is an officer who has responsibility for monitoring section 106 agreements relating to financial obligations for developers;
 - non-financial obligations and obligations on the Council are dealt with by relevant departments, and responsibility was for individual officers on a case-by-case basis; and
 - it would be possible for the section 106 monitoring officer to deal with both financial and non-financial obligations, but any change would need careful consideration, particularly on how monitoring would be funded.

My findings

The Council should have records to show what happened, but it did not keep them. This is fault.

23. Because of the fault and the passing of time, further investigation by me is unlikely to result in a clear finding of why the Council failed to keep proper records and why it did not use its powers to protect the land.
24. The Council has explained its current processes, but I am not persuaded they are robust enough to ensure the fault I found does not happen again.
25. I will recommend the Council considers its working practices and procedures to ensure the fault is unlikely to happen again.

Recommended action

26. To avoid recurrence of the fault I have found, the Council should agree to:

-
- a) carry out a review of its record keeping and section 106 monitoring functions, to ensure they are effective and fit for purpose. This should happen within 3 months from the date of our final decision on this complaint.
 - b) share the outcome of its review with any changes to practice and procedure with the Council's oversight and scrutiny committee. This should happen within 1 month from completion of the review.
27. The Council should provide us with evidence it has complied with the above actions.

Draft decision

28. I found evidence of fault that may happen again. Subject to further comments I may receive, I intend to complete my investigation if the Council accepts my recommendations.

Investigator's draft decision on behalf of the Ombudsman

From: [REDACTED]
Sent: 12 September 2024 14:33
To: [REDACTED]@coinweb.lgo.org.uk'
Subject: RE: Confidential: Case ID - 24001693

Dear [REDACTED] – thank you for your draft decision on this matter.

I confirm that I will share you draft decision with the relevant officers and respond to you by 26 September.

Yours sincerely

[REDACTED]



Corporate Services Officer

Dover District Council
Council Offices, White Cliffs Business Park,
Whitfield, Dover, CT16 3PJ

Tel: [REDACTED]
Email: [REDACTED]@dover.gov.uk
Web: <http://dover.gov.uk/Home.aspx>



Please consider the Environment before printing this email

Please note that I do not ordinarily work on Fridays

Dover District Council is a data controller under GDPR, your attention is drawn to our [Corporate Privacy Notice](#). This explains how we will use and share your personal information and protect your privacy and rights.

From: [REDACTED]@coinweb.lgo.org.uk [REDACTED]@coinweb.lgo.org.uk>
Sent: 12 September 2024 14:25
To: DDC Complaints <DDCComplaints@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK>
Subject: Confidential: Case ID - 24001693

12 September 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Please see the attached letter.

Yours sincerely

[REDACTED]
Investigator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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[REDACTED]

From: [REDACTED]@coinweb.lgo.org.uk
Sent: 26 September 2024 14:59
To: DDC Complaints; [REDACTED]
Cc: [REDACTED]
Subject: Confidential: Case ID - 24001693
Attachments: Officer interviews.pdf; Notes for council interviewees.pdf

26 September 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Please see the attached letter.

Yours sincerely

[REDACTED]
Investigator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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Local Government &
Social Care
OMBUDSMAN

26 September 2024

[REDACTED]
Managing Director
Dover District Council
Council Offices
White Cliffs Business Park
Whitfield
DOVER
CT16 3PJ

Your ref: C23-136

Our ref: 24 001 693

(Please quote our reference when contacting us and, if using email, please put the number in the email subject line)

If telephoning please contact: [REDACTED]
email address: [REDACTED]@coinweb.lgo.org.uk

Dear [REDACTED]

Complaint by [REDACTED]

Please arrange for me to interview the following officer who has been involved in the above complaint:

[REDACTED] Head of Planning Services.

I should like to carry out the interview on Microsoft Teams on Tuesday 1 October 2024, starting at 10am, and I expect the interview to last about 45 minutes. I will send a copy of this letter to the interviewee and invite them to join a Teams meeting.

Please make the relevant files available to the interviewees to refer to if necessary during the interviews and ensure that our *Notes for Interviewees* (enclosed) are circulated to each interviewee before the day of the interview. Please confirm these arrangements as soon as possible and let me know if there are any difficulties.

Yours sincerely

[REDACTED]
Investigator

Enc: Notes for Interviewees

What happens during and after the investigation

1. The Local Government and Social Care Ombudsman is investigating a complaint about your council. These notes aim to give you a better idea of what might happen during the investigation. (Although we refer to 'councils' in this document, the information applies to all authorities in the Local Government and Social Care Ombudsman's jurisdiction.)
2. The Ombudsman has powers similar to those of the courts to obtain evidence. He delegates his authority to his investigators. Some of the things an investigator may do during an investigation are:
 - write to the council and ask it for its comments;
 - ask for evidence from the council or the complainant;
 - talk to the complainant;
 - inspect the council's files;
 - interview council officers or other people involved; or
 - carry out site visits.
3. You are being interviewed as part of the investigation. This may be because you were directly involved in the complaint or because you can explain or are responsible for the council's procedures and policies. You should read these notes before your interview takes place.
4. Interviews may be conducted face-to-face or by phone. They are usually arranged through the council, though sometimes an investigator may arrange a phone interview directly with you. If they do they will arrange in advance a suitable time to call you. If you would prefer not to be interviewed by phone, please let us know and the investigator will consider arranging to interview you face-to-face.
5. You can have a friend with you to support you at the interview, but he or she cannot give evidence. The investigator will need to make sure that the friend has no conflict of interest (e.g. is not the council's contact officer, your manager, someone you directly manage or a legal officer of the council). Please contact the investigator before the interview if you think there may be a conflict.
6. Please refresh your memory before your interview so you can give the investigator as much information as possible. The council will normally be able to make the files available for you to see before your interview and you can also refer to them at the time if your interview is face-to-face. If you have any notes you made at the time of the

events under investigation, please bring them with you as these may help the investigator.

7. Interviews are:

- formal and on the record. Withholding information or providing false or misleading information can result in legal proceedings; and
- in private – do not talk about the complaint or the interview until a draft decision or draft of the key facts is issued.

The investigator will ask you questions and you will have an opportunity to comment or ask questions too.

