

NOTICE OF DELEGATION OF DECISION TO CABINET MEMBER BY STRONG LEADER

Section 15(4) of the Local Government Act 2000, the senior executive member may discharge any of the functions that are the responsibility of the Cabinet or may arrange for them to be discharged by another member of the Cabinet or Officer. On 1st December 2010, the Council adopted the Strong Leader Model for Corporate Governance 2011 as required under Part 3 of The Local Government and Public Involvement in Health Act 2007 (The 2007 Act).

I Helen Dyke, as Strong Leader, delegate the decision to approve the introduction of a charging regime for s106 monitoring fees to the Cabinet Member detailed below:

Cabinet Member- Helen Dyke

Dated: 6th October 2022

Signed:

A handwritten signature in black ink that reads "H.E. Dyke". The letters are written in a cursive, slightly slanted style.

Leader of the Council

NOTICE OF DECISION OF CABINET MEMBER

Pursuant Section 15(4) of the Local Government Act 2000, as amended by section 63 of the Local Government and Public Involvement in Health Act 2007, the senior executive member may discharge any of the functions that are the responsibility of the Cabinet or may arrange for them to be discharged by another member of the Cabinet or Officer. On 1st December 2010, the Council adopted the Strong Leader Model for Corporate Governance 2011 as required under Part 3 of The Local Government and Public Involvement in Health Act 2007 (The 2007 Act).

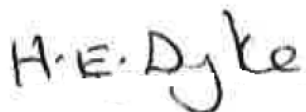
In accordance with the authority delegated to me by the Leader, I have made the following decision:

Subject	Decision	Reason for decision	Date for Decision to be taken
S106 Monitoring Fees	To introduce a charging regime in relation to monitoring fees for s106 agreements.	The charging regime will provide an additional resource to support the team in establishing and monitoring s106 money and obligations. This has been permitted through the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019'	6th October 2022

I confirm that the appropriate statutory officer consultation has taken place with regard to this decision.

Dated: 6th October 2022

Signed:



Councillor: Helen Dyke
Cabinet Member

Strong Leader Report

S.106 Legal Agreements – Monitoring Fees

OPEN	
CABINET MEMBER:	The Leader of the Council and Cabinet Member for Economic Regeneration, Planning and Localism
RESPONSIBLE OFFICER:	Head of Strategic Growth
CONTACT OFFICER:	Helen Hawkes ext 2517
APPENDICES:	Appendix 1 - s.106 Monitoring Fee Schedule

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to agree the Section 106 Monitoring Fee Policy to enable the Planning team to introduce monitoring fees to help cover the cost of monitoring and reporting on planning obligations, excluding those requested by Worcestershire County Council (Highway Authority) and Worcestershire Children First.

2. RECOMMENDATION

- 2.1 **The Leader of the Council and Cabinet Member for Economic Regeneration, Planning and Localism is asked to decide that:**

The monitoring fee regime shown at appendix one is introduced from 1 November 2022.

3. BACKGROUND

- 3.1 Planning obligations are legal obligations 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.
- 3.2 In 2019, the Government acknowledged the administrative burden monitoring Section 106 agreements can have on local planning authorities. It proposed 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 in 'The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019' which became law on 1 September 2019, Regulation 10 states under the sub-heading 'Fees for monitoring planning obligations' that such monitoring fees can be sought where;

