

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 03 July 2023

Portfolio:	Planning and Development
Subject:	The payment of monitoring fees in association with planning obligations
Report of:	Director of Planning and Regeneration
Corporate Priorities:	A dynamic, prudent and progressive Council

Purpose:

This report sets out a proposal for developers to pay a fee to the Council for monitoring obligations contained within planning obligations (Section 106 legal agreements).

Executive summary:

When planning permission is granted, especially for larger developments, they are often subject to a planning obligation. A planning obligation is a legal agreement, typically between the Council and a landowner. Planning obligations secure a wide range of matters which include requiring the payment of financial contributions or requiring the provision of facilities or infrastructure on and/or off-site.

The Council monitors the requirements of all planning obligations to ensure that the obligations contained therein are fulfilled to required timescales. There is an ongoing requirement on the Council to monitor all financial contributions collected, how they are spent and to publish an Annual Statement setting out this information.

The cost of monitoring planning obligations is borne by Fareham Borough Council at the present time. The Government advice is clear that Councils can charge a fee to cover their costs of monitoring planning obligations. Many local authorities in South Hampshire charge a fee to carry out such monitoring.

This report sets out proposals for charging a monitoring fee for planning obligations.

Recommendation:

It is recommended that the Executive approves the introduction of a monitoring fee of £500 for:

- (a) each type of obligation (i.e. head of term, financial and non-financial); and
- (b) each obligation (i.e. covenant, restriction or requirement) contained within the planning obligation, as set out in paragraphs 14-16 of the Executive Briefing Paper, with effect from 1 August 2023.

Reason:

The proposal will enable the Council to recover its costs of monitoring planning obligations. This approach is consistent with Government guidance.

Cost of proposals:

The proposals will reduce the cost to this Council of monitoring planning obligations to ensure they have been complied with.

Background papers: None

Reference papers: None

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Executive Briefing Paper

Date:	03 July 2023
Subject:	The payment of monitoring fees in association with planning obligations
Briefing by:	Director of Planning and Regeneration
Portfolio:	Planning and Development

INTRODUCTION

1. When planning permission is granted for new development (particularly new housing or major proposals) the applicant is often required to enter into a planning obligation (commonly referred to as 'Section 106', 'S106' as well as a planning legal agreement). Section 106 is the relevant section of the Town and Country Planning Act 1990 which gives local planning authorities the power to enter into planning obligations.
2. Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Mitigation can take many forms including:
 - a financial contribution which is pooled with other financial contributions to deliver off-site mitigation;
 - provision of land or facilities on a development site in a particular way by a specified timescale (e.g. the provision on-site of an equipped play area before 50 dwellings are occupied);
 - a financial contribution for the future ongoing maintenance of on-site facilities;
 - Provision of off-site infrastructure by a specified timescale (e.g. providing a footpath link across adjacent land before 100 dwellings are occupied).
3. Each planning obligation can contain a number of individual 'obligations' which the party implementing a development must meet (each of the four bullet points listed at paragraph 2 above for example represents an 'obligation' placed on a developer). Furthermore, each contribution may be broken into phased payment with each payment requiring monitoring or there may be a number of covenants, restrictions and requirements sought in connection with each individual obligation, with each one requiring separate monitoring. Planning obligations run with the land, are legally binding and enforceable. Whilst the onus is on developers to ensure they meet all the requirements contained within the planning obligations, the Council separately monitors the requirements of each planning obligation.
4. The Council is also under a duty to annually report information on the monetary and non-monetary contributions sought and received from developers for the provision of infrastructure to support development in Fareham. This is set out in the Council's Infrastructure Funding Statement.

5. The following report sets out proposals for introducing a fee for monitoring and reporting on planning obligations.

THE PRINCIPLE OF INTRODUCING A MONITORING FEE

6. Through the advice contained within the national 'Planning Practice Guidance', the Government position is as follows:

'Authorities can 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. Monitoring fees should not be sought retrospectively for historic agreements.'

'Fees could be a fixed percentage of the total value of the section 106 agreement or individual obligation; or could be a fixed monetary amount per agreement obligation (for example, for in-kind contributions). Authorities may decide to set fees using other methods. However, in all cases, monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. Authorities could consider setting a cap to ensure that any fees are not excessive. Authorities must report on monitoring fees in their infrastructure funding statements.'

7. Historically, other LPAs have sought monitoring fees in their planning obligations, secured under contract and custom. Recently, the Government has introduced provisions into the Community Infrastructure Levy Regulations 2010 which recognise that payments of monitoring fees can be secured as planning obligations.
8. The Council does not currently have a published set of monitoring fees which it applies to all developments. As a result, the cost of monitoring and reporting on planning obligations is borne by this Council.

WHAT DOES THE MONITORING OF PLANNING OBLIGATIONS INVOLVE?