8. The investigator will either make a note of what you say or digitally record the interview. If anything you say is referred to in the draft decision or report, you will have an opportunity to check the accuracy then (see paragraph 11 below). If you want to see a copy of the investigator's note, please let the investigator know.
9. The investigator will have a timetable and will try to keep to it; but sometimes interviews overrun and it will be helpful if you allow for that possibility. Please switch off your mobile phone during the interview.
10. When the investigator has come to a view about the complaint, they will usually send a draft decision to the complainant and the council for comments. In the interests of fairness, the Ombudsman is generally required to share information relied on when reaching a decision. While interview notes are not routinely shared with complainants, they can ask for copies. At that point we will give careful consideration as to whether the information should be disclosed.
11. Where information you have provided is included in the draft decision, the Chief Executive should make sure that you have the opportunity to comment. The investigator will then issue their final decision to the complainant and council at the same time.
12. Sometimes, the Ombudsman will decide that a report should be issued about a complaint. Where the Ombudsman intends to issue a report, a draft will be sent to the complainant and the council for comment. Where information you have provided is included, the Chief Executive should make sure that you have the opportunity to comment.
13. When all comments have been received and considered the Ombudsman will decide whether to close the complaint with a final decision or issue a report. Both the final decision and the report will include conclusions as to whether there was maladministration and whether that has caused injustice. If so, there will be recommendations on how to remedy the injustice, which may include making improvements to the council's procedures. We publish most of our decisions and reports on our website.

14. Where the Ombudsman issues a report, the council must consider it, publicise it and tell the Ombudsman what it proposes to do about any recommendations. If the council does not comply with the recommendations, the Ombudsman may issue a further report, and extra publicity may follow.
15. We don't use people's real names in the report or the decision.
16. Just because the Ombudsman is investigating a matter, the council does not have to stop dealing with it by following its usual practice, although sometimes it might feel it is sensible to do so.
17. The law relating to Ombudsman investigations is contained in the Local Government Act 1974 as amended.
18. If you have any questions, please ask the council's contact officer or our investigator.
19. If at any stage you have a complaint about the actions of the Ombudsman's staff you may complain in writing to Mrs K Sykes, Director of Investigation, at:

The Local Government and Social Care Ombudsman
PO Box 4771
Coventry CV4 0EH

From: DDC Complaints
Sent: 26 September 2024 15:03
To: [REDACTED]@coinweb.lgo.org.uk
Subject: RE: Confidential: Case ID - 24001693

Dear [REDACTED] – thank you for your letter and notes. I have tried to telephone [REDACTED] but she is unavailable until tomorrow morning. I don't work Fridays, but I have messaged her and she will have now received your email as well.

Yours sincerely

[REDACTED]



Corporate Services Officer

Dover District Council
Council Offices, White Cliffs Business Park,
Whitfield, Dover, CT16 3PJ

Tel: [REDACTED]
Email: [REDACTED]@dover.gov.uk
Web: <http://dover.gov.uk/Home.aspx>



Please consider the Environment before printing this email

Please note that I do not ordinarily work on Fridays

Dover District Council is a data controller under GDPR, your attention is drawn to our [Corporate Privacy Notice](#). This explains how we will use and share your personal information and protect your privacy and rights.

From: [REDACTED]@coinweb.lgo.org.uk [REDACTED]@coinweb.lgo.org.uk
Sent: 26 September 2024 14:59
To: DDC Complaints <DDCComplaints@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK>
Cc: [REDACTED]@DOVER.GOV.UK>
Subject: Confidential: Case ID - 24001693

26 September 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Please see the attached letter.

Yours sincerely

[REDACTED]
Investigator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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[REDACTED]

From: [REDACTED]@coinweb.lgo.org.uk
Sent: 01 October 2024 13:31
To: [REDACTED]
Cc: DDC Complaints; Sue carr
Subject: Confidential: Case ID - 24001693

01 October 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Thank you for speaking with me this morning. Please send me the following information:

- Evidence that the East Kent Audit Partnership was satisfied with your processes for financial s106 monitoring.
- The MS Powerpoint process guide for financial s106 agreement monitoring.

We also talked about how this s106 agreement was meant to work and why the local nature reserve was not created and transferred to the Council.

As I understand it, the scheme required submission of a land management plan, which would need to be agreed before a land transfer took place. The Council has no records to show what happened, so it does not know whether a plan was submitted, considered, approved, rejected. The records should show what happened but they do not exist.

Please let me know whether I have misunderstood the Council's position.

I would be grateful for a response as soon as possible but no later than 8 October. If you need more time to respond, please let me know.

Yours sincerely

[REDACTED]
Investigator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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[REDACTED]

From: [REDACTED]@coinweb.lgo.org.uk
Sent: 01 October 2024 09:43
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: RE: Confidential: Case ID - 24001693

Dear [REDACTED]

Thank you for your email. Can you accept the meeting invite please, so you will be added to the meeting as a participant?

Regards

[REDACTED]
Investigator

From: [REDACTED]@DOVER.GOV.UK
Subject: RE: Confidential: Case ID - 24001693 To: "[REDACTED]@coinweb.lgo.org.uk"
[REDACTED]@coinweb.lgo.org.uk); "[REDACTED]@DOVER.GOV.UK" [REDACTED]); Date Sent: 30/09/2024 15:44:39
Good afternoon,

It's in my diary for tomorrow morning. I thought I'd sent an acceptance email so I'm sorry if you didn't receive it. The time is fine by me, so I'll see you tomorrow.

Kind regards

[REDACTED]

[REDACTED]
Head of Planning and Development
Dover District Council
Council Offices, White Cliffs Business Park, Whitfield, Dover CT16 3PJ
Tel: [REDACTED]
Email: [REDACTED]@dover.gov.uk

From: [REDACTED]@coinweb.lgo.org.uk [REDACTED]@coinweb.lgo.org.uk>
Sent: 30 September 2024 15:25
To: DDC Complaints <DDCComplaints@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK>
Cc: [REDACTED]@DOVER.GOV.UK>
Subject: Confidential: Case ID - 24001693

30 September 2024

Your ref: C23-136
Our ref: 24 001 693
(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Your officer, [REDACTED] has not accepted my Teams meeting invite for tomorrow at 10am or contacted me to ask for an alternative date.

I would be grateful if you chase this for me.

