

Appendix C

Technical Note on the Monitoring of Planning Obligations

Background

1. Amended Community Infrastructure Levy (CIL) Regulations came into force on 1 September 2019 which confirm that a local planning authority may now lawfully charge a fee for monitoring planning obligations, provided it is fairly and reasonably related in scale and kind to the development and does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the related planning obligations.
2. The County Council primarily enters into section 106 agreements as Local Highway Authority (including in relation to Public Rights of Way); Local Education Authority; Adult Services Provider; and in respect of Countryside Services.
3. There is currently no coordinated process for the monitoring of section 106 agreements on behalf of the County Council. Any monitoring that takes place is done by individual teams across the organisation, and at the County Council's own expense.
4. The change in the CIL Regulations provides an opportunity for the County Council to introduce a planning obligations monitoring fee, put in place appropriate resources to proactively monitor agreements and ensure compliance with the obligations and payment of all financial contributions at the appropriate time.
5. The National Planning Practice Guidance states that '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.' A benchmarking review to consider what other local authorities are charging for monitoring of planning obligations highlighted a varied approach to this process in line with this guidance.
6. Most of the local planning authorities will also be seeking to introduce a monitoring fee for planning obligations and therefore it is important that, in addition to making sure the fee is proportionate and reasonable, the fee is set at a level that is not likely to significantly impact developers and therefore give rise to challenge. The County Council will only be charging a fee to monitor the obligations that it has specifically entered into, and not for those elements that another Local Planning Authority could charge a monitoring fee for. That will avoid any double counting of monitoring fees.

What does the monitoring of planning obligations involve?

7. The monitoring of financial obligations will involve:
 - a. recording the details of the section 106 agreement on an IT system;
 - b. highlighting the triggers for the obligations contained within the agreement;
 - c. monitoring the progress of the development in order to identify when obligations are due; and
 - d. invoicing for financial contributions (including any indexation) and ensuring they are paid at the appropriate time.
8. With respect to non-financial contributions, the monitoring proposed is expected to provide a framework within which colleagues across the organisation are notified when triggers are approaching in order that they can ensure that the obligations are complied with.

Setting the fee

9. In order to establish the reasonable cost of monitoring each planning obligation, an estimate was made of how many section 106 planning agreements the County Council enters into each year and how many obligations each agreement is likely to contain.
10. Data from legal services suggests that over the past 5 years the County Council has entered into an average of 86 section 106 agreements per year.
11. The Ministry for Housing Communities and Local Government carried out research into the incidence and value of planning obligations in March 2018 which suggested that the average number of planning obligations contained within a section 106 agreement is 2.56. This figure has been used in order to provide a robust assessment however it should be noted that Hampshire County Council is typically party to more complex legal agreements and therefore average number of obligations is likely to be more than this.
12. Based on the number of agreements and obligations expected to need monitoring per annum initially it is suggested that 1 Full Time Equivalent (FTE) post at an F grade be established to carry out the role.
13. Using this information the Economy, Transport and Environment charging calculator model was used to establish the likely cost of providing the monitoring service per annum, as set out in Table 1:

Table 1: Cost of carrying out the monitoring of planning obligations

Team	Grade	FTE	% Time Spent on Activity	Chargeable Days	Chargeable Hours	Cost
Senior Project Officer	F	1	100	213.70	1581.38	£83,313
Manager	G	1	10	21.37	158.14	£10,121
Grandparent Manager	I	1	2	4.23	31.33	£2,820
Other costs (IT etc.)						£10,000
Total						£106,254
Cost per transaction (2019/20) (based on 86 agreements per year)						£1,235.51
Cost per obligation (2019/20) (based on 2.56 obligations per transaction)						£482.62

14. This calculator suggests that the cost of monitoring each obligation amounts to £482.62 and therefore it is proposed that the fee be set at £500 per obligation initially, and subject to review after the first 12 months.
15. A benchmarking exercise has been carried out to compare this proposed fee level with other authorities currently charging a monitoring fee. Some authorities use a percentage of the value of the obligations to determine the fee (typically 5%), however this was discounted due to the significant value of the infrastructure that the County Council secures which would make the fee disproportionate to the monitoring required. Compared to those authorities that have set a fixed fee, the County Council proposed fee of £500 is considered comparable. A cap will be applied so that the maximum fee associated with any one agreement will be set at £10,000. Details of what other authorities charge can be found in Table 2.

Table 2: Benchmarking Planning Obligation Monitoring Fees

Authority	Non-Financial	Financial	Comments
Havant Borough Council	£693 per non-financial head of term	5% of cost per financial head of term	Monitoring fee capped at a max of £10,000 per application
South Downs National Park	£440 per eligible covenant	£440 per eligible covenant	Exemptions apply

Scarborough Borough Council	£500 per obligation	5% of all obligations up to £100,000 Fixed charge £250 - levied where the total is less than £5,000	Plus, an additional 2.5% of any amount exceeding £100,000
Plymouth City Council	£667 per obligation	£667 per obligation	First £1,000 to be paid on completion of the agreement. Payment should be made at signing. The remainder is normally due on commencement of works, however further trigger points may be agreed.
Guildford Borough Council	£750 per payment trigger	£750 per payment trigger	Increasing fee to £750 per payment trigger from 1 October 2019
Norfolk County Council	£500 per obligation on all schemes involving the phasing of payments.	£500 per obligation on all schemes involving the phasing of payments.	<i>Planning Obligations Standard September 2019</i> On more complex sites the charge will be levied at a rate of 1% of the County Council's total obligations up to a max of £10,000 per agreement.
Cambridge City Council	The management and administration charge will be 5% of the total contribution(s) (subject to a maximum charge of £50,000).	The management and administration charge will be 5% of the total contribution(s) (subject to a maximum charge of £50,000).	Large sites - To be considered on a case by case basis. May be agreed by negotiation, subject to an additional management and administration charge. The default position for administration charge will be 5% of total contribution(s).
Mid Sussex District Council	For developments up to 15 dwellings - £150 per obligation For larger developments between 16 and 100 dwellings, and including commercial developments - £450 per obligation For very large developments over 100 dwellings - £500		The 2019/2020 fees for monitoring planning obligations are as follows:

	per obligation. Where an obligation is based on triggers, the fee will be £500 per trigger.		
Essex County Council	Where a contribution is taken via agreement, up to 2% (to a maximum of £2,000) of each appropriate amount may at the discretion of the County Council be expended for the purpose of monitoring compliance with the agreement.	Where a contribution is taken via agreement, up to 2% (to a maximum of £2,000) of each appropriate amount may at the discretion of the County Council be expended for the purpose of monitoring compliance with the agreement.	The Essex County Council Developers' Guide to Infrastructure Contributions Updated 2016

Conclusion

16. In order for the County Council to commence monitoring planning obligations in a coordinated and proactive way, it is proposed to introduce a fee of £500 per each planning obligation contained within a section 106 agreement, subject to a capped maximum fee of £10,000 per agreement. This fee will be introduced as of 1 October 2020 for all agreements that the County Council enter into which contain planning obligations.