

NORTH LINCOLNSHIRE COUNCIL

**BUSINESS, INNOVATION, EMPLOYMENT AND SKILLS
CABINET MEMBER**

SECTION 106 AGREEMENT MONITORING CHARGE POLICY

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To approve the Section 106 Agreement Monitoring Charge Policy.
- 1.2 The policy will provide guidance for officers with regard to charging developers for the monitoring of compliance with planning obligations, the need for which is over and above the general monitoring requirements of such agreements.

2. BACKGROUND INFORMATION

- 2.1 The monitoring of Section 106 (S106) Agreements is a complex and time consuming process. The Planning Obligations Practice Guidance published by the Department for Communities and Local Government (DCLG) and Secretary of State's general policy Circular 5/05 (paragraph B50) both make it clear that monitoring is an essential part of the development management process and that they should be enforced in an efficient and transparent way.
- 2.2 Some agreements require the monitoring of physical or financial obligations or both. Most require monitoring monthly, annually and in some cases in perpetuity. This is where great consideration is required to the amount of officer time incurred as well as site travelling costs.
- 2.3 The council currently enters into a number of S106 Agreements each year as part of the determination of planning applications. Currently we hold around 166 agreements in total (11 pre NLC, 155 NLC) with an average of 8 agreements signed per year since 1996. Approximately 70 of those agreements are still either live or still able to progress. There are approximately 25 section S106 agreements in draft form or sites that have the potential to provide developer contributions. It is worth noting that all of the above agreements could be subject to modification/variation. This would result in a requirement to monitor additional agreements.
- 2.4 Currently, the developer/applicant is required to pay the legal services costs incurred by the council in preparing and executing the S106 Agreement. However, it does not require a fee payable as part of the S106 Agreement to enable the council to assist in covering its costs in the monitoring of agreements.

- 2.5 Section 106 Agreements can include a number of clauses requiring the developer to, amongst other things:
- Pay monies towards infrastructure and community requirements e.g. education contributions and environmental contributions.
 - Provide land for infrastructure uses e.g. public open space provision or affordable housing provisions.
- 2.6 As part of these requirements there are often “trigger points” during the development which, when reached, require the payment of a percentage of the monies or other actions.

3. OPTION FOR CONSIDERATION

- 3.1 The Cabinet Member is asked to approve the Section 106 Agreement Monitoring Charge Policy.

4. ANALYSIS OF OPTION

- 4.1 It is appropriate to consider the implementation of a monitoring charge within any agreement that, after assessment, requires significant monitoring to ensure that all planning obligations are met.
- 4.2 The timing of introducing the charge sooner rather than later is particularly important with regard to the imminent signing of the Lucent S106 agreement and the proposed drafting of the Maltgrade application and S106 agreement for the Lincolnshire Lakes development. The total cost of developer obligations contained within the Lucent agreement amounts to almost £60million. The agreement will require close monitoring/management to ensure payments and provisions are made correctly and efficiently. The council has received the second batch of significant planning applications connected with the Lincolnshire Lakes scheme alongside other large scale development schemes in North Lincolnshire which will no doubt result in the production of more planning agreements.
- 4.3 Bearing in mind the recent case law to come out of a planning appeal case in Oxfordshire, the council cannot impose a fixed charge across all agreements. Each agreement requires assessment on its own merits, taking account of the amount of additional work the council will need to undertake to ensure that the obligations are complied with.
- 4.4 The obligation must concern the development, the use of the land and be necessary not just desirable.
- 4.5 Officers have devised a calculation method taking into consideration the number of obligations within a development, the number of hours of work required, any associated travel costs and the number of years the development is expected to require monitoring for. It is felt the following method both benefits the council and the developer in terms of a reasonable charge that allows the council to ensure the necessary amount of monitoring to guarantee provisions and contributions are made at the appropriate time.

Officer time calculation:-

Physical Monitoring Charge (for example monitoring of the provision of a playground on a site)

£14 (Grade 7 officer cost) + £5 (travel cost) x 12 (monthly monitors) = £228 per clause per year

£228 x No. of years of development (period of monitor) x no. of clauses = Physical monitoring charge

Financial Monitoring Charge (for example monitoring that an education contribution is made)

£14 (Grade 7 officer cost) x 12 hours (1 hour per month) = £168 per clause per year

£168 x No. of years of development (period of monitor) x no. of clauses = Financial monitoring charge

Monitoring Charge = Physical Monitoring Charge + Financial Monitoring Charge

- 4.6 Using this method the council is able to provide a clear and auditable trail to the developer/contributor as to how it has calculated the monitoring fee payable. It accurately considers how much officer time is required (including travel costs) to manage the individual agreement ensuring that the fee is spent accordingly.
- 4.7 There would be no concern for over or under charging the developer as the monitoring charge will have been specifically calculated to that individual Section 106 agreement ensuring that the planning agreement is accurate.
- 4.8 At some point in the future the council might introduce the Community Infrastructure Levy (CIL). At that time this monitoring fee will need further review.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 **Financial Implications** - This proposal will provide a revenue income to the Council to help offset administrative costs in monitoring the agreements.
- 5.2 **Legal Implications** -
 - 5.2.1 Under section 106(1) of the Town and Country Planning Act 1990 the council 'may require a sum or sums to be paid to it on a specified date or dates or periodically', so in general terms the council has the power to introduce a charge as proposed in this report. Local authorities must however have regard to the Secretary of State's general policy (Circular 05/05) that planning obligations, including those that require payments are directly related to the development proposed and are fairly and reasonably related in scale (Paras B8 and B9). As such, the level of any fee must be justifiable in relation to the development.

5.2.2 Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), does place limitations on the use of planning obligations. One of the legal requirements is that such obligations are 'necessary to make the development acceptable in planning terms'. The Council must ensure that the factual context be required in each case of charging, to establish whether the regulation 122 necessity test has indeed been satisfied.

5.3 **IT Implications** - The council has recently introduced a new planning system with full implementation to follow shortly in the early autumn. The system will provide a detailed recording element through which all Section 106 Agreements and eventually the CIL will be monitored and managed. It is hoped that this system will lead to a reduction in the average time spent monitoring each obligation. Therefore there could be an option to reduce the fee payable once this system is fully established.

5.4 There are no additional resource implications requiring consideration by the Cabinet Member.

6. OUTCOME OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

6.1 Not applicable

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTEREST DECLARED

7.1 Consultation has taken place with legal officers within the council. Any comments received were taken into account in preparing the policy.

8. RECOMMENDATIONS

8.1 That the Cabinet Member approves the S106 Agreement Monitoring Charge Policy.

8.2 That a quarterly S106 update report is provided to the Cabinet Member updating on planning agreements and obligations secured by the council, including the amount of financial contributions and site provisions received from developers.

DIRECTOR OF PLACES

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Background Papers used in the preparation of this report: None