

## For publication

### S.106 Agreement Monitoring Fees

[\(Delegation Reference – click here to view Part 3 Constitution\)](#)

<b>Meeting:</b>	Cabinet
<b>Date:</b>	16 <sup>th</sup> April 2024
<b>Cabinet portfolio:</b>	Economic Growth
<b>Directorate:</b>	Economic Growth
<b>For publication</b>	

#### 1.0 Purpose of the report

1.1 To seek Cabinet approval to implement a Section 106 monitoring regime and apply monitoring fees in accordance with this report.

#### 2.0 Recommendations

2.1 That Cabinet authorises the charging regime for monitoring S.106 Obligations as set out in section 4 of this report and that it is incorporated as a standard clause in relevant S.106 Obligations with immediate effect.

2.2 That the charging regime is published on the Borough Council's website as soon as is practically possible.

#### 3.0 Reason for recommendations

3.1 To enable the implementation of charges to support the staffing resource in the monitoring and compliance of approved S.106 Legal Agreements.

#### 4.0 Report details

##### Background

- 4.1 The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) allow Local Authorities to charge a fee in relation to S.106 agreements for the monitoring and reporting of planning obligations.
- 4.2 As of 2020, there is an annual requirement for Councils to report on all aspects of CIL and S.106 funds received, allocated and spent in an Infrastructure Funding Statement. The above provision in the CIL Regulations is designed to enable authorities to be adequately resourced to effectively monitor and report on planning obligations.
- 4.3 This report proposes the introduction of a S.106 monitoring fee charging schedule for Chesterfield Borough.

### **S.106 Monitoring Costs**

- 4.4 The Chesterfield Local Plan allocates sites for new residential development, some of which are strategic developments with complex requirements for mitigation measures. The granting of planning permission for these sites invariably involves the preparation and signing of a detailed S.106 Obligation. Although required to make a development acceptable, the costs associated with monitoring the implementation of such obligations has historically fallen to the Borough Council. Changes to the legislation mean that the Council now has the opportunity to recoup costs associated with monitoring of S.106 Obligations and it is considered appropriate to assess the extent to which such measures can be introduced for Chesterfield.
- 4.5 The CIL Regulations now allow for the introduction of monitoring fees, but do not specify how these fees should be set. Regulation 122(2A) indicates the Council is permitted to charge a fee providing:
  - i. the sum to be paid fairly and reasonably relates in scale and kind to the development; and
  - ii. 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.

- 4.6 To be able to comply with Regulation 122 (2A) (ii), an estimate is required of the cost of S.106 monitoring to the Council. This can include both salaries of officers involved in S.106 monitoring and peripheral costs.

### **Setting the Charging Schedule**

- 4.7 There are three main costs associated with monitoring S.106 Obligations:
1. Administrative monitoring of S.106 obligations that are recorded and managed through a centralised database.
  2. Physical monitoring of developments on site for compliance with the requirements of the S.106 Obligation agreement, e.g. to assess whether trigger points have been met thereby requiring the payment of contributions.
  3. Financial monitoring and management of the monies associated with the receipt of developer contributions towards local infrastructure and mitigation measures.
- 4.8 An annual report in the form of an Infrastructure Funding Statement setting out S.106 receipts and expenditure and is required to be published in December each year.
- 4.9 To determine the method and level at which to set S106 monitoring fees, a number of alternative models have been considered. This has included assessing methods used by other Local Planning Authorities that already charge for monitoring, including Derbyshire County Council, Derbyshire Dales District Council and other neighbouring district councils to establish the most appropriate approach based on the experience of monitoring compliance with historic S.106 agreements.
- 4.10 Planning obligations are normally arranged in schedules addressing different issues which have been identified a requiring a developer contribution. Each schedule has separate requirements and triggers and therefore each places different demands for monitoring and demands on staff time to ensure that each requirement is fulfilled. The recommended charging regime is based upon the average number of hours spent on monitoring developer contributions on previous developments with S.106 Obligations. Based on this historic experience, for each schedule

in each obligation a total of 5 hours per year is allowed for to cover desk-based monitoring, site visits, and administrative time (raising invoices, chasing payment, updating databases etc.). A worked example is set out below for a typical planning obligation with 5 schedules.

