

1. **Section 106 Obligation Monitoring Fee** (Pages 2 - 8)

## CABINET MEMBERS DELEGATED DECISION

<b>Open/Exempt</b>		Would any decisions proposed:			
<b>Any especially affected Wards</b>	Mandatory/	Be entirely within Cabinet's powers to decide		YES/NO	
	Discretionary /	Need to be recommendations to Council		YES/NO	
	Operational	Is it a Key Decision		YES/NO	
Lead Member: Cllr Jim Moriarty E-mail: cllr.james.moriarty@west-norfolk.gov.uk			Other Cabinet Members consulted: Cllr J Moriarty		
			Other Members consulted:		
Lead Officer: Lee Osler E-mail: lee.osler@west-norfolk.gov.uk			Other Officers consulted: Alexa Baker, Assistant Director for Legal, Governance and Licensing (Monitoring Officer) Stuart Ashworth, Assistant Director Environment and Planning		
Financial Implications YES/NO	Policy/Personnel Implications YES/NO	Statutory Implications YES/NO	Equal Impact Assessment YES/NO If YES: Pre-screening/ Full Assessment	Risk Management Implications YES/NO	Environmental Considerations  YES/NO
If not for publication, the paragraph(s) of Schedule 12A of the 1972 Local Government Act considered to justify that is (are) paragraph(s)					
Date meeting advertised: 29th November 2023			Date of meeting decision to be taken: 6th December 2023		
Deadline for Call-In: 13th December 2023					

### TITLE: Section 106 Obligation Monitoring Fee

<b>Summary</b>	<p>1) Proposal for the Borough Council to introduce a Section 106 (S106) obligation monitoring fee (Section 106 of the Town and Country Planning Act 1990 (as amended) and as set out in regulation 122 of the Community Infrastructure Levy (CIL) Regulations (as Amended). Planning obligations are legal obligations entered into to mitigate the impacts of a proposed development. It is an administrative burden on the Borough Council to monitor such Agreements. The law permits local authorities to seek a proportionate and reasonable contribution toward the monitoring and reporting of planning obligations through Section 106 Agreements.</p>
<b>Recommendation</b>	<p>2) <b>A S106 Obligation monitoring fee is introduced at the level of £500 per obligation as set out in option 2 of this report.</b></p> <p>3) <b>Monitoring fees to come into force on 1 January 2024, and subject to annual indexation uplift using the Retail Prices Index (RPI).</b></p>
<b>Reason for Decision</b>	

- 4) To ensure an appropriate cost recovery of monitoring obligations within Section 106 Agreements and Unilateral Undertakings is recovered from applicants which is fairly and reasonably related in scale and kind to the development, in accordance with regulation 122 of the Community Infrastructure Levy (CIL) Regulations (as Amended), which came into force on 1<sup>st</sup> September 2019.

## **1 Background**

- 1.1 Planning obligations are legal obligations entered into to mitigate the impacts of a proposed development. Planning obligations are normally secured through a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) and are a mechanism through which development proposals can be made acceptable in planning terms.
- 1.2 The Local Government Act 2003 (Section 93) provides the legislative basis for local authorities to charge for discretionary services such as the administration/monitoring of Section 106 Agreements. An amendment to the CIL in September 2019 clarified that monitoring contributions could be sought through a S106 agreement, and it is in this context it is considered appropriate to recover the cost of administration and monitoring Section 106 obligations.
- 1.3 The proper administration of Section 106 monitoring regime is resource intensive, and it is considered appropriate to ensure that monitoring is cost neutral to the Council.
- 1.4 To meet the legislative requirements the Council already:
- maintain a record of all active S106 Obligations.
  - undertake Consultations to confirm obligation requirements are met.
  - written confirmation for each clause and obligation met to developers.
  - issue Compliance Statement.
  - track site progress to ensure trigger points are met.
  - raise Invoices for financial contributions.
  - track and acknowledge payments.
  - keep the land charges register up to date.
  - comprehensive financial data for the Annual Infrastructure Funding Statement.

## **2 Legislation, guidance and policy context**

- 2.1 Regulation 122 of the CIL Regulations (as amended), which details the limitation on the use of planning obligations, applies to all planning applications made to a local planning authority that are determined by the local planning authority, and to appeal and call-in determinations. A planning obligation may only constitute a reason for granting planning permission if it complies with the three tests stated in Regulation 122(2), namely, that it is:
- necessary to make the development acceptable in planning terms.

- directly related to the development.
  - fairly and reasonably related in scale and kind to the development.
- 2.2 A planning obligation which does not meet these three tests would not constitute a reason for granting planning permission.
- 2.3 In 2019, the Government acknowledged the administrative burden monitoring S106 agreements can have on local planning authorities and on 1 September 2019 amended CIL Regulations came into force with Regulation 10 stating under the sub-heading 'Fees for monitoring planning obligations' that such monitoring fees can be sought where:
- the sum to be paid fairly and reasonably relates in scale and kind to the development.
  - 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.

