

Bath & North East Somerset Council

MEETING/ DECISION MAKER:	Cllr Tim Ball, Cabinet Member for Housing, Planning, and Economic Development.	
MEETING/ DECISION DATE:	On or after 5th December 2020	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3249
TITLE:	Introduction of S106 Monitoring Fees	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: N/A		

1 THE ISSUE

- 1.1 Under the Community Infrastructure Levy (Amendment)(England)(No.2) Regulations (“the CIL Regs”), Regulation 122 (2A) allows Local Authorities to charge a fee in relation to section 106 agreements for the monitoring and reporting of planning obligations.
- 1.2 As of December 2020 there is an annual requirement for all Councils to report on all aspects of CIL and S106 funds received, allocated and spent. The above provision in the CIL Regs to charge a monitoring fee in respect of S106 monitoring and reporting is designed to enable authorities to be adequately resourced to effectively monitor and report on planning obligations.

2 RECOMMENDATION

The Cabinet Member is asked to;

- 2.1 Agree the implementation of a fixed fee set at £400/obligation (up to a cap of £10,000) for the monitoring of S106 agreements.

3 THE REPORT

3.1 In accordance with the CIL Regs and the guidance contained in the NPPG it is proposed that Bath & North East Somerset Council adopt a formal charging schedule for the collection of S106 Monitoring Fees.

3.2 CIL Reg 122(2A) states that the fee for monitoring (including reporting) in relation to the delivery of planning obligations in the authority's area must be:

- a) fairly and reasonably related in scale and kind to the development; and*
- b) 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 order to assess what an appropriate level of fees would look like research has been conducted to look at the scale of fees adopted by other authorities; the results are as follows:

Authority	S106 Monitoring Fee	Trigger for Payment
South Downs National Park Authority:	£440 per eligible covenant	Commencement of Development
Braintree District Council:	£300 to monitor for commencement and £300 per additional trigger in the obligation	Payable on completion of the S.106 agreement
Bristol City Council	15% of the planning application fee. No monitoring fee required in cases where CIL is due in addition to entering into a S.106	Not Defined
Norfolk County Council	£500 per obligation. On more complex sites the fee will be 1% of the total obligations up to a maximum of £10,000. On major strategic sites it will be negotiated on a case by case basis.	Commencement of Development
Mid Sussex District Council	Developments up to 15 Dwellings - £150 per obligation Large developments (16-100 dwellings and commercial developments) - £450 per obligation. Developments over 100 dwellings - £500 per obligation or £500 per trigger	Commencement of Development
Maidstone Borough Council	Developments up to 40 units - £1000 + £500 per additional obligation Developments over 40 units	Payable on completion of the S.106 agreement

	- £1500 + £750 per additional obligation	
South Gloucester Council	4% of the total financial contributions	Payable on completion of the S.106 agreement unless otherwise agreed
City of London	1% of the total financial contributions and/or £250 per non-financial contribution	Not Defined

3.3 Looking at the number of planning applications with S106 agreements in the years 2018/19 and 2019/20 B&NES Council agreed an average of 17 agreements. In 2018/19 27 agreements were signed with a total of 172 obligations. In discussion with the CIL/S106 Monitoring Officer, the monitoring of each obligation takes approximately 45 minutes to 1 hour for a desk top assessment and 2-3 hours if a site visit is required. Administering and dealing with requests for monitoring and responding to developers, conveyancing solicitors and other interested parties can take 1-2 hours. Overall, the monitoring of S106 agreements equates to c.50% of the officers work time.