Yours sincerely

[REDACTED]
Investigator
[REDACTED]

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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[REDACTED]

From: [REDACTED]
Sent: 04 October 2024 10:01
To: [REDACTED]@coinweb.lgo.org.uk
Cc:
Subject: RE: Confidential: Case ID - 24001693
Attachments: FINAL 2023 DDC S106 Process Guide.pdf

Good morning,

Audit: The “PLANNING, INCOME & SECTION 106 AGREEMENTS” initial review was concluded in February 2023 and resulted with 9 Recommendations (4 High Priority) - this was reported to the [Governance & Audit Committee 16.03.23](#) in the Quarterly Internal Audit Update Report. Full minutes are available in the link above – the resolution on agenda item was that Members noted the report. The Progress Report was concluded in December 2023. Only one recommendation remained High Priority and “Outstanding with Intent to Action” – this was not anything to do with section 106 agreements (it related to the determination of planning applications, which had also been part of the audit). This was escalated to the [Governance and Audit Committee 28.03.24](#). Minutes (available in full on the link) state that the resolution was that the report was noted.

S106 process guide: The s106 process guide was started about the same time as the audit was underway and was further developed once we had the audit actions (it is dated Dec 2022 and has been regularly updated over the past two years). This is attached. I’ve attached it as a PDF due to size.

Betteshanger s106: As discussed, I wanted to provide a written summary of what happened to ensure it was legally and factually accurate. There is some legal language but I want to be clear in exactly what the situation was:

The s106 agreement did not envisage any transfer of the Nature Reserve Land (defined term within the agreement, shown hatched blue on the plan attached to agreement) from the owner (SEEDA) to the Council. The s106 (recital 9, clause 2 – p 4) records agreement between the owner and Council as to designation of the Nature Reserve Land as a local nature reserve (the agreement was a prerequisite of designation, as the Council didn’t have a legal interest in the land). The owner covenanted that the Nature Reserve Land “**may**” be made the subject of a declaration as a local nature reserve and thereafter be managed as such (para 5 of first schedule) and to prepare a Nature Conservation Management Plan for the Nature Reserve Land and submit it to English Nature (as it then was) for approval. The Council covenanted to “commence appropriate proceedings” for its designation as a local nature reserve “within one month of the date upon which the Council notifies the Owner that it is satisfied that the approved works within the Nature Reserve Land have been completed” (para 3 of 2nd schedule). The agreement does not define the “approved works” and, therefore, there remains some doubt as to what they were and, accordingly, whether the trigger for designation ever occurred. This point had been the subject of conflicting submissions to the Council from both the current owner of the land and from objectors to the planning applications for development of the NRL.

I hope this provides the information you need, but please let me know if you require anything further.

Kind regards

[REDACTED]



Head of Planning and Development

Dover District Council

Council Offices, White Cliffs Business Park, Whitfield, Dover CT16 3PJ

Tel: [REDACTED]

Email: [REDACTED] [@dover.gov.uk](mailto:[REDACTED]@dover.gov.uk)

From: [REDACTED]@coinweb.lgo.org.uk [REDACTED]@coinweb.lgo.org.uk>

Sent: 01 October 2024 13:31

To: [REDACTED]@DOVER.GOV.UK>

Cc: DDC Complaints <DDCComplaints@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK>

Subject: Confidential: Case ID - 24001693

01 October 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Thank you for speaking with me this morning. Please send me the following information:

- Evidence that the East Kent Audit Partnership was satisfied with your processes for financial s106 monitoring.
- The MS Powerpoint process guide for financial s106 agreement monitoring.

We also talked about how this s106 agreement was meant to work and why the local nature reserve was not created and transferred to the Council.

As I understand it, the scheme required submission of a land management plan, which would need to be agreed before a land transfer took place. The Council has no records to show what happened, so it does not know whether a plan was submitted, considered, approved, rejected. The records should show what happened but they do not exist.

Please let me know whether I have misunderstood the Council's position.

I would be grateful for a response as soon as possible but no later than 8 October. If you need more time to respond, please let me know.

Yours sincerely

[REDACTED]
Investigator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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DDC S106 PROCESS GUIDE

December 2022

VERSION CONTROL

- 4th January 2023 – modified by [REDACTED] (policy)
- 4th – April 2023 – modified by [REDACTED] (policy)
- 29th June 2023 – modified by [REDACTED] (s106)
- 26th July 2023 – modified by [REDACTED] (policy)
- 16th August 2023 – modified by [REDACTED] (policy)
- 13th March 2024 - modified by [REDACTED] (s106)
- 29th August 2024 – modified by [REDACTED] (accountancy)



OVERALL S106 PROCESS

Step 1 – Negotiation

S106 agreement is negotiated as part of a planning application. Dealt with by legal services and DM officers. Other DDC officers/ KCC/ providers / local community have some input into calculations and project costs and identification. Infrastructure Delivery Plan should also be cross referenced

Step 2 - Signing of S106

Once agreed and signed, the S106 agreement gets recorded in several ways:

- Land Charges note the agreement on the land charges register and on a S106 agreements GIS mapping system
- S106 Officer logs the full requirements of the S106 on the MASTER excel spreadsheet
- DM officers save on public IDOX system

Step 3 – Monitoring

Our team role is then to monitor each S106 and the trigger points and invoice the right contributions at the right times, then process the payments and update the systems to keep accurate records of received, held and spent S106 conts for the Infrastructure Funding Statement (IFS) published at the end of each year.

As part of this monitoring role, we work with internal partners such as finance, open spaces and projects teams and KCC officers to determine where S106 funds are spent and when they are transferred etc.

This presentation sets out the process for Step 3.



RECORDING NEW S106 AGREEMENTS

Send	Land Charges will send an email to developer.contributions inbox when a new S106 Agreement has been signed.
Add	Add details to the S106 Master – Excel spreadsheet in the main folder S106 and Planning Obligations – and occupations spreadsheet if there are occupation triggers
Make	Make a new folder in the S106 Files using the application reference. Save a copy of the S106 agreement and any other relevant emails or information

Tip: Weekly/monthly Lists of planning applications granted can also be checked for major applications (10 or more dwellings usually) that have been approved and may have a S106 agreement that you haven't yet been notified of.



S106 GIS MAP

- [REDACTED] adds new S106 Agreements to GIS for Land Charges when he receives them.
- The S106 Map is available on the DDC website:

[Planning Obligations \(dover.gov.uk\)](http://dover.gov.uk)

- This is a good point of reference to look up agreements in certain areas of the district.

Note: [REDACTED] has mentioned that old S106 plots are not removed from the map once the S106 is all signed off.

However, It is useful to keep a record of old S106 agreements that are available on public access, but you may need to consider if some could be removed in future before it gets too unwieldy.



S106 MASTER SPREADSHEET



The _S106 MASTER spreadsheet can be found in the S106 file [S106 & Planning Obligations – S106]



Details of S106 obligations are added to the S106 MASTER.



