



Hinckley & Bosworth Borough Council

Forward timetable of consultation and decision making

Council 6 September 2022

Wards affected All wards

Section 106 Agreement Monitoring Fees

Report of Director (Community & Development Services)

1. Purpose of report

- 1.1 To seek Council approval for the introduction of fees to support monitoring and management of section 106 agreements (s106).

2. Recommendation

- 2.1 That the schedule of monitoring fees as set out in this report are introduced as of 1 October 2022 and will be reviewed annually.
- 2.2 The monitoring fee income is used to support the effective monitoring and management of section 106 agreements for the Council.

3. Background to the report

- 3.1. The Community Infrastructure Levy (Amendment) (England) Regulations (2019) 1103 ("The Regulations"), enables local planning authorities to charge a fee for the cost of monitoring in relation to the delivery of planning obligations in Section 106 agreements.

The Planning Policy Guidance describes the power as enabling the local planning authority to charge a monitoring fee through the section 106 agreement to cover the costs of monitoring and reporting on the delivery of obligations.

The fees charged must be proportionate and reasonable and reflect the actual cost of monitoring

- 3.2. The Regulations require Local Planning authorities to report on what is received and spent in respect of monitoring as detailed below.

“ in relation to money (received under planning obligations) which was spent by the authority during the reported year (including transferring it to another person to spend), summary details of—

(i)the items of infrastructure on which that money (received under planning obligations) was spent, and the amount spent on each item;

(ii)the amount of money (received under planning obligations) spent on repaying money borrowed, including any interest, with details of the items of infrastructure which that money was used to provide (wholly or in part);

(iii)the amount of money (received under planning obligations) spent in respect of monitoring (including reporting under regulation 121A) in relation to the delivery of planning obligations”

- 3.3. The Department for Levelling Up, Housing and Communities, Planning Practice Guidance (paragraph 036 ID: 23b-036-20190901)

“Authorities, including county councils, should work together to ensure that resources are available to support the monitoring and reporting of planning obligations.

Authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that 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.

*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). Authorities may decide to set fees using other methods. However, in all cases, **monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. Authorities could consider setting a cap to ensure that any fees are not excessive.**”*

Other Council Charging Schedules

- 3.4. To ensure the Council adopted a ‘*proportionate and reasonable*’ charging schedule for monitoring S106 agreements, a review of how other councils

across the county and country operate shows that a variety of methods have been adopted in respect of charging for the monitoring of s106 agreements. Two main methods seem to have been adopted, a charge per obligation based on officer hourly rates or a percentage of the total monetary obligations within the S106 agreement. They have been outlined in a table below.

Table 1: Other Council Charging Schedules

| Council | Method | Charge |
|---|--|--|
| Havant BC (2022) | A charge per head of term as well as a legal charge for drafting and checking the obligation | £798 per non-financial heads of terms £5% of cost per financial heads of terms Fee capped at a max of £11,525 per application up to 250 homes without long term ecological management. |
| Portsmouth City Council (14/15) | Based on officer rate of £42 per hour and are based on per obligation | £310 per financial contribution with commencement trigger £620 per financial contributions with future trigger £620 per obligation governing construction timing or the management of the site during construction (viability r-assessment, employment plans, management plans, occupation restriction) £620 – Onsite provision (open space, AH, Highway works) |
| Wychavon District Council (2019/20) | | £500 ongoing obligations or monitoring £300 per one-off obligation (no phased payments) |
| Gedling BC 2018 | Cost based on hourly cost of £42 x 7.5 hours | £315 per obligation trigger requiring monitoring Indexation is also applied as of 1 st April |
| South Downs National Park Oct 2019 | | £440 per obligation index linked and payable upon commencement |
| Plymouth 2019 | | £667 x no. of financial obligations x no. triggers £667 x no. of non-financial obligations First £1000 to be paid at signing. The remainder due on Commencement £46 to check whether the obligation has been complied with (per planning application) |