9. The monitoring of planning obligations is primarily undertaken by the Development Management Service. The spending of financial contributions is monitored by Finance working with the relevant Service to which the contribution relates. The reporting and publishing of information relating to the Council's collection and expenditure of developer contributions is undertaken by the Planning Strategy Service working closely with Finance.
10. From start to finish, the process can involve many officers across the Council and can therefore be resource intensive. The monitoring of planning obligations involves:
 - Recording the details of all the planning obligations within the Council's databases;
 - Recording the triggers for all obligations within the Council's databases;
 - Monitoring the progress of the development to identify when contributions are due to be paid (this includes site visits to monitor development progress);
 - Monitoring the progress of the development to ensure infrastructure/ facilities have been delivered on site in accordance with the timescales required by the planning obligation;
 - Invoicing for financial contributions and ensuring they are paid in line with the obligation;

- Recording how financial contributions are spent by the Borough Council;
- Ensuring details which are required to be submitted under the planning obligation have been submitted; and
- Publishing detailed information on the collection and spending of financial contributions in spreadsheets and the Infrastructure Funding Statement on the Council's website annually.

WHAT ARE OTHER HAMPSHIRE AUTHORITIES DOING?

11. If this Council is to introduce monitoring fees, it is required to set the fees in line with the broad guidance set out in the Planning Practice Guidance quoted earlier in this report.
12. Officers have been undertaking assessments of the amount of time currently spent on the monitoring and reporting on planning obligations. In addition, a review has been undertaken of the charges applied by other local authorities within Hampshire. A summary of those charges is set out below:

Local Authority	Financial obligation	Non-financial obligation
Gosport Borough Council	5% of cost of planning obligation. Total monitoring fee capped at £10,000 per each legal agreement	No charge
Portsmouth City Council	£310 for each obligation with a commencement trigger £620 for each obligation with a future trigger	£620
Havant Borough Council	5% of cost per obligation. Total monitoring fee capped at £12,205 per each legal agreement	£846 per each obligation
South Downs National Park	£440 per each obligation	£440 per each obligation
Hampshire County Council	£500 per each obligation. Total monitoring fee capped at £10,000 per each legal agreement	£500 per each obligation
Southampton City Council	£289 per each obligation	£289 per each obligation
	No distinction made between financial and non-financial obligations	
Eastleigh Borough Council	Fixed charges based on scale of development. Ranges from a £500 monitoring fee for a residential scheme of 1-3 dwellings up to £10,000 for a scheme of 500+ dwellings.	
New Forest National Park	Charge based on scale of development. Ranges from £295 per each obligation for a residential scheme of 1-5 dwellings to £531 per each obligation for a scheme of 50+ dwellings. Total monitoring fee cap per legal agreement agreed on a case-by-case basis.	

13. There are a wide range of approaches towards monitoring fees amongst the Hampshire authorities. In light of the level of work involved and the number of Officers and Services

involved, it is considered appropriate to secure a monitoring fee for both financial and non-financial obligations.

14. Based on the amount of Officer time spent across Council Services monitoring and reporting on planning obligations, it is recommended that a monitoring fee of £500 is introduced for (a) each type of obligation i.e. head of term (financial and non-financial) and (b) for each obligation i.e. covenant, restriction or requirement contained within the planning obligation. The level of the monitoring fee should be index linked to RPI and updated every April.
15. The monitoring fee will be secured as part of the Section 106 planning obligation and would be payable upon execution of the planning obligation. The Council would similarly expect the relevant monitoring fees to be included in any planning obligation, whether by way of agreement or unilateral undertaking presented in connection with any planning appeal.
16. The fee for monitoring financial obligations is proposed to be capped at £10,000 per agreement/unilateral undertaking. It is not considered appropriate to introduce a cap for non-financial obligations due to their nature and content.
17. There are also instances where obligations require further details to be submitted to and approved by the Council. Where there is a requirement for further details to be submitted, it would be appropriate for the Council to recover its full costs for assessing and approving any such details. The fee for undertaking this work will need to be agreed on a case-by-case basis.
18. Lastly it is recommended that the following exception to the monitoring fee would apply:

any payment secured towards the Solent Recreation Mitigation Strategy or any subsequent scheme of a similar nature. The reason for this is that financial contributions secured to deliver the Strategy already contain an element towards monitoring contributions (which in turn is undertaken by other bodies, not Fareham Borough Council).

CONCLUSION

19. The approval of a monitoring fee enables the Authority to recover its costs for monitoring compliance with planning obligations within future Section 106 legal agreements. The fees would relate to the monitoring of both financial and non-financial obligations. In setting a proportionate and reasonable fee, the proposed fees have been benchmarked against those that other local planning authorities in Hampshire are charging.

RECOMMENDATION

20. That the Executive approve the introduction of a monitoring fee of £500 for (a) each type of obligation (i.e. head of term, financial and non-financial) and (b) for each obligation (i.e. covenant, restriction or requirement) contained within the planning obligation, as set out in paragraphs 14-16 of this Executive Briefing Paper, with effect from 1 August 2023.

Enquiries:

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