It is used to monitor for when triggers are met and keep a record of financial transactions and non-financial S106 obligations.



This spreadsheet has lots of S106 agreements on it. There is a notes and Key tab to explain colour coding etc and also separate tabs for Whitfield Urban Extension (WUE) and Aylesham Garden Community



There is also a tab for non-financial obligations to be recorded – explained later.

- The Accounts department also have access to the S106 Master – this is currently [REDACTED] [REDACTED] adds job codes to the spreadsheet, but the S106 Officer is responsible for all other updates and notes and making sure this is accurate.

ACTION: This master sheet still needs a lot of work to make it easier to use. Maybe moved to a database or a new recording system. We also need to start recording Unilateral Undertakings for SPA – this is an action to do.



ACCOUNTS PROCESS — FOR ACCOUNTS TO UPDATE

- Each contribution has its own nominal code
- Activity codes – update Table



S106 FILES

[S106 & Planning Obligations – S106 – S106 files]

- Files are arranged by planning reference number - except Aylesham and Whitfield which have their own files due to the size of developments and S106 requirements.
- Save any documents, emails and correspondence relevant to the S106 and any agreed projects, payments, triggers or invoices in these files.

To save in file:

- S106 Agreement and any DoV
- Planning documents that may be useful in monitoring the S106, eg. Tenure plan, phasing plan
- Indexation calculations
- Invoices
- Correspondence



Tip: We have an inbox for this role – developer.contributions@dover.gov.uk [REDACTED] also has access. Use this on all communications about S106 and encourage developers to notify us of triggers through this email account.

TRIGGERS

A 'trigger' is the point when we chase for payment. As set out in the S106 agreement, it is the developer's duty to notify DDC when they are approaching a trigger point.

The main triggers for payment of a contribution or a non-financial submission are **commencement** of development and number of **occupations**. i.e £20k to be paid on occupation of 50 dwellings.

We monitor these to capture any triggers we are not notified of (most are not notified). *Currently excel and no automated notification (Action: can we set something up to get notifications when we update the occupations?)*

Once triggers are reached, we need to invoice the developer the correct amounts – details of developer on application or if they have emailed us to notify they have met trigger.

Keep S106 Master up to date with status.

We might not always know who we should be addressing invoices to.

Developers/landowners/agents can change between S106 and triggers being met.

Try and keep master up to date with contact details when you get them.

If they haven't updated us or sent an email to us then go back to company that signed the S106 – they are the ones liable.

NOTE/ACTION

- We have asked [REDACTED] (Legal) if the [developer.contributions](mailto:developer.contributions@dover.gov.uk) email address can be included in the S106 agreement for notification of triggers (they currently just give the council office postal address).
- It would be worth checking with [REDACTED] to see if this can be actioned as most correspondence is now by email.



COMMENCEMENT MONITORING — HOW TO ASSESS THIS

- Commencement of developments is monitored for the annual Housing Information Audit (HIA). Undertaken in each April to check completions.
- It needs to be noted that the definition of 'Commencement' for S106 purposes may be different to HIA (this is set out in the Definitions section of the s106 agreement). However, works on site are an indication that they are approaching the Commencement trigger.
- GIS LLPG Map: [2022 HIA Extents and LLPG \(arcgis.com\)](#)

Can be used to check HIA records/completions

- **Action:** The Building Control team may also be able to provide details of works commencing on site – look into this.



OCCUPATION MONITORING

- This folder contains the Occupation Monitoring spreadsheets:

[Planning - Occupation Monitoring - All Documents \(sharepoint.com\)](#)

[Policy – S106 and Planning Obligations – Monitoring S106 – Occupation Monitoring]

- Whitfield Urban Extension has its own spreadsheet
- All other sites are on the main spreadsheet.

If a S106 Agreement has triggers on occupations:

- Add a tab to the Occupations Monitoring Spreadsheet.
- When the Address details come through the Address Amendments update from [REDACTED] add the addresses to the spreadsheet. *(note – address details may be months or years later!)*

Send this spreadsheet to Council Tax to update every **2-3 months**.

Send to: compliance@civica.ekservices.org

[REDACTED] usually does the update *(it sometimes takes several weeks to get the updated spreadsheet back, You can email again to remind [REDACTED] if it's been a while).*

. When it comes back - Unoccupied addresses on the spreadsheet are shown in **pink** without an occupation date and when Council Tax check the new addresses if they are occupied they colour the entry in **green** with the occupation date. The occupations numbers for each development then need to be checked against the S106 Master to see if any contributions have been triggered and are now due for payment.



ADDRESS AMENDMENTS

- As sites are being built out and sold to new residents, they will need an actual address created. To do this, the developer has to register the property with Land Charges department who will assign the new full address.
- Having an address means that Council Tax get informed when someone moves into that address and the property is 'occupied'. So we need to keep the occupations spreadsheet up to date with address details.
- New address details are sent by [REDACTED] [REDACTED] to the developer.contributions inbox regularly
- When the email comes in check if includes details relevant to S106 (most are not and can be deleted as not linked to S106).
- When relevant details are received - add the address details to the tab on the Occupation Monitoring spreadsheet.
- It is useful to save a copy of the Address Amendments plan in the S106 file for the site.



OCCUPATION MONITORING PROCESS

ACTIONS:

For future improvements in occupation monitoring [REDACTED] [REDACTED] is able to set up GIS so we can monitor LLPG through the GIS system – this can be discussed further with [REDACTED] along with the move to SharePoint Lists for monitoring.

Sometimes need to identify phases, market/affordable occupations within larger developments – may still need to use the spreadsheet system for these – check with [REDACTED] whether these can be identified through the GIS system instead.



SAMMS/SPA CONTRIBUTIONS

New requirement coming from Local Plan policy – all new dwellings in a specified area of the district need to pay a SPA/SAMMS contribution – so can apply to a single house.

This requires an agreement for financial payment. If this is the only requirement a Unilateral Undertaking will be signed rather than a S106.

This will include the SPA contribution and a Monitoring Fee (as well as the legal fee paid directly to legal).

