



Section 106 Monitoring Fee

Report by the Director for the Economy

1.0 Summary

- 1.1 The Community Infrastructure Levy (CIL) Regulations 2010, as amended from 1st September 2019, allow for an authority which collects contributions through the use of S106 agreements, to lawfully charge a fee to cover the cost of monitoring and reporting on delivery of that section 106 obligation. The monitoring fee must meet the test criteria set out in the CIL Regulations (see Legal section below) and must not exceed the authority's estimate of the cost of monitoring the development over the lifetime of the planning obligation.
- 1.2 Adur District Council enters into S106 agreements or planning obligations to mitigate the impact of development on infrastructure such as affordable housing. In addition, for larger schemes in the District S106 agreements can be used to mitigate flood and water management, open space, and transport impacts. This may take the form of a financial contribution towards infrastructure improvements or as non-financial obligations to be undertaken by the site developer or their sub-contractors.
- 1.3 All legal agreements require monitoring to ensure compliance with site specific mitigation requirements and to ensure that financial obligations are fully met. The s106 sets out when a payment or infrastructure improvement has to be made and is often called the trigger point/date.
- 1.4 The recommendation is that the S106 monitoring fee for Adur District Council is set at £300 per trigger, with the fee for each signed S106 agreement payable upon commencement of the development. There will be no cap on the maximum fee charged for a S016 agreement, however there will be some flexibility for major applications with multiple obligations, which could allow a

single monitoring fee to be negotiated and agreed. The same fee will apply for any Deed of Variation or Supplemental Agreement, which introduces new trigger points or dates.

- 1.5 The monitoring fee will be regularly reviewed and updated as required. The amount of money collected each year, through the charge, will be reported in the Infrastructure Funding Statement (IFS) and the Annual Monitoring Report (AMR), both published on the website.

2.0 Background

- 2.1 Section 106 (S106) agreements (planning obligations) are agreements made between local authorities and developers, which are attached to a planning permission to make acceptable development which would otherwise be unacceptable in planning terms. A developer can also submit a Unilateral Undertaking to make a payment or infrastructure improvement (a one sided agreement). The planning obligations contained within S106 agreements represent an important funding stream for the provision of infrastructure services needed to deliver sustainable growth.

- 2.2 In recent years there has been a rise in the number of Local Planning Authorities (LPAs) and County Councils who have introduced a fee for monitoring compliance with planning obligations. This charge has been levied to cover the administrative burden on local authorities to ensure effective monitoring. For example, from 1 April 2020 West Sussex County Council (WSCC) has introduced a S106 monitoring fee to mitigate against the administrative work involved in monitoring the legal obligations contained in Section 106 Agreements.

- 2.3 The updated CIL Regulation from 1st September 2019 states that:

“Authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of the section 106 obligation. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation. Monitoring fees should not be sought retrospectively for historic agreements.” CIL Guidance (NPPG) Para 180 Ref ID: 25-180-20190901.

3.0 Proposals

- 3.1 It is recommended that the S106 monitoring for Adur District Council is set at £300 per trigger. The monitoring fee for each signed S106 agreement will be

payable upon commencement of the development. There will be no cap on the maximum fee charged for a S016 agreement, however, there will be some flexibility for major applications with multiple obligations, which could allow a single monitoring fee to be negotiated and agreed. The same fee will apply for any Deed of Variation or Supplemental Agreement, which introduces new trigger points. The monitoring fee will be reviewed on a regular basis and updated as required.

3.2 National Planning Practice Guidance states that, 'fees could be a fixed percentage of the total value of the section 106 agreement or individual obligation; or could be a fixed monetary amount per agreement obligation (for example, for in-kind contributions).' In all cases monitoring fees must reflect the actual cost of monitoring. At Adur & Worthing Councils, monitoring is undertaken by Officers within the Planning Policy team and involves:

- ❑ Recording the obligations of an S106 agreement onto the database
- ❑ Local planning authorities are required to keep a copy of any planning obligation together with details of any modification or discharge of the planning obligation and make these publicly available on their planning register
- ❑ Highlighting the triggers for the obligations contained within the S106 agreement
- ❑ Monitoring the progress of the development in order to identify when obligations are due
- ❑ Calculating the sums due after interest and indexation are applied
- ❑ Where necessary, conducting site visits to ensure non-financial contributions have been complied with
- ❑ Updating the database when payments are made and works have been completed in compliance with the S106 agreement
- ❑ Production of an Infrastructure Funding Statement (IFS), published at least annually, for reporting on the agreements signed, amount of financial contributions received and the expenditure of contributions on infrastructure projects

3.3 More than one member of staff is involved in this work but it equates to approximately 0.5 full time employee (FTE) in order to manage efficiently. An average salary base for the team members undertaking these tasks is currently estimated at £20,000 per annum, inclusive of pension, employer NI contributions and other packaged benefits. This therefore, is the basis for the calculation of the fee, reflecting the actual cost of monitoring over the course of the S106 agreement, that WBC will charge for S106 monitoring.

