

COUNCIL  
27 AUGUST 2020

Report of Director of Regulatory Services, Director of Regeneration and Policy and Director of Corporate & Customer Services

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## **DERBYSHIRE DALES SECTION 106 MONITORING FEES**

### **PURPOSE OF REPORT**

This report sets out changes to legislation that allows Local Authorities to recover their costs associated with monitoring the operation and implementation of Section 106 Obligations. The report recommends that with immediate effect the District Council introduce a charging regime for monitoring the implementation of relevant Section 106 Obligations.

### **RECOMMENDATION**

It is recommended that:

1. That the charging regime for monitoring S106 Obligations as set out in Paragraphs 2.7 to 2.11 of this report be approved and that it be incorporated as a standard clause in relevant S106 Obligations with immediate effect.
2. The charging regime is published on the District Council's website as soon as is practically possible.

### **WARDS AFFECTED**

All Wards outside the Peak District National Park

### **STRATEGIC LINK**

The introduction of a charging regime for monitoring S106 Obligations will enable the District Council to recover its costs associated with monitoring S106 obligations. The collection of financial contributions through the S106 Obligation regime enables the provision of infrastructure for the benefit of the communities across Derbyshire Dales It also enables the Council to improve the quality of life for residents and, with partners, by ensuring the continued provision of excellent services.

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## **1. BACKGROUND**

- 1.1 Section 106 Obligations are legal agreements 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. They are typically focused on site-specific mitigation measures and run with the land, meaning they are legally binding and enforceable. The preparation, monitoring and enforcement of Section 106 Planning Obligations can be resource intensive and for larger developments, lead to many years of monitoring

by the District Council to ensure that developer contributions are made in accordance with the clauses set out in the obligation.

- 1.2 In June 2019, the Government acknowledged the administrative burden monitoring Section 106 agreements can have on local planning authorities in a ‘technical consultation on draft regulations to reform developer contributions’ to “permit local authorities to seek a proportionate and reasonable contribution towards the monitoring and reporting of planning obligations through Section 106 agreements”. This was met with overwhelming support by the respondents and was reflected within the ‘The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019’ which became law on 1 September 2019.
- 1.3 The revised Regulation 122 of the Community Infrastructure Levy Regulations now allows fees to be paid to a local planning authority to cover the costs of monitoring 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.”.
- 1.4 Despite the Government’s intention to “provide guidance on different methods that could be used to calculate monitoring costs” as stated in its response to the ‘Reforming Developer Contributions’ consultation in June 2019, no such guidance has yet been made available, nor has any definition been provided of what constitutes ‘fair and reasonable’ Given that this advice has not been made available, and the ability to collect monitoring fees was introduced some nine months ago it is now considered appropriate for the District Council to determine how best to bring forward a charging regime which reflects local circumstances.

## **2. REPORT**

### **Section 106 Monitoring Arrangements at Derbyshire Dales District Council**

- 2.1 There are three main costs associated with monitoring Section 106 Obligations by the District Council:
  1. Administrative monitoring of S106 obligations that are recorded and managed through a centralised database.
  2. Physical monitoring of developments on site for compliance with the requirements of the s106 Obligation agreement, e.g. to assess whether trigger points have been met thereby requiring the provision of developer contributions for affordable housing or education.
  3. Financial monitoring and management of the monies associated with the receipt of developer contributions towards local infrastructure and mitigation measures;

- 2.2 Monitoring the receipt of financial developer contributions secured through Section 106 Obligations is primarily undertaken by the Business Support and Development Management teams, with input from a number of other departments across the Council, including Finance and Legal.
- 2.3 Officers within Development Management team provide advice on the initial requirements in a S106 Obligation, and the details are then negotiated by the District Council's legal team.
- 2.4 The Business Support team carry out administrative tasks such as logging new obligations and keeping the central database up to date; but also dealing with more complex cases where financial compliance with agreements needs to be enforced. Site visits are carried out by members of the Development Management Team to monitor whether a trigger for the payment of an agreed financial contributions has been reached (e.g. commencement of development, prior to occupation).
- 2.5 Annual reports are presented to Council and quarterly reports are presented to the Corporate Leadership Team which provide details of developer contributions received and monies allocated to specified projects or capital reserves.
- 2.6 The Derbyshire Dales Local Plan (2017) allocates a number of sites for new residential development, some sites of which are identified as strategic developments with complex requirements for mitigation measures. The granting of planning permission for these sites inevitably involves the preparation and signing of a detailed S106 Obligation. Although required to make a development acceptable, the costs associated with monitoring the implementation of such obligations has historically fallen to the District Council to bear. Given that the District Council now has the opportunity to recoup any costs associated with monitoring of S106 Obligations it is considered wholly appropriate to assess the extent to which such measures can be introduced for Derbyshire Dales.