| Council | Method | Charge |
|--|--|---|
| LCC July 2019 | | 0.5% of the value of each type of County Council Contribution or £300 per contribution (whichever is greater). 500+ dwellings there is a negotiated figure. Legal fees - Agreements taking less than 10 hours are £950. |
| Harborough DC Draft S106 Obligation SPD 2020 | Hourly basis at £44.54 per hour applied to a per obligation charge | There is a breakdown of how many hours each obligations takes to monitor based on the size of the development, which then creates a fee based on the hourly rate. For example – 31-50 dwelling scheme. Affordable housing obligation will take 6 hours to monito equating to a fee of $6 \times 44.54 = £267.24$ |
| Charnwood Borough Council (May 2022) | Hourly basis at £38.94 per hour applied to a per obligation charge | Similar approach to Harborough. A list of average time spent per obligations and an hourly charge for the officer at £38.94 which is 7.5 hours \times £38.94 = £292. This figure is then used per obligation in the lowest group of houses (1-10 dwellings. A percentage increase is then applied for large dwelling groups (20, 40 & 80%). Additional fees for site visits at 5 hours of officer time (prep, visit and write up) = £195 and approval of details and documents for the S106 £292 per document based on a day's work to review and approve documents. |

- 3.5. From reviewing the above charging schedules, the majority of councils calculate an average time spent and then apply an hourly rate. The Council needs to justify the costs of monitoring S106 agreements to meet the requirements of the national guidance, ensuring any charges are reasonable and proportionate.

HBBC Data

- 3.6. Each S106 will be managed and monitored by the Compliance and S106 Monitoring Officer (90% of the time) with input and oversight from the Principal Planning Officer (5%) and Development Manager (5%). Therefore using the table below we have been able to calculate an overall hourly rate for the monitoring of S106 obligations at £42.59.

Table 2: Officer Costs

| | Monitoring Officer | Principal Planning Officer | Development Manager | |
|---|---------------------------|-----------------------------------|----------------------------|--------------|
| Hourly Rate | 41.85 | 46.59 | 51.92 | |
| % of time on S106 monitoring | 90 | 5 | 5 | |
| | | | | Total |
| Hourly cost of monitoring Section 106 obligations | 37.66 | 2.33 | 2.60 | 42.59 |

- 3.7. The table below identifies the different types of obligations that appear in S106 agreements and the average time spent per obligation, assuming each obligation has one trigger, which more often than not, is not the case.
- 3.8. S106 (1) of the Town and Country Planning Act 1990 defines a planning obligation as:
- (1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A as “a planning obligation”), enforceable to the extent mentioned in subsection (3) —*
- (a) restricting the development or use of the land in any specified way;*
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;*
- (c) requiring the land to be used in any specified way; or*
- (d) requiring a sum or sums to be paid to the on a specified date or dates or periodically.*

Table 3: Average Time Spent Monitoring Planning Obligations

| Examples of types of planning obligations (not an exhaustive list) | Hours spent per obligation (based on one trigger) | Cost (£) |
|--|--|-----------------|
| Health Care | 10 | 425.90 |
| Affordable Housing (excluding First Homes which incurs a separate monitoring fee per s106) | 5 | 212.95 |
| Community Facilities | 6 | 255.54 |
| Public Realm | 8 | 340.72 |
| Canal and River Trust | 5 | 212.95 |
| National Forest | 5 | 212.95 |

| | | |
|---|------------|----------------------|
| <i>Public Open Space – On and off site as well as maintenance are all considered separate obligations</i> | | |
| Equipped Children's Play Space | 12 | 511.08 |
| Casual/Informal Play Space | 12 | 511.08 |
| Outdoor Sports Provision | 7 | 298.13 |
| Accessible Natural Green Space | 12 | 511.08 |
| Average | 8.2 | 349.21 (£349) |

- 3.9. As with most s106 agreements, the more dwellings on the scheme, the more complex the s106 agreements can be with additional triggers. Therefore it seemed appropriate that to account for increased complexity and additional triggers, the charging schedule for the S106 monitoring is based on the size of the development as set out below with percentage increases which represents the additional time incurred on larger schemes.

