

Executive Committee

29 October 2109

Planning Obligation Reforms – Charging for Section 106 Monitoring

Relevant Portfolio Holder	Cllr M Dormer
Portfolio Holder Consulted	Yes
Relevant Head of Service	Ruth Bamford
Wards Affected	All
Ward Councillor Consulted	All
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 The Town and Country Planning Act 1991 under Section 106 (S106) introduced planning obligations. Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. These obligations are more commonly known as Section 106 agreements.
- 1.2 Regulation 10 of The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 (“the Regulations”) brings into legislation powers to allow a sum to be paid under S106 for monitoring the delivery of planning obligations. This report seeks approval to use this power to charge a S106 monitoring fee where applicable in accordance with the regulations.

2. RECOMMENDATIONS

It is Recommended that:

- 2.1 The Council approves with immediate effect the inclusion of a monitoring charge within Section 106 agreements in accordance with the Regulations; and**
- 2.2 That delegated authority is given to the Head of Planning and Regeneration Services in consultation with the Portfolio Holder for Planning and Regulatory Services, to develop and implement as soon as possible a charging approach in line with the Regulations as stated below at para 3.4**

3. KEY ISSUES

Financial Implications

- 3.1 The full financial implications at this stage are currently unknown. As identified below at para 3.4 there are regulations governing the amount that can be charged for the monitoring of planning obligations. It is envisaged that a simple charging regime can be developed to ensure the charges are both transparent and within the regulations.
- 3.2 The funding that can be collected to assist in the monitoring of S106 agreements will help to offset the additional requirement to produce an infrastructure funding statement which is also required by the new regulations. If the funding is not collected this additional work would have to be done within existing budgets and staff resources.

Legal Implications

- 3.3 Regulation 10 of The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 brings into legislation powers to allow a charge to be made and for monitoring the delivery of s106 planning obligations. This report seeks approval for that power to be used by the Council.
- 3.4 The amendment to the legislation by this new regulation requires that any fee for s106 monitoring is lawful provided that

(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.

Service / Operational Implications

- 3.5 Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.

- 3.6 The reforms to the planning obligations process introduced by the Community Infrastructure Levy Regulations 2019, contain a number of key elements, which includes not only the ability to charge a monitoring fee, but also removing the restriction on the number of planning obligations that can be used to fund a single project (known as pooling restrictions) and introducing new reporting requirements through Infrastructure Funding Statements (from December 2020).
- 3.7 Both the removal of the pooling restrictions and the need to produce and infrastructure funding statement will increase the sometimes substantial workload and cost the Council has to cover when producing, monitoring and reporting on S106 agreements, which work is currently unfunded by the developer. It is seen as essential that this funding is secured.
- 3.8 The amount of funding available from this source will continue to be explored by officers; the regulations are not specific on how it is calculated. Delegations are being sought for officers to work alongside the portfolio holder for Planning and Regulatory services, to develop a robust and transparent methodology, which establishes the appropriate level of funding developments where the section 106 agreement will need to be monitored. It may be that specific viability / technical work is undertaken to evaluate the quantum and extent of developer contributions payable towards the monitoring of S106 planning obligations without causing development viability issues.

Customer / Equalities and Diversity Implications

- 3.9 There are no Customer / Equalities and Diversity Implications of this report.

4. RISK MANAGEMENT

- 4.1 Without this funding there is a risk that the funding infrastructure statement is not prepared adequately or resources are diverted from other key areas within the planning service.

5. APPENDICES

None

6. BACKGROUND PAPERS

None

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