

FEES AND CHARGES REPORT

APPENDIX 15 - PLANNING POLICY – SECTION 106 MONITORING

1. Proposed Charges: Section 106 Monitoring Fee

It is proposed to introduce a new fee for the monitoring of Section 106 agreements to recover from relevant parties the costs of monitoring the obligations resulting from these agreements.

Background:

Section 106 agreements are entered into to secure developer contributions which mitigate the impact of a proposed development, by providing necessary associated infrastructure such as contributions to education and healthcare or affordable housing. They are secured through a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) and are a mechanism through which development proposals can be made acceptable in planning terms. They are typically focused on site-specific mitigation measures and run with the land, meaning they are legally binding and enforceable.

Once in place, the obligations resulting from Section 106 agreements need to be monitored to ensure that the requirements are delivered in accordance with the agreement. These requirements are often complex and, on larger sites, will involve multiple triggers for delivery of the obligations which must be met at different timescales as the development is built out. The associated monitoring is therefore a complex and time-consuming process which the Council is required to undertake.

The Council currently absorbs the cost of monitoring Section 106 agreements within its existing resources. However, there is recognition from government that the developers who benefit from the planning permission associated with the Section 106 agreement should contribute towards that cost. This is enabled through The Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019 which were introduced in September 2019 to allow fees for monitoring obligations to be sought from developers where:

- a) *the sum to be paid fairly and reasonably relates 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.*

In addition, the latest Planning Practice Guidance supports this by stating:

“Monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring.”

However, the monitoring fee should not negatively impact on the ability for developers to enter into Section 106 agreements, and therefore a cost-recovery model is proposed.

Justification:

The key task associated with Section 106 monitoring include:

- Centralised logging of agreements onto the housing database.
- Desktop monitoring of development progress against s106 triggers.
- Site visits to check progress on the ground.
- Enforcement action where necessary if obligations are not being adhered to.
- Liaison and coordination with other recipient parties (e.g. NHS, LCC, parish councils).
- Financial tasks (calculation of indexation and interest due; recording payments received; making payments to third parties).
- Reporting of Section 106 obligations met and funds held.

As there is no formula or guidance set by Government on how to set the fees, local planning authorities are required to establish their own charging regime and to justify the monitoring fees for Section 106 agreements. Research has shown that other local authorities have applied various approaches to charging for Section 106 monitoring fees as follows:

- 1) Standard fee applied to all sites.
- 2) Fee determined by development size only.
- 3) Fee determined by development size and per obligation.
- 4) Fee determined by financial/non-financial obligation.
- 5) Fee determined by specific obligation category.
- 6) Fee determined by development type.

It has been concluded that option 3 above is the preferred mechanism to ensure that the fee charged best reflects the specifics of the individual agreement, since it recognises both the size of the development and the actual number of obligations involved. The proposed development sizes to be used reflect those applicable within the Central Lincolnshire Local Plan.

An example of a typical development site has been applied to a calculator which contains the relevant tasks involved and officer time spent in the monitoring of a typical Section 106 agreement. The time is aggregated, and the cost calculated accordingly based on salary costs, including on-costs and overheads.

A percentage adjustment has then been applied to reflect the varying complexities and timescales associated with monitoring different sizes of development, with this uplifting the fee proportionally for larger sites. The results have been considered against the benchmarking data contained at Appendix A.

Proposed Section 106 monitoring fee:

Fee proportioned by site size	Development size (dwellings)			
	1 - 9	10 - 99	100 - 499	500 +
% uplift	0%	20%	40%	60%
Fee per obligation in s106	£365	£438	£511	£584

The monitoring fee will be secured within the Section 106 agreement itself and will be in addition to the existing legal charge for the drafting of the agreement. The monitoring fees will be payable at the same time as any legal costs or on completion of the legal agreement. The fee will be introduced for new Section 106 agreements from the adoption date and will not be applied retrospectively to existing Section 106 agreements.

2. Impact on Medium Term Financial Plan

This would be a new fee from the 1st of April 2025 and demand is unknown at this point in time. Any income generated in 2025/2026 would be windfall income during that year and budget implications will be considered through the 2026/2027 fees and charges review process.

3. Recommendation

Members are asked to approve the introduction of a new Section 106 Monitoring Fee for 2025/2026 as illustrated in the schedule below.

Prosperous Communities Committee		Section 106 Monitoring Fee				
2024/25	Proposed Increase / (Decrease)		2025/26	VAT Amount	2025/26 Charge Inc. VAT	VAT Rate
£	% Type	or £	£	£	£	
Section 106 Monitoring Fee Charging Schedule						
Development size 1 - 9 dwellings		Fee charged per obligation contained within the section 106 agreement	£365.00	£0.00	£365.00	OS
Development size 10 - 99 dwellings			£438.00	£0.00	£438.00	OS
Development size 100 - 499 dwellings			£511.00	£0.00	£511.00	OS
Development size 500+ dwellings			£584.00	£0.00	£584.00	OS