Table 4: Development thresholds for obligation charges

| Development thresholds | Cost |
|--|---|
| 1-10 dwellings less than 1,000 square metres gross floor space | £349 per obligation |
| 11-50 dwellings or 1,000 – 3,000 square metres gross floorspace | £419 per obligation (20% increase) |
| 51-150 dwellings or over 3,000 – 5,000 square metres gross floorspace | £489 per obligation (40% increase) |
| 151-250 dwellings or over 5,000 -10,000 square metres gross floorspace | £559 per obligation (60% increase) |
| 251+ dwellings or over 10,000 square metres gross floorspace | £629 per obligation (80% increase) |
| Significant sites of 350 dwellings or more or 15,000 square metres gross floorspace | Bespoke fee based upon complexities of the S106 agreement |

- 3.10. After the s106 is sealed there are occasions when the landowner/developer needs to modify the agreement and this can only be done when entered into by Deed, by virtue of section 106A (2) of the Town and Country Planning Act 1990. This Deed of Variation (DoV) process requires consultation in line with the Council's constitution, officer consideration and input from legal services. The nature of deed of variation applications can vary in terms of officer time spent and therefore the Council believe that the collective teams involved on

average would spend 15 hours per topic¹, which equates to £648.62 (43.24 per hour).

- 3.11. Outside of the DoV process there are certain Section 106 documents which include the submission and approval of certain details/documents. This is work which is outside of the 'average' time spent calculations. The consideration and assessment of these details/documents, including administrative tasks, internal consultation (such as with the Economic Development and Open Space Team), by an officer on average takes 7.5 hours, which equates to £327.08 (£43.61 per hour).
- 3.12. Open space, which is to be transferred to the Council/Parish, requires site inspections to ensure the layout is in accordance with the agreed details. The number of visits needed is dependent upon the development. This is an additional unknown cost outside of the 'average time spent'. A site inspection on average would take an officer 5 hours (including preparation and post site visit reporting), which equates to £219 (£43.80). Therefore the following additional fees are also recommended:
- Deed of Variation - £649 per topic
 - Site Inspection Fee - £219 per visit
 - Approval of details/document - £327 per approval
- 3.13. The overall proposed fees for the monitoring of obligations in a S106 agreements are:

Table 5: Proposed s106 monitoring fee schedule of charges 2022

| Development Type | Fee |
|--|-------------------------|
| Section 106 Agreements and Unilateral Undertaking | |
| 1-10 dwellings or less than 1,000 square metres gross floor space | £349 per obligation 348 |
| 11-50 or 1,000 – 3,000 square metres gross floorspace | £419 per obligation 418 |
| 51-150 dwellings or over 3,000 – 5,000 square metres gross floorspace | £489 per obligation 487 |
| 151-250 dwellings or over 5,000 -10,000 square metres gross floorspace | £558 per obligation 557 |

¹ Sections within a S106 Agreement i.e. Play and Open Space, Affordable Housing, Education etc

| | |
|---|---|
| | |
| 251+ dwellings or over 10,000 square metres gross floorspace | £628 per obligation 626 |
| Significant sites of 350 dwellings or more or 15,000 square metres gross floorspace | Bespoke fee set on a case by case basis |
| Site inspection fee | £219 per visit |
| Approval of details/documents | £327 per document |
| Deed of Variation | £649 per S106 topic |

S106 Agreement Monitoring Spend

3.14. As detailed above, a local planning authority is able to charge to cover the cost of monitoring and reporting on delivery of that section 106 obligation. Therefore as the Council also reports the receipt, transfer and spend of S106 obligations annually through the infrastructure funding statement², it is important to ensure any monies received for monitoring are spent on monitoring of S106 agreements.