3.4 Based on an assessment of how other authorities set their monitoring fees there four potential options were considered:

- Option 1 – 1% of the total financial contribution and a fixed £250 fee for non-financial obligations (City of London approach)
- Option 2 – 4% of the total financial contributions (South Gloucestershire approach)
- Option 3 – a £400 fixed fee per obligation (South Downs/Braintree/Norfolk approaches)
- Option 4 – 15% of the application fee (the Bristol approach)

3.5 Considering the 4 options it is not recommend that we follow the approach of Bristol City Council (a fee based on 15% of the total application cost). Application costs can vary dramatically depending on the scale and type of application. To secure enough funding to cover the cost of monitoring S106 agreements would be reliant primarily on the fees generated from complex major applications. An application fee for a single dwelling is £462 yet may carry a S106 agreement with multiple obligations. A monitoring fee of 15% in this instance would only be £69.30 and would not cover the cost of monitoring the agreement. Receipt of complex applications is contingent on wider market forces beyond the control of the Council and could be subject to significant fluctuation meaning there is a risk under Option 4 of not securing enough funding to cover the resources required.

3.6 A fixed fee-based approach would seem more appropriate as the fees would be in scale and kind and the approach would be transparent to developers/applicants. Consideration has been given to a percentage fee based on the total level of contributions secured by an obligation however financial obligations tend to form a lesser part of legal agreements. Most obligations are

non-financial (such as delivery rates of affordable housing) and often require a greater level of on-site monitoring.

- 3.7 It is recommended that the Council adopts a fee based on a fixed rate per obligation (up to a cap of £10,000) – Option 3.
- 3.8 From the research, scales of fixed fees vary across Authorities. Some authorities have introduced different rates dependant on the size of the application however it is argued that the complexity or scale of the planning application often has little bearing on the requirements of the S106 agreements. A scale set by application type could add confusion to developers thus it is recommended that a single fee is introduced per obligation. The rationale being the more obligations, the more monitoring is required, the more monitoring, the greater the resource implication.
- 3.9 Looking at the fees set by other authorities it is recommended Bath and North East Somerset Council introduce a schedule to charge a fixed fee of £400/obligation, this would be at the lower end of the scales offered by other authorities but is comparable and is therefore justified.
- 3.10 In terms of the trigger for payment it is recommended that payment is made upon commencement of development as that is the point at which the Council needs to commence site monitoring.
- 3.11 The fee and the trigger for payment will need to be written into the S106 agreement.
- 3.12 The Council would need to monitor the resource expenditure annually and could review and revise the fees as necessary.

4 STATUTORY CONSIDERATIONS

- 4.1 Under Regulation 122(2A) of the Community Infrastructure Levy (Amendment) (England) No.2 Regulations, Local Authorities are allowed to charge a fee in relation to the monitoring and reporting of S106 agreements associated with planning permissions.
- 4.2 In the NPPG (Para 36, Reference ID: 23b-036-20190901) it states:

“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.

Authorities must report on monitoring fees in their infrastructure funding statements”

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 5.1 The introduction of monitoring fees could cover the additional resources required to undertake detailed monitoring of development sites. The fee needs to be justified according to the level of work required to actively monitor each legal agreement. Some agreements (and sites) will require a greater level of on-site monitoring whereas others may require a greater level of desk-top assessment along with discussions with other service areas (for example Highways, Education and Affordable Housing).
- 5.2 At present, monitoring is done on an ad hoc basis and is reactionary to requests for information (usually generated by the relevant services areas). Approximately 50% of the CIL/S106 Monitoring Officer’s time is allocated to monitoring and tracking S106 agreements and confirming whether obligations have been satisfied. To support the CIL/S106 Monitoring Officer planning officers from both Development Management and Planning Enforcement undertake regular site visits to check development progress. The intention of the amendment to the CIL Regs is to enable Council’s to take a more proactive approach to ensure obligations are satisfied at the right point in time. This is likely to increase the workload pressures on staff however at this stage it is hard to quantify what the additional pressure may be or whether an additional member of staff is required.
- 5.3 To inform the resource implication considerations of this proposal an assessment of previous years S.106 data has been undertaken. In 2018/19 there were 27 s.106 agreements completed with a total of 172 obligations across all legal agreements. Based on this data it is projected that a potential income of up to the following amounts could have been achieved under each of the options considered:

Option 1	Option 2	Option 3	Option 4
£54,764.37	£47,0573.48	£68,800.00	£43,608.57

The caveats to these figures however are:

- (1) it would be impossible to predict the number of S106 agreements that may be received or signed in a particular year as this is contingent on certain types of planning applications being submitted which is entirely driven by the development industry. This would make it difficult to accurately set an income target and the Council would likely need to profile a few years data before an accurate picture as to the additional resource implication could be established.
- (2) In line with the approach taken by other Local Planning Authorities it is recommended a fee cap is imposed particularly for large/complex legal agreements to ensure the fees remain proportionate to the level of monitoring required for the life of an agreement; a cap of £10,000 per legal agreement is proposed, this is consistent with the approach taken by Norfolk. The above calculations however do not factor a cap and therefore may not be entirely reflective of the amount of fees that could have been secured.

- 5.4 The recoverable rate of the CIL/S106 monitoring officer is £34/hr, this is the agreed rate used when recovering costs in legal cases – this rate is based on the total cost of salary, overheads and on-costs. Assuming a work pattern of 7.4hrs per day at £34/hr the daily recoverable rate is £251.60. There is an average of 252 workdays per year, so the annual recoverable cost is calculated at £63,403.20. Assuming the figures in the table above, if the monitoring element equates to half the officers time all options outlined above would cover the cost of the additional work/officer time. It is estimated that currently c.50% of the CIL/S106 Monitoring Officer's time is spent monitoring and chasing developers, in addition the officer relies on other planning and enforcement officers to undertake site inspections and report progress.
- 5.5 The 2020/21 budget has set a figure of £10k for monitoring fees however the Council cannot charge any fees until the proposal is formally agreed so it is showing as zero received on the budget. It is anticipated that this figure can be achieved this financial year and going forward the figure would be higher based on the projection above.
- 5.6 Whilst it is difficult at this stage to accurately attribute figures and projections to this proposal, based on the above it is considered that this will be a cost neutral proposal to the Council with the fees adequately covering the additional work required. Part of the proposal is to absorb the additional workload into the wider Development Management team initially until the true scale of resource implications can be assessed. If sufficient fees are generated and the workload requires, it may be necessary to employ additional staff to be funded by the fees.

6 RISK MANAGEMENT

- 6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.
- 6.2 It is recommended that the fees should be reviewed again in 36months of the date of the decision. This would ensure that cost recovery is achieved and that on balance over a period of 2-3 years the fees are not generating income but are breaking even. The risk of not reviewing after a period is that the figures are uprated by inflation until such time as they become unreasonable and subject to potential challenge. If a successful challenge were made it would open the risk of the Council refunding part of the historical charges. A set review point would mitigate the risk of over/under-charging.

7 EQUALITIES

- 7.1 There are no identified equalities impacts with this proposal. The monitoring fees are intended to cover the Councils reasonable costs of monitoring and reporting the progress of S106 agreements linked to developments and will be payable by the developer. The fees are to be at a set rate and applied equally to all S106 agreements.
- 7.2 It is not considered necessary to carry out an Equalities Impact Assessment in support of this proposal.

8 CLIMATE CHANGE

8.1 In approving a planning application, the Local Planning Authority will already have had regard as to the measures intended to address climate change and reduce carbon in line with its adopted planning policies.

8.2 The proposed fees will not specifically address climate change however will enable to Council to adequately resource the monitoring of all S106 legal agreements related to development sites, thus ensuring obligations secured by individual planning permissions are achieved in order to deliver the intended developments.

9 OTHER OPTIONS CONSIDERED

9.1 The other fee options considered are set out in the above report at 3.4 and 3.5.

10 CONSULTATION

10.1 Agreement to put this report on the Forward Plan for approval has been granted by the Leader of the Council, the relevant Cabinet Member, the Director – Development and Public Protection, the S.151 Officer and the Monitoring Officer.

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Background papers	N/A
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