- 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.
- 3.3 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 what 'fair and reasonable' represents in a particular circumstance. Until this has been provided, local planning authorities are required to establish their own charging regime and to justify the monitoring fees for Section 106 agreements. It was felt that it was reasonable at the time to wait for guidance, however this guidance has still not been published. Given the number and size of agreements that are in the pipeline, it is now felt that this is an appropriate time to bring in monitoring fees.
- 3.4 There are two aspects to monitoring Section 106 legal agreements:
1. Financial monitoring and management of the monies associated with receiving developer contributions towards local infrastructure and mitigation measures; and
 2. Physical monitoring of compliance with the terms of the agreement, e.g. erection of buildings and infrastructure.
- 3.5 The monitoring of the receipt of financial developer contributions secured through Section 106 agreements are currently undertaken primarily by Planning Enforcement Officer (who works within the Planning Enforcement team) and Senior Planning Policy Officer. This includes time taken on the following tasks:
- Establish what elements of the S106 agreement require monitoring
 - Inputting the agreement of the S106 onto the database require monitoring
 - Inputting the agreement onto the database, including each individual planning obligation (financial and non-financial)
 - Prepare a monitoring worksheet for each agreement
 - At each trigger point, liaising with the case officer and/or the developer and checking building control records to see whether the trigger has been reached and if an obligation has been met
 - Meeting the requirement under the CIL Regulations 2019 to prepare and publish an annual Infrastructure Funding Statement (IFS) by December each year (cost can be recovered via monitoring fee)
 - Responding to enquiries from developers and third parties about the compliance of planning obligations either financial or non-financial
- 3.6 There are currently approximately 200 live S106 agreements on the system and the adoption of the Local Plan in April 2022 has made provision for a number of site

allocations for housing to come forward in the district and as such, the monitoring workload is likely to increase further.

4. The Proposal

- 4.1 It is proposed that the Wyre Forest makes use of the provisions introduced by the updated CIL Regulations in September 2019 to secure a proportionate fee for monitoring to support the Authority's increased resource requirements.
- 4.2 The proposed monitoring fee schedule would come into effect on the 1st November 2022 and would be applied to all s.106 Agreements from this date and would need to be payable on commencement of development.
- 4.3 The proposed monitoring fee schedule will be reviewed on an annual basis as part of the Annual Fees and Charges to ensure that the fees collected reflect the true monitoring costs. The first review will take place in April 2024, to allow an appropriate amount of time for the initial fees to bed in.

5. FINANCIAL IMPLICATIONS

- 5.1 The costs of adopting the s.106 Monitoring Fee Policy mostly relate to staff time and with the adoption of the Local Plan and the two large strategic sites this is becoming more onerous. It is anticipated that the resource generated from the monitoring fee will be made available to create capacity through increased administrative staffing to support the process, freeing up officer time to deal with increased planning and enforcement caseloads and policy work.

6. LEGAL AND POLICY IMPLICATIONS

- 6.1 The ability for Local Planning Authorities to charge monitoring fees is enshrined in the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019' which became law on 1 September 2019. Regulation 10 states under the sub-heading 'Fees for monitoring planning obligations' that such monitoring fees can be charged.

7. RISK MANAGEMENT

- 7.1 Not applicable.

8. CONCLUSION

- 8.1 The Council considers it is necessary to impose a s.106 Monitoring Fee Policy to help cover the cost of monitoring and reporting on planning obligations. This fee will be charged from 1 November and will be used to support the administrative burden incurred from monitoring planning obligations.

9. CONSULTEES

- 9.1 CLT, Principal Solicitor and the Planning Manager.

10. BACKGROUND PAPERS

- 10.1 Not applicable

APPENDIX 1 – s.106 Monitoring Fee Schedule

Amount of Development	Fee
Small Developments (less than £1,500 contributions)	£250
Minor Developments (less than 10 dwellings)	£1,500 (up to 5 obligations) £500 per trigger for each additional obligation Monitoring fee capped at £2,500
Major Developments (10-199 dwellings)	£2,500 (up to 5 obligations) £500 per trigger for each additional obligation Monitoring fee capped at £5,000
Major Development (200-500 dwellings)	£3,500 (up to 5 obligations) £500 per trigger for each additional obligation Monitoring fee capped at £10,000
Large Scale Development (500+ dwellings)	£4,500 (up to 5 obligation) £500 per trigger for each additional obligation Monitoring fee capped at £10,000

Regulation 122 of Community Infrastructure Levy Regulations 2010 (as amended)