### **3 Why a monitoring charge is necessary**

- 3.1 The implementation of an administrative charge will allow the Council to clarify its approach relating to the monitoring of S106 planning agreements. This will be of benefit to all parties involved in the process. By having a robust monitoring framework in place, it will ensure development is implemented in accordance with the obligations within the S106 and any associated financial contributions are paid at the required stages/trigger points.
- 3.2 It is acknowledged that developments need to be viable to be delivered and any monitoring fee will add cost to the development. However, monitoring fees should not be sought retrospectively for historic agreements.
- 3.3 There are two distinct forms of monitoring within Section 106 legal agreements:
- Monitoring of commencement/phasing triggers to ensure financial contributions are collected.
  - Physical monitoring of compliance with the terms of the agreement, e.g. monitoring delivery and ongoing management of infrastructure, biodiversity net gain and affordable housing.
- 3.4 Any proposed monitoring charge will cover a number of different aspects of monitoring legal agreements including, but not limited to:
- Affordable Housing delivery.
  - Biodiversity Net Gain.
  - Open Space implementation including play provision.
  - Green Infrastructure and Recreational impact Avoidance and Mitigation Strategy (GIRAMS).
  - Transportation improvements.
  - Education contributions/new school.

3.5 Obligations relating to transportation, travel plans and education are a County Council matter and Norfolk County Council (NCC) have their own set monitoring charges.

## **2 Options Considered**

### **4.1 Option 1 – no monitoring fee**

Continue to record and monitor S106 agreements with no monitoring fee. The Council would continue to carry the cost of fulfilling this resource intensive function, despite current legislation allowing the introduction of a monitoring fee.

### **4.2 Option 2 – monitoring fee per obligation**

Introduce a monitoring fee of £500 per obligation. This would generate an annual income of approximately £23,000 per annum. This would be subject to the number of S106 agreements and associated obligations within the financial year.

### **4.3 Option 3 – monitoring fee per S106 agreement**

Introduce a monitoring fee of £2,000 per S106 agreement, no matter how many obligations within the agreement. This would generate an annual income of approximately £20,000 per annum. Again, this would be subject to the number of S106 agreements within the financial year.

## **3 Policy Implications**

None.

## **4 Financial Implications**

Will generate an annual income of approx. £23,000 per annum.

## **5 Personnel Implications**

Monitoring and Compliance Officer is already in post.

## **6 Environmental Implications**

None.

## **7 Statutory Considerations**

Legislative amendments (Community Infrastructure Levy (CIL Amendments) Regulations) were laid before Parliament on 4 June 2019 and came into force on 1 September 2019.

## **8 Equality Impact Assessment (EIA)**

(Pre screening report template attached)

No direct impact.

**9 Risk Management Implications**

None.

**10 Declarations of Interest / Dispensations Granted**

None.

**11 Background Papers**

A copy of the CIL Regulations (as Amended) can be found at this [link](#).

Signed:



Cabinet Member for: DEVELOPMENT + RECONSTRUCTION

Date: 27/11/23

# Pre-Screening Equality Impact Assessment

Borough Council of  
**King's Lynn &  
West Norfolk**



Name of policy/service/function	S106 Agreement – Monitoring Fee				
Is this a new or existing policy/ service/function?	New / <del>Existing</del> (delete as appropriate)				
Brief summary/description of the main aims of the policy/service/function being screened.  Please state if this policy/service rigidly constrained by statutory obligations	To introduce a monitoring fee for S106 Agreements				
<b>Question</b>	<b>Answer</b>				
<p>1. Is there any reason to believe that the policy/service/function could have a specific impact on people from one or more of the following groups <b>according to their different protected characteristic</b>, for example, because they have particular needs, experiences, issues or priorities or in terms of ability to access the service?</p> <p>Please tick the relevant box for each group.</p> <p>NB. Equality neutral means no negative impact on any group.</p>		Positive	Negative	Neutral	Unsure
	Age			X	
	Disability			X	
	Gender			X	
	Gender Re-assignment			X	
	Marriage/civil partnership			X	
	Pregnancy & maternity			X	
	Race			X	
	Religion or belief			X	
	Sexual orientation			X	
Other (e.g low income)			X		
<b>Question</b>	<b>Answer</b>	<b>Comments</b>			
2. Is the proposed policy/service likely to affect relations between certain equality communities or to damage relations between the equality communities and the Council, for example because it is seen as favouring a particular community or denying opportunities to another?	<del>Yes</del> / No				
3. Could this policy/service be perceived as impacting on communities differently?	<del>Yes</del> / No				
4. Is the policy/service specifically designed to tackle evidence of disadvantage or potential discrimination?	<del>Yes</del> / No				
<p>5. Are any impacts identified above minor and if so, can these be eliminated or reduced by minor actions?</p> <p>If yes, please agree actions with a member of the Corporate Equalities Working Group and list agreed actions in the comments section</p>	<del>Yes</del> / No	<b>Actions: N/A</b>			
		<b>Actions agreed by EWG member</b>			

<b>Assessment completed by: Name</b>	Lee Osler
<b>Job title</b> Office Manager, Environment and Planning	<b>Date</b> 16 <sup>th</sup> November 2023

**Please Note: If there are any positive or negative impacts identified in question 1, or there any 'yes' responses to questions 2 – 4 a full impact assessment will be required.**