

Report to: Leader of the Council

Date: 2 April 2020

Title: Introduction of Planning Obligation Monitoring Fees

Report of: Ian Fitzpatrick, Deputy Chief Executive and Director of Regeneration and Planning

Cabinet member: Councillor Emily O'Brien, Cabinet Member for Planning and Infrastructure

Ward(s): All areas of the district outside the South Downs National Park boundaries

Purpose of report: To seek approval to introduce planning obligation monitoring fees

Decision type: Key Decision

Officer recommendation(s): (1) To agree the introduction of planning obligation monitoring fees as set out in the schedule in the appendix to this report

(2) To delegate the future annual review of these fees to the Head of Planning Services

Reasons for recommendations: To cover the costs of efficient and effective monitoring and reporting of planning obligations

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1 Introduction

- 1.1 Planning obligations are legal obligations entered into prior to the grant of planning permission to mitigate the impacts of a development proposal. This can be via a planning agreement entered into under section 106 of the Town and Country Planning Act 1990 by a person with an interest in the land and the local planning authority; or via a Unilateral Undertaking entered into by a person with an interest in the land without the local planning authority.
- 1.2 Planning obligations are commonly referred to as 'Section 106', 'S106', as well as 'developer contributions'. The clauses and controls are varied and are site and development specific. These agreements are in addition to highway control under the Highway Acts (278 agreements etc) and the Community Infrastructure

Levy.

- 1.3 The 2019 amendments to the CIL Regulations 2010 allow local planning authorities to charge a fee for the monitoring of, and reporting on the delivery of planning obligations. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation.
- 1.4 Planning guidance suggests various methods on how to set planning obligations monitoring fees. However, in all cases, monitoring fees must be proportionate and reasonable and must not exceed the cost of monitoring over the lifetime of the development.
- 1.5 The collection of planning obligation monitoring fees will help us to fulfil our monitoring activities as well as reporting duties, introduced by the latest amendments to the CIL Regulations. From December 2020, local authorities will be required to publish an Infrastructure Funding Statement to include:
 - Infrastructure projects or type of infrastructure which may be funded by CIL;
 - a CIL report and;
 - for the first time a planning obligation report.

The latter whilst being very informative is likely to be resource intensive.

2 Proposal

- 2.1 It is proposed to introduce a fee in order to cover the cost of monitoring future planning obligations. The monitoring fee will be included as a planning obligation within the Section 106 agreement or Unilateral Undertaking and indexed linked to allow for inflation. The monitoring fee will become due upon commencement of the development.
- 2.2 The appendix of this report sets out how the fee will be calculated.
- 2.3 These charges will be reviewed after an initial 6 months period.

3 Outcome expected and performance management

- 3.1 The outcome to be achieved is efficient and effective planning obligation monitoring by dedicated officers to ensure all aspects and terms of Section 106 agreements and Unilateral Undertakings are met as well as to support delivery of infrastructure to mitigate the impacts of development.
- 3.2 Reporting on monitoring fees collected will be included within our Infrastructure Funding Statement as required under the CIL Regulations. The report will form the starting point of the yearly review to ensure that the fee remains relevant and proportionate in time.

4 Business case and alternative option(s) considered

4.1 For ease of understanding, key terms are defined as follow:

Deed: the legal document

Covenant: each obligation contained within the legal document

(e.g. 'Prior to to occupation of the development, the owner will pay to the Council the Recycling contribution')

Heads of terms: issue to be addressed within the legal document

(e.g. Kerside Recycling, Highway work etc)

4.1 The monitoring of planning obligations involves the following:

- Agreeing with the case officer items to be monitored within the deed
- Loading the deed onto our database, and diarising each covenant
- Liaising with the case officer and/or development at each trigger point to determine whether the obligation has been met, including possible site visits
- For financial obligation, calculating and subsequently raising and issuing Demand Notices, liaising with the finance team and acknowledging receipt of payment
- Sending notification to developer to discharge the obligations when appropriate
- Working with partners to spend the funds received within the legal timeframe
- Attending general and site specific planning obligation monitoring meetings
- Compiling requirement information for reporting the planning obligation elements of Infrastructure Funding Statement

4.2 When considering how a charging system for the monitoring of planning obligations would work, several methods were explored which included:

- Apply a charge based on a percentage of the total value of financial contributions secured in the deed
- Apply a standard charge for every deed
- Apply a standard charge based on dwelling thresholds
- Apply a standard charge per covenant
- Apply a retrospective charge based on actual monitoring once the obligation has been satisfied
- Calculate a fee on a case by case basis

4.3 Neighbouring authorities such as the South Downs National Park Authority and Mid Sussex District Council are charging for planning obligations monitoring.

4.4 The SDNPA is charging a flat rate of £440 per covenant.

4.5 Mid Sussex District Council is charging a fixed rate per covenant based on the size of the development as well as a fixed rate per approval required under the section 106 agreement.

For up to 15 dwellings	£150 per obligation
16 to 100 dwellings	£300 per obligation
More than 100 dwellings	£500 per obligation If the fee is based on a trigger, £500 per trigger

An additional £300 is levied for each approval required (e.g. management plan)

4.6 To best reflect the cost of monitoring planning obligations within our area, it is proposed to adopt two charging regimes:

- A charge based on threshold of dwellings and heads of terms for development of up to 50 dwellings
- A charge calculated on a case by case basis for non-residential proposals and developments of more than 50 new dwellings.

4.7 If the charging regime were to have been adopted from the 1st April 2018, the fee income would have been around £25k.

5 Financial appraisal

5.1 If introduced, this decision will generate additional revenue to recover the cost of the council's future monitoring and planning obligations. The monitoring fee will be included as a planning obligation within the Section 106 agreement or Unilateral Undertaking and indexed linked to allow for inflation. The monitoring fee will become due upon commencement of the development. At present the full cost of the monitoring activity carried out is not recovered from the developer and hence is being subsidised.

5.2 The fees schedule does not only include the receipt of agreed developer contributions, but also the monitoring of other measures required in the legal agreements. The fees will be based on current hours spent on financial monitoring. Thresholds will be created based on dwelling numbers and obligations in order to create a sliding scale which relates to an estimation of officer time spent on monitoring each obligation.

6 Legal implications

6.1 The Community Infrastructure Levy Regulations 2010 were updated in 2019 to allow councils to charge a fee to cover the cost of monitoring the delivery of planning obligations provided:-

(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. (Regulation 122 (2A)).

6.2 Planning Practice Guidance sets out that councils should work together to ensure that resources are available to support the monitoring and reporting of

planning obligations.

- 6.3 It confirms that Councils may 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 although monitoring fees should not be sought retrospectively for historic agreements.
- 6.4 In all cases, monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring and the guidance provides that councils could consider setting a cap to ensure that any fees are not excessive.

Legal Implications Provided 27.02.20 008985-LDC-JCS.

7 Risk management implications

- 7.1 There is no risk associated with this proposal.

8 Equality analysis

- 8.1 It is assessed that an Equality Analysis is not required for this report
- 8.2 Information relation to planning obligations monitoring fees will be made available in alternative formats and languages upon request. Any individuals who have concerns about the fee may contact officers to discuss on a case by case basis.

9 Environmental sustainability implications

- 9.1 It is not considered that this proposal will have any adverse impacts on the environment. The proposal will however result in further resources being allocated to ensure the timely delivery of infrastructure alongside new development which should enable our communities to thrive.

10 Appendices

- Appendix 1 – Porposed Methodology
- Appendix 2 – Planning Obligations Monitoring Fees Calculator