- As a new requirement it is yet to be decided what the best way to monitor will be for the UUs. I have not been notified of any to date (23/12/22).
- It may be best to create a new tab on the S106 Master to record and monitor these UUs.
- More info and draft UU is here: Thanet Coast and Sandwich Bay SPA Mitigation and Monitoring Strategy ([dover.gov.uk](https://www.dover.gov.uk))



SPA INTEREST GAINING ACCOUNT

- Following a meeting with [REDACTED] it has been agreed that the S106 contributions held for SPA Mitigation will be subject to interest. This will be at a rate of 3% calculated at the end of the financial year based upon the average of the start and end balance of the account for the year.

Calculation:

- Take the years' opening SPA Balance (including the added interest from previous year)
- Take the end of year SPA Balance
- Calculate the Average between the two amounts
- Calculate 3% interest against that amount



INDEXATION

- In general, all financial contributions are subject to indexation uplift. This adjusts the amount payable to take into account the time lapsed between the amount being agreed (the S106 agreement signed) and the date at which it becomes payable.
- The indexation to be used will be set out in the S106 Agreement (Retail Price Index is the most common for DDC contributions, others include Building Costs Index, Tender Price Index).
- The time period to apply indexation is also set out in the S106 Agreement – this is usually from the date of the agreement to the date at which the contribution becomes payable.
- When you are ready to raise an invoice complete the details in the table on the next slide and send to [REDACTED] in Accounts to calculate the final amount due.
- [REDACTED] will also generate a Job Code and add this to column A of the S106 Master. This Job Code is required on the invoice to link the funds to the correct S106.
- If possible, forward the indexation calculation to the developer/agent before raising the invoice to confirm they understand the indexation calculation and are in agreement with the final amount due.
- If there are any questions, check with [REDACTED] for a suitable explanation.



CODE GENERATION

The following request
will be sent to
Accountancy on adding
a new Planning
Reference to S-106
Master –

Planning Ref. & Site	Job Code
	To be generated by Accountancy

██████ will generate a Job Code and add this to column A of the S106 Master containing the Planning Ref. That way the code stays with the Planning Ref. This Job Code is required on the invoice to link the funds to the correct S106. **Column O (S106 MASTER tab) M (AYLESHAM / WUE - Whitfield tab) will no longer be used.**



CODE GENERATION

- The new Code will comprise
 - a. Time Limit status of the new Planning Ref Column AE/AF/AG – Time limit means 'With Conditions' use code <800100>
 - b. Time Limit status of the new Planning Ref Column AE/AF/AG – No Time limit means 'Without Conditions' use code <800101>
 - c. Job Code generated for the New Planning Ref. <37***>
 - d. Category Code according to the List provided <4****> or <6****>

Final code will be (a or b) + (c) + (d)

This is the code to be used when raising an invoice



EXAMPLE TABLE FOR INDEXATION CALCULATION

Planning Ref. & Site	Contribution	Baseline Amount	Index to apply	Dates to apply indexation	Indexation to be added	Apply interest? Y/N	Dates to apply interest	Interest to be added	Total amount of contribution owing	Job Code
					To be calculated by Finance				To be calculated by finance	To be generated by finance

Planning Ref. & Site	Contribution	Baseline Amount	Index to apply	Dates to apply indexation	Indexation to be added	Apply interest? Y/N	Dates to apply interest	Interest to be added	Total amount of contribution owing	Job Code
20/01237 Land on south side of Coombe Valley Road, Dover	3- SPA	£2,358.36	"All items" index figure of RPI	02/02/22 - 09/11/22	<p>£ X RPI figure on date requesting to pay / RPI figure on date S106 signed</p> $2358.36 \times 356.2 / 320.2 = 2623.51$ <p>Indexation to be added = 265.15</p>	N	n/a	n/a	£2,623.51	37429



INVOICING

- *A new starter will need to be added to the authorised signatory list to be able to send an invoice request from their own email account. Contact [REDACTED] for this.*
- *In the team [REDACTED] and [REDACTED] are authorised signatories – the form will need to be completed and sent from the email account of the authorised signatory to be valid.*
- *The code is always 10-0-9000-37***-20119 (email from [REDACTED] with 37***)*

Raising an Invoice:

See file for how to:

- Policy – S106 & Planning Obligations – S106 – Invoice, Indexation & PO Details – RAISING AN INVOICE
- An Invoice Request Form needs to be filled out and sent to:
incomesection@dover.gov.uk

Cancelling an Invoice:

- If you need to change any details on an invoice after it has been issued, you will need to cancel the incorrect invoice and raise a new invoice.
- An Invoice Cancellation Form must be completed and sent to: incomesection@dover.gov.uk

If you receive an invoice for a payment going out – to say a PC or KCC – you will need to raise a PO first and then send invoice to invoices@dover.gov.uk - Update Master once money is transferred.



INTEREST

- Interest may be due on late payments as part of the invoice.
- Rate of interest to apply is set out in the specific S106 agreement.
- At the moment, interest is generally only added if an invoice is raised and not paid following standard reminders.
- Check with [REDACTED] or [REDACTED] if you think it may be appropriate to add interest.
- If interest needs to be added, complete the details in the table on the previous slide and ask [REDACTED] to calculate the interest and final amount due.



MONTHLY TRANSACTIONS AND MONITORING

- Before any money is transferred out of S106 accounts, it must be confirmed that it will be spent as detailed in the S106 agreement – this can be noted on the S106 Master or emails saved.
- Some projects are agreed in Quarterly meetings (later slide)
- [REDACTED] will provide a monthly spreadsheet to detail money received and transferred out of the S106 accounts.
- You can then update the S106 Master - amend details in relevant columns and select relevant colour coding.

Action/To check:

- Who chases if an invoice is not paid? Do the team that issue the invoice chase, or should we chase?
- Agree date of monthly spreadsheet with [REDACTED]



PURCHASE ORDERS

When S106 money needs to be transferred out of DDC accounts to go to another infrastructure provider, a Purchase Order (PO) is raised for the recipient to raise an invoice against.

- This is mainly for transfers to KCC or a Parish Council for example.
- TechOne is used to raise Purchase Orders.

See file for process notes:

- Policy – S106 & Planning Obligations – S106 – Invoice, Indexation & PO Details – PURCHASE ORDERS TechOne

TechOne System

- Contact [REDACTED] to set up an account on TechOne for a new user.
- See process notes in PURCHASE ORDERS file.
- The only aspect specific to S106 is the coding and VAT category which are detailed in the process notes.



INTERNAL TRANSFERS — FOR ACCOUNTS TO UPDATE

- Payment schedule
- Accounts to update when the funds have been transferred



NON-FINANCIAL S106 SUBMISSIONS

Some S106 agreements include requirements to submit details for approval. This often relates to affordable housing details or open space management.

