

Report of	Meeting	Date
Director (Planning and Property) (Introduced by Executive Member (Planning and Development))	Executive Cabinet	Thursday 14 th November 2024

Charging a s106 monitoring fee

Is this report confidential?	No
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Is this decision key?	Yes
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Savings or expenditure amounting to greater than £100,000	Significant impact on 2 or more council wards
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Purpose of the Report

1. For members to consider and approve the addition of a monitoring fee for Section 106 planning obligations agreements into the Council's upcoming Fee and Charges schedule.

Recommendations to Cabinet

2. To approve the inclusion of a S106 monitoring fee in the upcoming annual review of Fees and Charges Schedule.

Reasons for recommendations

3. The regulations allow us to charge for the monitoring of Section 106 agreements and payments. The income will assist with the Council's statutory obligations on monitoring and reporting.

Other options considered and rejected

4. The Council currently does not charge. There is an option to charge which is therefore the only alternative option.

Corporate priorities

5. The report relates to the following corporate priorities:

Housing where residents can live well	A green and sustainable borough
An enterprising economy with vibrant local centres in urban and rural areas	Healthy, safe and engaged communities

Background to the report

6. Section 106 agreements are commonly signed with developers to deliver funds and activity to make development acceptable. These 'planning obligations' may be funds for a play area improvement, or an activity such as producing a travel plan.
7. The relevant regulations (the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019) allow Local Authorities to charge a monitoring fee through s106 planning obligations, to cover the cost of the monitoring and reporting on delivery of that s106 obligation as described above.
8. Many local planning authorities do charge a fee, but currently Chorley Council does not.

The proposal

9. The Council's Planning Obligation team, consists of two posts to monitor and report on both historic and live Section 106 agreements, amongst other duties. Section 106 fees may be used to fund specific infrastructure, such as play area improvements and as such, alongside our finance teams, it is important to monitor the income and the expenditure. Additionally, there is a legal requirement to produce an annual Infrastructure Funding Statement specifying what has been received, spent and future plans for expenditure.
10. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation. For example, many S106s require affordable homes to be retained as affordable in perpetuity -this requires recourse across a large number of planning applications and associated developments.
11. Given that the monitoring and reporting on S106 income requires staff time, from within the Planning Obligations team, it is suggested that monitoring fees are added to new S106 agreements. Monitoring fees should not be sought retrospectively for historic agreements. It is also worth noting that the Council's legal team already charge for their involvement in drawing up the agreements.
12. The regulations allow monitoring fees to be either a fixed percentage of the total value of the section 106 agreement or individual obligation; or they could be a fixed monetary amount per agreement obligation; or 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.

13. It is suggested that monitoring fees start to be added to any s106 agreements associated with planning applications in Chorley. The fees set out below are considered to be proportionate, in line with other Lancashire authorities and will contribute to the Council's reasonable costs of monitoring each obligation.

- 2% of application fee across each agreement
- An additional 2% of each payment instalment (indexed value) for any commuted sums
- An additional £1,000 per development site for any land contribution or on-site affordable housing provision
- £350 per trigger/clause

14. These fees have been benchmarked with an analysis of practice amongst other Lancashire/ Councils (see table 1). The proposed fees are in line and therefore, it is not expected that significant pushback will be received from applicants.

Council	Flat fee	Trigger	Commuted sum	Land contribution or on-site affordable housing	Annual amount
Fylde		£300 per trigger			c. £33k
Blackburn with Darwen	1% of application fee	£350 per trigger	1% of each payment instalment	£1000 per development site	c. £9k
Wyre	No information				£2-2.5k
West Lancs	No information				
Hyndburn	No information				
Preston	Only for employment and skills monitoring				
Blackpool	No charge				
Rosendale			1% of each payment instalment	£1,173 per development site (or other obligation)	No figure provided
Lancaster City Council	No charge				No

Table 1. Evidence of monitoring fees charged by other Lancashire Councils.

15. With the upcoming review of fees and charges, it is proposed that, upon approval, these fees are added to that documentation and therefore will apply after those schedules are approved by the Council. This means that the monitoring fees will be reviewed annually to reflect up-to-date costs (NB. Finance colleagues advise this only relates to the set fees, not the percentage). Therefore, the changes will come into effect when the revised Fees and Charges schedules are approved, likely to be January 2025.

16. To clarify, the fee will be added to the s106 requirements, rather than a top slice of the receipt (as is the case in CIL). In the short term, additional monitoring fees associated with biodiversity net gain may also be required but this will be the subject of a separate decision.
17. In terms of potential income, calculations based on the proposed rates and recent levels of S106 income reported in the Councils' Infrastructure Funding Statement, the projected income varies between £6,500 to £37,000 per year. It is proposed that the level of income will be reviewed after the first year with a view to setting an income budget for 2026/27. The income must be linked with the reasonable costs of administering and monitoring S106 and the Council will need to be transparent about this expenditure. Suggestions for expenditure including staffing, training and the costs of digital software to improve our recording and reporting S106 spend.
18. Given that the S106 contributions can relate to the provision of play areas, open spaces, affordable homes and the Low Cost Home Ownership Scheme, the outcome is better monitoring and reporting of contributions, but it is recognised that some of this work touches on the work of other services outside planning.

Climate change and air quality

19. The work noted in this report does not impact the climate change and sustainability targets of the Council's Green Agenda and all environmental considerations are in place.

Equality and diversity

20. There are no equality and diversity considerations associated with this decision. The outcome will be better monitoring on developer contributions to infrastructure across the whole of the Borough.

Risk

21. The only potential risk is push back from developers. The Council is not legally entitled to refuse to sign a S106 agreement without the monitoring fee, if the developer were to object. However, this is considered a low level risk in terms of likelihood given that monitoring fees are the norm across the country (even though it does not appear to be the norm in Lancashire).

Comments of the Statutory Finance Officer

22. This report proposes an extension of fees to be charged alongside S.106 agreements. As per point 17 this figure is difficult to quantify given the variable nature of agreement but it will be monitored and appropriate budgets set to reflect the income received.

Comments of the Monitoring Officer

23. Regulation 10 of the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 states 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.

24. Monitoring fees for Section 106 agreements can be secured by way of a covenant in the Section 106 agreement itself. Fees should be payable at the same time as any legal costs or on execution of the legal agreement. A transparent overview of fees should also be made available to the public, which is understood will be adopted as part of the fees and charges schedule.

Background documents

There are no background papers to this report

Appendices

None

Report Author:	Email:	Telephone:	Date:
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This decision will come into force and may be implemented five working days after its publication date, subject to being called in in accordance with the Council's Constitution.