**Example:**

5 schedules in planning obligation

5 x 5 hours = 25 hours per annum

25 hours at Grade 12 hourly rate £40.13:  $25 \times 40.13 = \text{£}1,003.25$  per annum

Applied over 5-year monitoring period:  $\text{£}1,003.25 \times 5 = \text{£}5,016.25$

(Plus indexation)

- 4.11 The recommended approach, based on the average number of hours spent on monitoring, the number of covenants in the S.106 Obligation and the length of the monitoring period, will be proportionate and will mean that larger, more complex agreements that necessitate more concentrated monitoring over a longer period of time will be reflected in the monitoring fee.
- 4.12 It is considered that the preferred method will provide the best balance between providing the best return to the Council whilst being simple to apply and administer and compliant with the requirements of the CIL regulations.
- 4.13 Income from applying a monitoring charge will vary year on year as it will be driven by planning applications received and any planning obligations required in connection with specific permissions. To provide an indication of the scale of costs which could be recovered, if these charges had applied to the S.106 agreements which were completed during 2023 (6 legal agreements) it is calculated that costs of around £10,000 would have applied.

4.14 It should be noted that charges for monitoring planning obligations will remain separate from the Council's legal costs for drafting and signing S106 agreements, which will remain independently recovered by the Legal Team. Biodiversity Net Gain (BNG) monitoring fees will also be applied separately, noting that BNG compliance is managed under a separate, statutory, process, albeit compliance with specific S.106 requirements will still need to be monitored and reported.

### **Indexation**

4.15 To ensure the real value of a S.106 financial contribution is maintained up to the date of payment, the 'principal' sum stated in the S.106 agreement will need to be index linked from a base date until the date payment is due followed by interest to the date of actual payment. The principal amount in the agreement will remain unchanged but will be affected by the index fluctuation.

4.16 The index applied will relate to the function of the obligation. For construction projects the All in Tender Price Index of Building Cost Information Services (BCIS) published by the Royal Institute of Chartered Surveyors (RICS), or Construction Materials Price Index will be used. For other financial contributions, such as travel plan monitoring, which does not include construction, the Retail Price Index will be used.

### **Review of S.106 monitoring charging scheme**

4.17 It is proposed that the charging regime for monitoring S.106 Obligations is reviewed as part of the Annual Infrastructure Funding Statement. This will ensure that the fees collected reflect the true monitoring costs.

## **5.0 Alternative options**

5.1 There is no legal definition regarding how S.106 monitoring fees should be calculated and there are many different approaches currently being used by other Councils.

5.2 The council could choose to continue to absorb the costs of monitoring S.106 agreements. This is not considered to be sustainable in the longer term.

## **6.0 Implications for consideration – Financial and value for money**

6.1 The proposal in this report will positively impact the Council's revenue. Monitoring fees will aid the council to transition to maximising cost recovery.

## **7.0 Implications for consideration – Legal**

7.1 The Council incurs a cost of managing and administering developer contributions. Regulations allow the council to be compensated in accordance with prescribed rules as set out earlier in the report.

7.2 The fee and the triggers for payment will need to be written into each S.106 agreement.

## **8.0 Implications for consideration – Human resources**

8.1 The proposals have no direct implications for human resources.

## **9.0 Implications for consideration – Council plan**

9.1 The recommendations will support monitoring of planned growth and sustainable development and Chesterfield's continued vitality, helping to support the local economy and community wellbeing.

## **10.0 Implications for consideration – Climate change**

10.1 The report and recommendations will help to support monitoring of new development through S.106 agreements which are designed to mitigate the impacts of new development permitted in accordance with the development plan which has undergone a climate change impact assessment.

## **11.0 Implications for consideration – Equality and diversity**

11.1 Not applicable.

## **12.0 Implications for consideration – Risk management**

12.1 The purpose of the planning system is to contribute to the achievement of sustainable development. Securing funds will help to ensure resources are available to actively monitor the collection and spending of developer contributions, which will help to ensure the timely delivery of infrastructure and ultimately aid the delivery of sustainable development. The potential risks of continuing with unfunded monitoring of S.106 agreements are summarised below:

Description of the Risk	Impact	Likelihood	Mitigating Action	Impact	Likelihood
continue unfunded monitoring of S.106 agreements	L	M	Recommendations are within scope of CIL Regulations and would support planned growth	L	L

### Decision information

<b>Key decision number</b>	<i>All key decisions must be in the Forward Plan at least 28 days in advance. There are constitutional consequences if an item is not in the Forward Plan when it should have been. Contact Democratic Services if in doubt.</i>
<b>Wards affected</b>	<b>ALL</b>

### Document information

<b>Report author</b>	
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<b>Background documents</b>	
These are unpublished works which have been relied on to a material extent when the report was prepared.	
None	
<b>Appendices to the report</b>	
None	