The requirement for non-financial submissions is included on the S106 Master. The S106 officer can monitor for triggers for these submission and remind the developer if the submission is not made.

There is a new process for these submissions:

- The submission should be sent to the planning admin team to set up as a case on Uniform, the relevant DM team leader will allocate it to a DM officer to assess.
- A formal letter will be issued when the DM officer has agreed the details submitted.

As a new process a few points need to be clarified with [REDACTED]

If a submission comes in not via the S106 Officer how will the S106 Officer be notified?

Who is responsible for issuing the letter of agreement – DM officer, admin, S106 Officer? If it's not the S106 Officer, how will they be notified that the submission has been approved?

Note of the submission and approval should be added to the S106 Master.



SOLICITOR QUERIES

See file:

- S106 & Planning Obligations – S106 – Other – Solicitor Queries
- We often receive queries from solicitors acting on behalf of buyers to confirm all S106 obligations have been met.
- In large developments plots are sold prior to triggers for all s106 obligations.
- [REDACTED] (legal) has provided a response to explain how the owner/occupier or tenant is not liable for s106 obligations – this falls with the Owner - the developer as defined in the S106 agreement, not individual owner-occupiers. See right image.

[REDACTED] has confirmed she would be happy to set up a new system through the support team where solicitors can check the S106 themselves. Maybe on the S106 map produced by [REDACTED] – an action to be followed up.

- 7.13 This Deed shall not be enforceable against owner-occupiers or tenants of individual dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 7.14 This Deed shall not be enforceable against Statutory Undertakers holding land for their operational purposes.
- 7.15 This Deed shall not be enforceable against a Registered Provider.



IDENTIFYING DDC PROJECTS AND QUARTERLY S106 MEETINGS

- Many S106 payments are to be transferred internally to DDC departments such as for Open Spaces / Play Areas / Sports and Leisure for example.
- Affordable housing financial contributions are also a big part of S106 process and go to housing team.
- Some S106 agreements aren't always clear exactly where the S106 funds will be spent. Particularly older ones.
- We need to ensure that other depts and teams know when triggers have been met and we are holding or about to invoice for amounts which will need to be spent by DDC teams, especially if there is a time limit on the spend.

We hold a quarterly S106 meeting to run through our records of what is being held or due to be triggered that DDC need to spend with a project group made up of:

- Director of Place – [REDACTED] (Has authority to approve spend of S106 funds)
- Planning – [REDACTED] & S106 Officer
- Open Spaces and Play – [REDACTED]
- Leisure Lead – [REDACTED]
- DDC Assets Manager –?
- Affordable Housing – [REDACTED]
- *May add in future – [REDACTED] and [REDACTED]
[REDACTED] from project delivery team*

- [More info and records in here: Planning - QUARTERLY Infrastructure Funding Meetings - All Documents \(sharepoint.com\)](#)



INFRASTRUCTURE FUNDING STATEMENT (IFS)

- CIL Regs require local authorities to publish an Infrastructure Funding Statement (IFS) on their website by the end of each year. It includes:
 - Summary of all financial & non-financial developer contributions agreed in the monitoring year
 - Amount of developer contributions held by the authority at the start of the monitoring year
 - Details of developer contributions received and spent during the monitoring year
 - Details of infrastructure the authority is intending to either wholly or part fund through S106 receipts
 - Report on estimated future S106 income from developer contributions
- This is quite a big job and must be commenced in October each year, ready to be approved at December Cabinet and published by 31st December.
- Includes CSV files as well as a detailed report. Most of the info comes from finance team but has to be cross checked and updated against S106 Master.
- Read current report for more info:
[Infrastructure Delivery \(dover.gov.uk\)](https://www.dover.gov.uk/information-for-residents/information-for-businesses-and-industry/information-for-developers/infrastructure-delivery)



USEFUL CONTACTS AND OTHER INFO

DDC contacts

- Finance –
 - [REDACTED] – Accounts
 - [REDACTED] – raising invoices & income received.
 - TechOne for Purchase Orders – [REDACTED]
- Planning Dept –
 - DM Support Team Leader – [REDACTED]
 - DM Conditions Officer - [REDACTED]
- Legal - [REDACTED]
- Housing – [REDACTED]
- GIS & S106 Mapping – [REDACTED]

KCC contacts for S106 issues related to their payments

- [REDACTED]

USEFUL INFO ABOUT S106:

- [DDC what are planning obligations](#)
- [DDC S106 & IDP FAQs](#) (published on website)
- [REDACTED] [S106 role Handover notes early 2022](#)



From: [REDACTED]
Sent: 18 November 2024 08:30
To: [REDACTED]@coinweb.lgo.org.uk'
Cc:
Subject: RE: Confidential: Case ID - 24001693

Dear [REDACTED] – thank you for keeping us informed.

Yours sincerely

[REDACTED]



Corporate Services Officer

Dover District Council
Council Offices, White Cliffs Business Park,
Whitfield, Dover, CT16 3PJ

Tel: [REDACTED]
Email: [REDACTED]@dover.gov.uk
Web: <http://dover.gov.uk/Home.aspx>



Please consider the Environment before printing this email

Please note that I do not ordinarily work on Fridays

Dover District Council is a data controller under GDPR, your attention is drawn to our [Corporate Privacy Notice](#). This explains how we will use and share your personal information and protect your privacy and rights.

From: [REDACTED]@coinweb.lgo.org.uk [REDACTED]@coinweb.lgo.org.uk>

Sent: 15 November 2024 13:45

To: DDC Complaints <DDCComplaints@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK>

Subject: Confidential: Case ID - 24001693

15 November 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Thank you for your email of 4 October.

[REDACTED] has not yet considered your email due to annual leave and he is currently off sick and likely to be next week.

We apologise for the delay and he will consider your email when he returns.

