

Chichester District Council

THE CABINET

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Introduction of Section 106 Monitoring Fee

1. Contacts

Report Author:

Karen Dower, Principal Planning Officer (Infrastructure Planning)
Tel: 01243 521049 E-mail: kdower@chichester.gov.uk

Cabinet Member:

Susan Taylor, Cabinet Member for Planning,
Tel: 01243 514034 E-mail: staylor@chichester.gov.uk

2. Recommendation

- 2.1. That the Cabinet agrees to introduce a section 106 monitoring fee as set out in the schedule in the appendix to this report and delegates the future annual review of these fees to the Head of Planning Services.**

3. Background

- 3.1. Until recently the charging of monitoring/admin fees by local planning authorities in relation to section 106 agreements was widespread due to the administrative burden that this activity generates. However, following a legal challenge on 3 February 2015 (*Oxfordshire County Council v Secretary of State for Communities and Local Government and Others* <http://www.bailii.org/ew/cases/EWHC/Admin/2015/186.html>) the High Court held that administration fees and monitoring fees imposed as planning obligations under section 106 (s 106) of the *Town and Country Planning Act 1990* were not necessary to make the development acceptable in planning terms and thus failed the tests in regulation 122 of the *Community Infrastructure Regulations 2010* (as amended). As a result of this judgment many local authorities including Chichester District Council (CDC) ceased charging for s 106 monitoring.

4. Outcomes to be Achieved

- 4.1. The outcome is efficient and effective s 106 monitoring by a dedicated officer to ensure contributions are received and to support delivery of infrastructure to mitigate the impacts of development.

5. Proposal

- 5.1. CDC wishes to reintroduce a fee in order to recover its costs in monitoring future s 106 agreements. It intends to do this not through a s 106 obligation but rather under s 111 of the *Local Government Act 1972* and s 1 of the *Localism Act 2011* (although the agreement to pay the monitoring fee will be within the same deed as the s 106 planning obligations).

- 5.2. In order to levy a fee, it is important that the charge for monitoring s 106 agreements reflects the actual cost (or as close as can be reasonably calculated) in order to justify the fee as a legitimate cost as opposed to a 'universal charge', irrespective of the monitoring and administrative burden. In the Oxfordshire County Council case the monitoring sum was calculated as a percentage of the total contributions payable under the agreement and did not, in the view of the judge, reflect an accurate assessment of the true costs involved in the monitoring of the obligations in the s 106 agreement.
- 5.3. Legal advice in the light of this judgment stresses the need to avoid standardised fees and establish the level of monitoring for each agreement ie are there multiple trigger points, is there an ongoing need for monitoring, how complex/large is the development site?
- 5.4. In Chichester the s 106 monitoring activity is undertaken in the Planning Service by the Planning Obligations Monitoring and Implementation Officer working a 28-hour week, whose role is specifically to develop and manage effective and efficient administration of s 106 agreements (especially financial contributions). The overall cost of this post including NI and Pension and standard corporate on-costs for heating, lighting, insurance, IT etc. is currently £29.57 per hour (£36,700 per annum).
- 5.5. Monitoring activity includes reviewing and recording each s 106 agreement and its obligations onto the software system. Site progress may need to be checked to assess whether triggers for paying contributions have been reached, records cross referenced with other data held by the council over commencement of development, invoicing for payment, chasing and enforcing payments (if required), distributing payments to services, auditing expenditure and compiling reports. Liaison also takes place with other bodies such as West Sussex County Council – for example in respect of monitoring education and highway related obligations.
- 5.6. As set out above, any fees need to be intrinsically linked to the costs associated with monitoring different types of s 106 agreement. The methodology set out in the appendix will ensure these costs are covered. In coming to conclusions about setting a reasonable fee, officers have benchmarked this against the fees that other local authorities are charging.
- 5.7. The approval of this fee schedule aims to enable CDC to recover its costs in monitoring future s 106 agreements and so support the effective monitoring of s 106 contributions by CDC. The appendix to this report sets out the proposed monitoring charges and has been formulated to recover the cost to CDC in full of monitoring each agreement based upon an estimation of officer time. Thresholds have been created based on dwelling numbers in order to create a sliding scale which relates to an estimation of officer time spent on monitoring each obligation.
- 5.8. The fee schedule will be monitored on an annual basis as part of the s 106 monitoring process to ensure that the fees collected reflect the true costs of monitoring s 106 agreements.

6. Alternatives Considered

- (i) Not to charge a monitoring fee;

(ii) Partial cost recovery.

These options are not favoured because the planning service (and ultimately the local council tax payer) would have to subsidise the monitoring function.

7. Resource and Legal Implications

7.1. The charging of s 106 monitoring fees can be justified under section 111 of the *Local Government Act 1972* and s 1 of the *Localism Act 2011*.

8. Consultation

8.1. Legal Services and Finance services have been consulted.

9. Community Impact and Corporate Risks

9.1. There are no community impacts associated with this proposal.

9.2. If the proposed fee schedule does not cover the cost of monitoring future s 106 agreements, the fee schedule will be revised.

10. Other Implications

Are there any implications for the following?		
	Yes	No
Crime and Disorder		✓
Climate Change		✓
Human Rights and Equality Impact		✓
Safeguarding and Early Help		✓
Other (please specify)		✓

11. Appendices

11.1. Appendix 1: Recommended fee schedule for Chichester

12. Background Papers

12.1. None