- 3.4 In order for the fee to be related in scale and kind to the development the fee should be based on the amount of monitoring for the specific S106 agreement in question. Contributions are met by the introduction of specific triggers, such as commencement of development, or occupation of a number of units. Consequently, the overhead for monitoring a S106 agreement is based on the number of triggers it contains, and the fee should reflect this. As a result, and in line with many other local authorities, ADC will take a fee on a per-trigger basis, for each S106 agreement that it monitors.
- 3.5 What do we mean by a 'trigger'? Typically, legal agreements will have a 'trigger point' when payments are required to be made or when affordable housing or other infrastructure should be delivered. In many cases, a trigger point will be related to the number of new houses that have been built and/or occupied.
- 3.6 Adur & Worthing Councils has entered into an average of 4.6 agreements, per year, over a five year period of 2016-2020. There is an average of 2.8 triggers across all live S106 agreements, causing around 65 triggers to be monitored on an annual basis.

$\text{£20,000 salary} / 65 \text{ triggers} = \text{£300 per trigger}$

- 3.7 There is no distinction between financial triggers and non-financial triggers, meaning they carry the same monitoring overheads as a result of the length of time they require monitoring.
- 3.8 Example: An S106 agreement has 5 financial obligations and 3 non-financial obligations. The agreement contains 6 different trigger points, e.g. Upon commencement of development, prior to occupation of the first dwelling, owners profit reassessment at 50% and 100% completion etc:

$6 \text{ trigger points} \times \text{£300 per trigger} = \text{£1,800 monitoring fee.}$

- 3.9 Worthing Planning Committee is considering a similar report at its meeting on the 24th June and the intention is to have a joint policy approach across both authorities.

4.0 Legal

- 4.1 The CIL Regulations 2010 (as amended on 1st September 2019) include regulation 122 which relates to planning obligations:

122.—(1) *This regulation applies where a relevant determination is made which results in planning permission being granted for development.*

(2) *Subject to paragraph (2A), A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—*

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

(2A) *Paragraph (2) does not apply in relation to a planning obligation which requires a sum to be paid to a local planning authority in respect of the cost of monitoring (including reporting under these Regulations) in relation to the delivery of planning obligations in the authority's area, provided—*

(a) the sum to be paid fairly and reasonably related in scale and kind to the development; and

(b) the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development.

4.2 Planning obligations (S106 agreements) come under Section 106 of the Town and Country Planning Act 1990 (as amended)

4.3 As soon as practicable after approval of implementation of a S106 monitoring fee, a document explaining the monitoring fee and how it is calculated will be placed on the Council's website.

5.0 Financial implications

5.1 By introducing the monitoring fee the Council will help to cover the cost of monitoring and reporting on delivery of that section 106 obligation

6.0 Recommendation

6.1 **The Committee is requested to support the proposal and to recommend to the Executive Member for Regeneration that he approves the introduction of a S106 monitoring fee for Adur District Council set at £300 per trigger, with the fee for each signed S106 agreement payable upon commencement of the development.**

Local Government Act 1972

Background Papers:

- CIL Regulations 2010 (as amended)
- Planning Practice Guidance - 'Planning Obligations'

Contact Officer:

David Attmore

Community Infrastructure Officer,

Planning Policy

01903 221493

david.attmore@adur-worthing.gov.uk

Schedule of Other Matters

1.0 Council Priority

- 1.1 'Platforms for our Places', in particular Platform 4: Good Services and New Solutions. We will be moving towards using a cloud-based piece of software (Exacom) for the monitoring of all S106 agreements.

2.0 Specific Action Plans

- 2.1 The government, through the introduction of the Infrastructure Funding Statement (IFS), seeks to increase the transparency of the amount of Section 106 contributions collected and spent by each Local Planning Authority. By introducing the Section 106 monitoring fee, the Council will help to cover the costs incurred with monitoring and reporting on the agreements that are signed.

3.0 Sustainability Issues

- 3.1 Matter considered and no issues identified.

4.0 Equality Issues

- 4.1 Issues relating to race, disability, gender and equality have been considered and it is not felt that the approach outlined in this report will have an adverse impact on any social group.

5.0 Community Safety Issues (Section 17)

- 5.1 Matter considered and no issues identified.

6.0 Human Rights Issues

- 6.1 Matter considered and no issues identified.

7.0 Reputation

- 7.1 The approach outlined within this report will ensure that local policy will continue to be in line with national guidance and in line with West Sussex County Council, who are often signatories on S106 agreements. This, in turn, will help to ensure that the Council's reputation is not damaged.

8.0 Consultations

8.1 The issue of the introduction of a Section 106 monitoring fee has been discussed with colleagues in Planning Policy and Development Management, as well as with the Head of Planning & Development. Colleagues at WSCC have also been informed of our intentions to introduce a monitoring fee.

9.0 Risk Assessment

9.1 Matter considered and no issues identified.

10.0 Health & Safety Issues

10.1 Matter considered and no issues identified.

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership Working

12.1 Colleagues at WSCC have been informed of our intentions to introduce a monitoring fee and a draft proposal has been shared.