



# ADUR DISTRICT COUNCIL

Executive Member for Regeneration  
Date: 12 January 2021  
Ref: REG/006/20-21  
Decision to be taken on or after  
20 January 2021

Key Decision: No

Ward(s) Affected: All

## Section 106 (s106) Monitoring Fee

### Report by the Director for the Economy

#### Executive Summary

##### 1. Purpose

- 1.1. Section 106 (s106) agreements are private 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. All legal agreements require monitoring to ensure compliance with site specific mitigation requirements and to ensure that financial obligations are fully met.
- 1.2. This report seeks the approval of the Executive Member for Regeneration for the introduction of a section 106 monitoring fee to help cover the administrative burden on local authorities that monitoring generates. It is proposed that the same approach will be adopted for both Worthing Borough Council (WBC) and Adur District Council (ADC).

##### 2. Recommendations

- 2.1. It is recommended that:
  - The Adur District Council Executive Member for Regeneration considers the comments made by the Adur Planning Committee regarding the introduction of a section 106 monitoring fee
  - The Adur District Council Executive Member for Regeneration approves the introduction of a section 106 monitoring fee in all future

section 106 agreements

- That the attached Adur & Worthing Councils s106 Monitoring Fee document be published on the Council's webpages

### 3. Context

- 3.1. Adur District Council enters into section 106 agreements (planning obligations) to mitigate the impact of development on infrastructure such as affordable housing. In addition, for larger schemes s106 agreements can be used for a variety of measures including: to mitigate flood and water management issues; the provision and maintenance of open space; and the management of 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.
- 3.2. 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 this is often called the 'trigger point or date'.
- 3.3. The 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 for monitoring the planning obligations contained in the agreement. Many Local Authorities are now using these provisions to collect money to help fund efficient monitoring and Adur and Worthing Councils now intend to follow this lead. Specifically, the guidance states:  
*“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.*
- 1.1. The s106 monitoring fee must be fairly and reasonably related in scale and kind to the development and must not exceed the authority's estimate of the cost of monitoring the development over the lifetime of the planning obligation.

#### **4. Issues for consideration**

- 4.1. The introduction of a section 106 monitoring fee was discussed at the Adur Planning Committee meeting on 6th July 2020. The committee approved its introduction.
- 4.2. National Planning Practice Guidance states that '(s106 monitoring) 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 must reflect the actual cost of monitoring.
- 4.3. At Adur & Worthing Councils, monitoring is largely undertaken by officers within the Planning Policy team and involves:
- Recording the obligations of an s106 agreement onto the database
  - 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 and 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) for reporting on the agreements signed, amount of financial contributions received and the expenditure of contributions on infrastructure projects
- 4.4. More than one member of staff is involved in this work but it equates to approximately 0.1FTE in order to manage efficiently. An average salary base for the team members undertaking these tasks is currently estimated at £30,000 per annum, inclusive of pension, employer NI contributions and other packaged benefits. Therefore, £3,000 of the salary is the basis for the calculation of the fee, reflecting the actual cost of monitoring over the course of the s106 agreement, that ADC and WBC will charge for s106 monitoring, as provided for by the CIL

Regulations 2010 (as amended by the CIL Amendment Regulations 2019).

- 4.5. 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, it is proposed that AWC will take a fee on a per-trigger basis, for each s106 agreement that it monitors.
- 4.6. Adur & Worthing Councils (combined) have entered into an average of 7 agreements, per year, over a five year period of 2015-2019. There is an average of 1.4 triggers across all live s106 agreements, causing around 10 triggers to be monitored on an annual basis.

£3,000 salary/10 triggers = £300 per trigger

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.

- 4.7. 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.
- 4.8. Fees are to be collected upon commencement of the development.
- 4.9. The introduction of the monitoring fee will bring the Council in line with a number of other Councils who have already introduced the charge. It will also allow the Council to charge for the process of monitoring all signed section 106 agreements, which ensures that all financial and non-financial contributions are received. With additional funding to help fund the Council's processes it will also help meet the CIL Regulations regarding the reporting on section 106 agreements.

## **5. Engagement and Communication**

- 5.1. The monitoring fee report has been drafted with input from Planning Policy and Development Management to ensure it accurately reflects the true cost of monitoring. A separate report has been prepared for Worthing Borough Council that is identical in structure. A report was recommended to approve at both Adur District Council and Worthing Borough Council Planning Committees.
- 5.2. It is proposed that following approval, the Adur & Worthing Councils s106 Monitoring Fee document (attached) is published on the Council's webpages to inform potential parties who sign a section 106 agreement with the Council. Once published, any future section 106 agreement signed, which contains trigger points which need to be monitored, will contain a charge under the section 106 monitoring fee.

## **6. Financial Implications**

- 6.1. The introduction of a section 106 monitoring fee will help the financial position of the Council by allowing developers to contribute towards the cost of monitoring the signed section 106 agreements.

## **7. Legal Implications**

- 7.1. The CIL Regulations 2010 (as amended on 1st September 2019) include regulation 122 which relates to planning obligations and makes provision for monitoring fees. The amendments provide that fees associated with monitoring and reporting on planning obligations given by developers and landowners are capable of being charged through section 106 agreements provided that they 'fairly and reasonable related in scale and kind to the development' and do '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'.
- 7.2. The section 106 monitoring fee will be contained in the Legal Agreement signed as part of the section 106 negotiations.

**Background Papers**

- Report to Adur Planning Committee (6th July 2020) - Agenda Item 9
- Appendix - Adur & Worthing Councils s106 Monitoring Fee
- CIL Regulations 2010 (as amended)

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## **Sustainability & Risk Assessment**

### **1. Economic**

- Matter considered and no issues identified

### **2. Social**

#### **2.1 Social Value**

- Matter considered and no issues identified

#### **2.2 Equality Issues**

- Matter considered and no issues identified

#### **2.3 Community Safety Issues (Section 17)**

- Matter considered and no issues identified

#### **2.4 Human Rights Issues**

- Matter considered and no issues identified

### **3. Environmental**

- Matter considered and no issues identified

### **4. Governance**

- The CIL Regulations (as amended) detail how an authority which collects contributions through the use of s106 agreements, can lawfully charge a fee for monitoring the planning obligations contained in the agreement