Yours sincerely

[REDACTED]
Team Coordinator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

NOTICE - This message contains information intended only for the use of the addressee named above. If you have received this message in error please advise us at once and do not make any use of the information. **Please note that our incoming mail size limit is 20Mb per email.**

[REDACTED]

From: [REDACTED]@coinweb.lgo.org.uk
Sent: 11 December 2024 11:32
To: DDC Complaints; [REDACTED]
Cc: [REDACTED]
Subject: Confidential: Case ID - 24001693
Attachments: Draft decision - revised.pdf; Draft decision cover to BinJ.pdf

11 December 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Please see the attached letter.

Yours sincerely

[REDACTED]
Investigator

[REDACTED]
LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

NOTICE - This message contains information intended only for the use of the addressee named above. If you have received this message in error please advise us at once and do not make any use of the information. **Please note that our incoming mail size limit is 20Mb per email.**

Local Government &
Social Care
OMBUDSMAN

11 December 2024

[REDACTED]
Managing Director
Dover District Council
Council Offices
White Cliffs Business Park
Whitfield
DOVER
CT16 3PJ

Your ref: C23-136

Our ref: 24 001 693

(Please quote our reference when contacting us and, if using email, please put the number in the email subject line)

If telephoning please contact: [REDACTED]
email address: [REDACTED]@coinweb.lgo.org.uk

Dear [REDACTED]

Complaint by [REDACTED]
[REDACTED]

Thank you for your response to my draft decision on this complaint. I made changes because of the comments I received, and I attach my revised draft decision statement for you to consider.

Your chance to comment

Before I make a final decision, I welcome comments from your Council on what I say in the revised draft decision statement. You should also seek comments from anyone involved in the issues complained of. This includes anyone who is alleged to, or appears to, have done something or failed to do something in connection with the complaint.

Any comments from others involved in the complaint may be sent with your own response, but should be in their original form, such as the original letter or email.

Any comments from current employees should be sent through your Council. Ex-employees and contractors can send comments directly to me if they prefer. If they do, I expect them to send you a copy, or explain to me why they do not wish to.

Please send me any comments by 17 December 2024. Please would you also confirm whether you agree with the draft recommendations and the proposed timescales for completion. Please let me know if there will be any issue completing the proposed remedy.

I am also sending my draft decision statement to the complainant for their comments. I will consider the comments of both sides before making a final decision.

Publishing our decision

We publish our final decision statements on our website. We use false names so they do not reveal details that could identify people involved. However, we sometimes use the job titles of senior council officers. If you are concerned that publishing our decision will identify people involved, please let me know as soon as possible.

Data protection

In the interests of fairness, we may send the complainant an unredacted copy of your comments and any evidence that we rely on in reaching a decision. We will not share any information about a third party or which is confidential for another reason. If you are sending information which should not be disclosed:

- please clearly identify it and say why it should not be shared;
- send it separately from the information which can be shared;
- send a redacted and non-redacted version;
- please bear in mind that names and contact details of your own staff and those employed by other organisations are third party information;
- if any of your documents contain details of individuals with whom the complainant has had no previous contact and which are not publicly available, please provide two copies: one that has this personal information redacted and a non-redacted version.

Confidentiality

The law says we must investigate in private. Please remind anyone consulted not to discuss our draft findings with the press, or publish any of our communications in the public domain, including social media. Thank you for your cooperation.

Yours sincerely

[REDACTED]

Investigator

Enc: Draft decision statement

The Ombudsman's draft decision

Summary: X complained the Council failed to use its powers to ensure land was protected for nature conservation purposes. The Council accepted there was fault, as it cannot now explain why it did not protect the land as it had once intended. It has also agreed it needs to review its practice and procedure to avoid similar fault in future. Based on the information we have seen so far we are likely to find fault because records were missing from the Council's planning register. We will complete our investigation if the Council agrees to our recommendations.

The complaint

1. The person that complained to us will be referred to as X.
2. X complained the Council failed to ensure open space land had statutory protection for nature conservation purposes.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
4. It is our decision whether to start, and when to end an investigation into something the law allows us to investigate. (Local Government Act 1974, sections 24A(6) and 34B(8), as amended)
5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

What I have and have not investigated

6. The original section 106 agreement that was aimed at creating statutory protection for the site X complained about was decided more than nearly two decades ago. Because of the fault I find below, I cannot know why the Council did

not protect the site. Because of the passing of time, it is unlikely further investigation by me will result in a clear finding of what happened.

7. We can investigate whether a similar fault might happen again, so this investigation will focus on the Council's current section 106 processes.

How I considered this complaint

8. I read the complaint and discussed it with X. I read the Council's response to the complaint and spoke to an officer. I also interviewed a manager and asked about the Council's current section 106 decision monitoring practice and policy. I have considered our guidance on remedies published on our website.
9. I gave the Council and X an opportunity to comment on an earlier draft decision. I will take account of any comments I receive in relation to this revised draft decision before making a final decision.

What I found

Planning law and guidance

10. Councils should approve planning applications that accord with policies in the local development plan, unless other material planning considerations indicate they should not.
11. Planning considerations include things like:
 - access to the highway;
 - protection of ecological and heritage assets; and
 - the impact on neighbouring amenity.
12. Planning considerations do not include things like:
 - views over another's land;
 - the impact of development on property value; and
 - private rights and interests in land.
13. Councils may impose planning conditions to make development acceptable in planning terms. Conditions should be necessary, enforceable and reasonable in all other regards.
14. Councils may approve applications, subject to a planning condition requiring the applicant to enter into a separate planning agreement. Council powers and appeal rights relating to these agreements are found in the Town and Country Planning Act 1990. The agreements are usually referred to as 'section 106' agreements. The agreements are in the form of a deed, which is a form of contract that is legally binding on the parties that sign it.
15. A party to section 106 agreement can apply to modify or discharge an obligation within it. An application to modify or discharge a section 106 agreement may only be made after five years after the agreement came into force.
16. Land can be protected by statutory powers for nature conservation purposes, and these include:
 - Sites of Special Scientific Interest;
 - Special Areas of Conservation;
 - Special Protection Areas;

-
- ‘Ramsar’ sites for wetland protection;
 - National Nature Reserves; and
 - Local Nature Reserves.
17. Every local planning authority must keep a record of applications for its area. The register should, amongst other things, include copies of:
- the site address, the application reference, the site plan, the date of the application, the name of the application, description of the decision including details of conditions, details of appeals, the application, including plans and drawings;
 - planning agreements and obligations connected with the application.