### **Introduction of a Charging Regime for Monitoring S106 Planning Obligations**

- 2.7 Any charging regime for monitoring s106 Obligations has to ensure that it meets the statutory requirements set out in Regulation 122 of the Community Infrastructure as set out in Para 1.3 above. The recommended approach that complies with the statutory requirements, involves charging a monitoring fee per obligation based on the average number of hours the District Council's spends on monitoring, the number of covenants in the Section 106 Obligation, and the size of the development. This way, larger, more complex agreements that necessitate more concentrated monitoring over a longer period of time are reflected in the monitoring fee.
- 2.8 In order to determine how best to achieve these requirements a number of alternative models were considered by Officers. The recommended charging regime seeks to enable the District Council to recover its costs in monitoring future Section 106 Obligations, and is based upon the average historical number of

hours spent on monitoring developer contributions on previous developments with S106 Obligations since 2010, as set out in Appendix 1.

For each obligation the following allowances were made:

- 15 minutes 'desk based monitoring' per month;
- 1 hour site visit every 6 months; and
- 1 hour of administrative time (raising invoices, chasing payment, updating databases etc.)

2.9 As a result of these calculations it was found that the average cost of monitoring an obligation/covenant since 2010 has been £319.01 (15.08 hours at Salary Grade 9).

2.10 To account for the additional time required to monitor the larger more complex developments it is recommended that the fee is increased on a proportionate basis to the size of development. The proposed percentage increase bands are set out as follows:

	<b>Band 1: 1-5 dwellings of up to 1ha of land</b>	<b>Band 2: 6-10 dwellings or up to 3ha of land</b>	<b>Band 3: 11-49 dwellings or up to 10ha of land</b>	<b>Band 4: 50+ dwellings or more than 10ha of land</b>
Percentage uplift of baseline fee	0%	20%	40%	80%
Monitoring fee per obligation/covenant	£319.01	£382.81	£446.61	£574.21

2.11 In taking this approach it is considered that a 'fair and reasonable' fee will be set. The recommended fees, have been benchmarked against the fees that other local authorities are charging. The approach set out in this report is similar to other Local Authorities but sits towards the lower end of the cost recovery regimes currently published.

2.12 Based on this model and using the same data set out in Appendix 1 it is anticipated that the amount would be in the region of £1,000 to £2,000 per Agreement with an average of 2-5 covenants/obligations.

2.13 The revised CIL Regulations (September 2019) also requires local planning authorities publish an annual 'Infrastructure Funding Statements'. This obliges local planning authorities to set out all the Planning Obligations entered into, and the extent of financial contributions received and spent during the previous 12 months. This information has to be made publicly available online by all local authorities with the first Infrastructure Funding Statement due to be published by December 2020.

2.14 It is proposed that the charging regime for monitoring s106 Obligations is reviewed as part of the annual update of the Annual Infrastructure Funding Statement. By doing this it will ensure that the fees collected reflect the true monitoring costs.

### **3 RISK ASSESSMENT**

#### **3.1 Legal**

This report presents a proposed charging schedule for the monitoring of S106 obligations and by seeking member approval for the fees, offers transparency and integrity to the development industry. The legal risk is therefore low. Publication of the report supports the District Council's transparency agenda.

#### **3.2 Financial**

The report sets out the approach for collecting monitoring fees as part of S106 obligations. The financial risk arising from this report is assessed as low.

### **4 OTHER CONSIDERATIONS**

In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

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### **5 CONTACT INFORMATION**

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## **6 BACKGROUND PAPERS**

- The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019, Regulation 122.
- Technical Consultation on draft regulations to reform developer contributions, June 2019

## **7 ATTACHMENTS**

**Appendix 1:** S106 Monitoring Fee Modelling of Historic Agreements