

Section 106 Monitoring Fees

1. Summary

- 1.1 The introduction of new CIL regulations in September 2019 has confirmed that a local planning authority is entitled to levy a monitoring fee to cover the costs of monitoring planning obligations within Section 106 agreements.
- 1.2 Monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. It is recommended that Dover District Council introduce a proportionate.
- 1.3 Government guidance on Planning Obligations, including guidance on monitoring fees, can be found at <https://www.gov.uk/guidance/planning-obligations>.

2. Considerations

- 2.1 Dover District Council wishes to ensure the charging is both reasonable and relevant to the level of work required for monitoring Section 106 agreements. Accordingly, initial research has been undertaken to attempt to attribute a true cost as per expected monitoring time to inform what would be a reasonable fee.
- 2.2 The council employs a dedicated monitoring officer who processes all Section 106 agreements. This work begins as soon as they are signed and involves monitoring each obligations of the applicant to ensure that they are fulfilled at the relevant trigger point and then the Council's undertaking of their covenants within the agreement.
- 2.3 Individual agreements throughout the previous financial year have been assessed to see what the overall monitoring fee would be in relation to each trigger event. This found that officer time equivalent to approx. £9,000 p/a was spent on monitoring obligations. When considered against number of triggers generating payment (38), an average cost of £236 per trigger event generating a payment emerges¹.
- 2.4 To further inform this research, a number of Local Authorities in Kent and the South East were contacted. For those which currently charge, the majority use a fixed rate for each trigger event. This ranged from £242-£750 per trigger. Some authorities however charged a fee based on the percentage of the overall value of the agreement. This was generally set at 5%, with one authority capping this at £10,000.

3. Recommendation

- 3.1 It is recommended that Dover District Council introduce a Section 106 monitoring fee of £236 per trigger event requiring a payment to be made. This fee is the minimum applied to any legal agreement clause as even the most simple of agreements require monitoring and the maintenance of a proper audit trail in respect of the collection and expenditure of the contributions received.
- 3.2 Whilst this fee is comparatively low when compared to other nearby local authorities, it is considered such a fee represents the current evidentially reasonable and proportionate fee. Further, by setting a comparatively low fee, it is considered this strikes the appropriate balance between ensuring the council costs are largely recovered though without becoming a sufficient additional burden for those wishing to bring forward development within the district.
- 3.3 As the fee is to cover officer time from the moment the agreement is signed, it is recommend that the fee should usually be paid on completion of the agreement.

¹ This does not currently include time where a bespoke monitoring fee had been negotiated or time spent on non-monetary contributions. Similarly this does not currently include time spent by other officers of the Council on related tasks. This aspect will remain under review.

- 3.4 Notwithstanding the above, it is recognised that the more complex Section 106 agreements are likely to generate additional monitoring burdens and resource implications. The appropriate monitoring fee for these will continue to be negotiated on a case by case basis.
- 3.5 To ensure the charging is both reasonable and relevant to the level of work required for monitoring Section 106 agreements, officer's time spent on monitoring will continue to be recorded with the charge to be modified each year to ensure fair and consistent monitoring fees are in place.

Officer Recommendation:

The Council set monitoring costs on all agreements as follows:

- £236 per trigger event requiring a payment to be made as set out in the S106 agreement to be paid on completion of the agreement; or
- On complex major applications where there are multiple obligations, some or all of which require monitoring for an extended period, the monitoring fee will be negotiated and agreed during the determination of the application.