

Section 106 Administration Fee Proposal (19 July 2022)

Recommendation

Application type	Fee
Commercial agreement	£700
Residential development	£2,200
Per each obligation that requires certification by the Council (i.e. landscaping)	£500
Strategic sites (200+)	Negotiation
Deed of variation or supplemental agreement	£250

Background

To ensure the timely payment of contributions and provision of onsite infrastructure, many local planning authorities seek contributions towards the cost of the monitoring of section 106 agreements. However, a High Court Judgement (2015) determined that on straight forward matters (i.e. one off financial payments), securing a s106 monitoring fee would not be lawful.

Whereas South Cambridgeshire District Council continued to secure monitoring contributions many Councils including Cambridge City took the decision to cease seeking monitoring contributions altogether.

New national policy

In September 2019, the CIL Regulations were updated introducing new regulatory requirements on local planning authorities to submit a data return to Government¹ and separately produce an Infrastructure Funding Statement. At the same time, the Planning Guidance² was updated confirming that monitoring fees were permissible.

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.

Considerations for Greater Cambridge Shared Planning

In the last 5 years an average of 38 agreements are completed per annum. Around 12 supplemental agreements or deed of variation are also completed per annum.

	Cambridge	South Cambs	Total
2017/18	17	45	62
2018/19	14	26	40
2019/20	20	11	33
2020/21	10	16	26
2021/22	12	18	30

- The annual total cost of the Section 106 Team (comprising 2 x Section 106 Monitoring Officers and 1 x Section 106 Officer) is £137,000.
 - The cost of running monitoring software is £8,000 per annum or £200 per agreement.
- Monitoring activity

¹ <https://www.gov.uk/guidance/publish-your-developer-contributions-data>

² <https://www.gov.uk/guidance/planning-obligations>

The work associated with the administration of a standard residential agreement is:

Activity	Time (mins)
Document redaction and publication	60
Database input	300
Site visits	240
Co-ordination of data submissions (i.e. affordable and/or open schemes etc)	180
Invoice generation with indexation calculation	180
Solicitor enquiries	300
Transfer of funds to service providers (inc Parish Councils)	180
Data reporting	240
TOTAL	28 hrs
Monitoring Fee	£1,988

Monitoring contributions secured for live strategic sites

Development	No. dwellings	Monitoring fee	Annual fee (min 10 years)
Northstowe Phase 2	3,500	£60,000	£6,000
Northstowe Phase 3a	4,000	£90,000	£4,500
Northstowe Phase 3b	1,000	£25,000	£2,500
Waterbeach Phase 1	6,500	£150,000	£7,500
Waterbeach Phase 2	4,500	£150,000	£7,500
Cambourne West	2,350	£15,500	£500
Marleigh	1,300	£75,000	£7,500
Land North Cherry Hinton	1,200	£50,000	£5,000

Around £41,000 is to be received per year over the next 10 years to covering the administration of Section 106 agreements for strategic sites.

Options

The easiest solution is for developments in South Cambridgeshire to continue to pay contributions based on a bespoke approach and for the City Council to reintroduce the Monitoring Fee based on either the Planning Obligations SPD (March 2010) or Draft Planning Obligations SPD (June 2014).

However, the PPG is clear that “monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring”. It is hard to see that a monitoring fee based on a fixed percentage of the total value of the section 106 agreement or individual obligation relates consistently to the actual cost of monitoring. Adopting a different approach across the 2 Councils may also undermine the approach adopted by the other including at appeal.

Taking that key criterion into consideration it is recommended that a standard monitoring fee be introduced that is directly representative of the tasks and activities undertaken.

Conclusion of Section 106 administration fee

- A fee of £700 for agreements with no payment of contributions, long term monitoring requirement or solicitor enquiries.
- A fee of £2,200 is recommended per standard residential development comprising affordable housing, open space and contributions.
- A fee of £500 where the Council is required to confirm compliance of each obligation
- Monitoring fees associated with strategic developments which should continue to be negotiated on a case by case basis.
- A fee of £250 per each deed of variation or supplemental agreement

Around £111,000 can be expected to be received each year to cover the officer costs associated with the administration and monitoring of section 106 agreements with a further £8,000 for the cost of software. This is made up of:

- Non-strategic developments - £70,000
- Strategic developments - £41,000
- Software - £8,000

Whilst the income represents 81% of the costs associated with the team, the team is also responsible for negotiating contributions on behalf of Council departments and third party organisations including Parish Councils the cost of which cannot be attributed to Section 106 administration.

Finally, exclusive from the above is an additional fee of £500 to payable by the developer where the Council is required to provide a certification of compliance in relation to certain types of infrastructure provided on the ground (e.g. in relation to landscaping matters).