4. Exemptions in accordance with the Access to Information procedure rules

4.1 This report is to be taken in open session.

5. Financial implications [AW]

5.1 The introduction of the fees as noted in Table 5 indicate that an annual gain to the general fund would accrue. If the years indicated are typical of activity that would be subject to fees, then an average range of £20,000 to £60,000 would be a reasonable estimate of the annual gain. Any site visits fees would increase this potential gain.

6. Legal implications (MR)

6.1 Set out in the report.

7. Corporate Plan implications

7.1 The introduction of a charging schedule for the monitoring of s106 agreements to create additional resources will contribute to the delivery of the following Corporate Plan priorities:

² https://www.hinckley-bosworth.gov.uk/info/608/make_a_planning_application/1224/section_106_planning_obligations/5

People

- Help people to stay healthy, be active and feel well
- Give children and young people the best start in life and offer them the opportunity to thrive in their communities

Places

- Make our neighbourhoods safer
- Protect and improve our parks and open spaces for everyone across the borough
- Improve the quality of existing homes and enable the delivery of affordable housing
- Inspire standards of urban design that create attractive places to live

Prosperity

- Boost economic growth and regeneration...places to work and live all over the borough.
- Support the regeneration of our town centres and villages
- Support our rural communities
- Work with partners to raise aspirations of residents and provide opportunities for training, employment and home ownership

8. Consultation

8.1 No consultation undertaken.

9. Risk implications

9.1 It is the council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

9.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

9.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) risks

| Risk description | Mitigating actions | Owner |
|---|---|-------------|
| Schemes don't progress due to the additional financial burden | Keep fee approach under review to identify any issues | Chris Brown |

10. Knowing your community – equality and rural implications

- 10.1 Government has acknowledged the resource and administrative implications of monitoring S106 agreements and reporting on the planning obligations as they have now stipulated that local relevant authorities can now charge for the monitoring and reporting of planning obligations.
- 10.2 Planning permissions for major schemes along with their subsequent S106 agreements enables any harm or burden of a scheme to be mitigated. This can be through the provision of affordable housing, additional play and open space or the adoption of an employment strategy to ensure local people are taught new skills for better employment opportunities.
- 10.3 During the planning application process where it is determined what the contents of the S106 agreement should contain, to then be monitored, the Council ensures all engagement is in accordance with the Council's Statement of Community Involvement 2019 which has regard to the Equality Framework for Local Government.
- 10.4 Seeking additional resources to help deliver a more effective service by delivering the development and its mitigation is aimed at benefitting the whole borough by improving the social, environmental and economic environment.

11. Climate implications

- 11.1 The climate implications will be assessed through future planning applications that arise from the consultation responses and officer knowledge of the relevant legislation.
- 11.2 If there are climate implications of a planning application requiring monetary mitigation, this would be contained within a s106 agreement which would be monitored by the Compliance and Monitoring officer.

12. Corporate implications

- 12.1 By submitting this report, the report author has taken the following into account:
 - Community Safety implications – none directly as a result of this report
 - Environmental implications – Any impacts identified during a planning application that requires mitigation will be identified through either the s106 agreement or planning conditions. The mitigation will be monitored.
 - ICT implications - none directly as a result of this report
 - Asset Management implications – none directly as a result of this report.
 - Procurement implications – Any future procurement of resources will be done so using the Council's procurement procedure
 - Human Resources implications – Any additional resource will be in consultation with Human Resources.

- Planning implications – S106 agreements are a direct result of granting planning consent on major developments and these will be monitored continuously.
- Data Protection implications - none directly as a result of this report
- Voluntary Sector – none directly as a result of this report.

Background papers: Community Infrastructure Levy (2019)
 Planning Practice Guidance (2019)

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