What happened

18. The Council approved a planning application on land, and also required completion of a section 106 agreement. Amongst other things, the agreement required the Council to protect land for the purpose of nature conservation using its statutory powers. This did not happen.
19. X complained to the Council about its failure to protect the land. The Council responded to say it did not know why the land had not been protected, but as the land was not in its ownership or control, it could not insist that happened now.
20. The Council explained that the section 106 agreement required certain works to be carried out to ‘trigger’ the designation of the land but the records the Council needed to explain what happened were either missing or unclear. The Council accepted it had failed to retain records it was required to keep, and it could not speculate on what the records might have contained. The Council apologised to X for the fault.
21. The Council said it took legal advice and concluded that it did not now have the power to protect the land as it had once intended.
22. I interviewed a manager and asked about the Council’s current practices relating to section 106 monitoring. The officer told me:
- there is an officer who has responsibility for monitoring section 106 agreements relating to financial obligations for developers;
 - non-financial obligations and obligations on the Council are dealt with by relevant departments, and responsibility was for individual officers on a case-by-case basis; and
 - it would be possible for the section 106 monitoring officer to deal with both financial and non-financial obligations, but any change would need careful consideration, particularly on how monitoring would be funded.
23. I sent a draft of this decision to X and the Council, and their comments are summarised below.

X’s comments on my earlier draft decision

24. In response to an earlier draft of this decision, X said:
- The Council had not observed its legal obligations regarding the section 106 agreement.
 - The Ombudsman should require the Council to provide an area of open space better suited for nature conservation, as the section 106 envisaged.
 - The Council has not provided any legal authority to justify its current position.

- The section 106 agreement still binds the developer, and the Council should enforce it.
- The Ombudsman could and should recommend the Council redress harm to local residents by insisting it observes its legal obligations under the agreement.

The Council's comments on my earlier draft decision

25. In response to an earlier draft of this decision, the Council accepted it was at fault, because it should have records to show what had happened but does not. The Council also said:
- In the years since the fault occurred, record keeping procedures have changed dramatically, and records are now digital, and many are available for the public on the Council's website portal. In the past, paper records could and were sometimes mislaid but the current system makes this much less likely. The Council said it is not aware of any fault resulting in the loss of planning records in the decades since the new system was introduced.
 - It has recently carried out a detailed review of how it records and monitors financial obligations in section 106 agreements. For this type of obligation, the Council employs an officer to monitor compliance
26. I interviewed a planning manager about the Council's section 106 monitoring practice and procedure. The manager said the Council had carried out a thorough review of its section 106 monitoring, which had been checked by the Council's internal audit team.
27. However, the new system's focus was primarily on obligations requiring financial payments. As well as a dedicated officer, the new system included comprehensive file notes, a mapping system, and trigger points for monitoring compliance.
28. The manager said:
- The new system was a big improvement on previous arrangements, but it did not cover non-financial obligations, like those in the section 106 agreement in this case.
 - There was a system for non-financial obligations, but this did not include trigger points or ongoing monitoring.
 - They did not know why non-financial obligations were not included in the recent review or new monitoring system.
29. The manager said the Council had considered our draft decision and had a clear idea what it needed to do to improve its processes. It needed to review its procedure and include non-financial obligations in its policy and practice guidance. The Council would need to decide how compliance monitoring would be delivered, but this might be added to its section 106 monitoring officer's role.

My findings

The Council should have records to show what happened, but it did not keep them. This is fault.

30. Because of the fault and the passing of time, further investigation by me is unlikely to result in a clear finding of why the Council failed to keep proper records and why it did not use its powers to protect the land.

-
31. The Council has explained its current processes, but I am not persuaded they are robust enough to ensure the fault I found does not happen again.
32. I will recommend the Council considers its working practices and procedures to ensure the fault is unlikely to happen again.
33. X would like the Ombudsman to do more. X would like us to say the Council:
- still has the power to enforce the Council is wrong not to enforce; and
 - should be required to provide the protection measures it would have insisted from another party to the section 106 agreement.
34. The Council has explained its position to X, and they know the Council has taken legal advice and decided that, because it lacks evidence in documents it should have produced and kept, it cannot enforce the section 106 agreement as it had once intended. X disagrees with the Council's position, but it is not for the Ombudsman to decide the law here. The Ombudsman is not a court and cannot determine or declare the law.
35. I did not find X was caused a personal injustice that I can remedy. However, the fault I found could happen again and cause injustice to others, so I will recommend a review of practice and procedure to make this less likely.
36. I have considered the Council's practice and procedure relating to financial obligations in section 106 agreements. I saw no evidence to suggest fault in the way these decisions are made and monitored.
37. This complaint relates to a non-financial obligation, for which the Council have adopted a different approach, so my recommendation will focus on this type of agreement.

Recommended action

38. To avoid recurrence of the fault I have found, the Council should agree to:
- a) Carry out a review of its record keeping and section 106 monitoring functions for non-financial obligations, to ensure they are effective and fit for purpose. This should happen within three months from the date of our final decision on this complaint.
 - b) Share the outcome of its review with any changes to practice and procedure with the Council's oversight and scrutiny committee. This should happen within one month from completion of the review.
39. The Council should provide us with evidence it has complied with the above actions.

Draft decision

I found evidence of fault that may happen again and so I have made recommendations that might make this less likely. Subject to comments I may receive on this revised draft decision, I intend to complete my investigation if the Council accepts my recommendations.

Investigator's revised draft decision on behalf of the Ombudsman

From: DDC Complaints
Sent: 17 December 2024 15:48
To: [REDACTED]@coinweb.lgo.org.uk
Cc: [REDACTED]
Subject: RE: Confidential: Case ID - 24001693

Dear [REDACTED]

Please accept my apologies for not emailing you sooner.

I confirm that the Council is in agreement with your draft decision. We look forward to receiving your final decision.

Yours sincerely

[REDACTED]



Corporate Services Officer

Dover District Council

Council Offices, White Cliffs Business Park,
Whitfield, Dover, CT16 3PJ

Tel: [REDACTED]

Email: [REDACTED]@dover.gov.uk

Web: <http://dover.gov.uk/Home.aspx>



Please consider the Environment before printing this email

Please note that I do not ordinarily work on Fridays

Dover District Council is a data controller under GDPR, your attention is drawn to our [Corporate Privacy Notice](#). This explains how we will use and share your personal information and protect your privacy and rights.

From: [REDACTED]@coinweb.lgo.org.uk [REDACTED]@coinweb.lgo.org.uk
Sent: 11 December 2024 11:32
To: DDC Complaints <DDCComplaints@DOVER.GOV.UK>; [REDACTED]@DOVER.GOV.UK>
Cc: [REDACTED]@DOVER.GOV.UK>
Subject: Confidential: Case ID - 24001693

11 December 2024

Your ref: C23-136

Our ref: 24 001 693

(Please use this reference number when contacting us. If using email, please put the number in the email subject line)

Dear [REDACTED]

Complaint re [REDACTED]

Please see the attached letter.

Yours sincerely

Investigator

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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