

Cabinet

28 January 2025

Planning Obligation Monitoring Fees

For Decision

Cabinet Member and Portfolio:

Cllr S Bartlett, Planning and Emergency Planning

Local Councillor(s):

All Councillors

Executive Director:

J Britton, Executive Director for Place Services

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Report Status: Public (the exemption paragraph is N/A)

Brief Summary:

Section 106 or s106 agreements (also known as Planning Obligations) are made by deed under Section 106 of the Town and Country Planning Act 1990. They allow a local planning authority to enter into a legally binding agreement with a landowner or developer to provide something or to restrict the use of a development. They relate to a person's land, binding whoever owns it and the obligation becomes a land charge.

S106 agreements and the planning obligations within them ensure that developers contribute towards the infrastructure that is required to make a development acceptable in planning terms. Although Dorset Council applies Community Infrastructure Levy in many areas, s106 agreements remain commonplace, and current monitoring, particularly in relation to the delivery of on-site obligations, requires improvement.

Planning authorities can charge a monitoring fee through planning obligations to cover the cost of monitoring and reporting on delivery of that s106 obligation.

Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation.

Fees could be a fixed percentage of the total value of the planning obligations or individual obligation; or could be a fixed monetary amount per planning 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.

This report recommends the introduction of s106 planning obligation monitoring fees for Dorset from the 1st April 2025. The approach follows a review of best practice and the collection of agreement data and staff costs relevant to Dorset. The recommended method is to apply a monitoring fee per planning obligation. The fee will be periodically reviewed to ensure the administrative costs associated with the monitoring and managing of developer contributions are covered by the fee.

Recommendation: That Dorset Council applies a monitoring fee to support the cost of monitoring and reporting on planning obligations. The fee would be based on the values and methodology outlined in this report and apply to all planning applications submitted from the 1st April 2025 which require a planning obligation.

Following implementation, delegation is given to the Executive Director for Place Services and anyone nominated by him in the scheme of nomination, to update the fee as necessary in consultation with the Cabinet Member for Planning and Emergency Planning.

Reason for Recommendation: To enable the implementation of charges to support the staffing resource in the monitoring and compliance of approved s106 Planning legal agreements.

1. Background

1.1 The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) allow Local Authorities to charge a fee in relation to the monitoring and reporting of planning obligations in s106 legal agreements. This provision exists to enable authorities to be adequately resourced.

- 1.2 With the exception of dedicated monitoring fees for some forms of habitat mitigation and biodiversity net gain, Dorset Council currently does not apply a general monitoring fee within planning legal agreements. Separately, Dorset Council charges site visit fees relating to mineral and waste development in accordance with nationally prescribed regulations. These fees support the monitoring of planning permissions, its conditions and other associated requirements which will continue to be undertaken alongside the new fees outlined in this report where applicable.
- 1.3 The effective monitoring of obligations requires considerable technical and administrative resource. At present, the Council does not have the capacity to proactively monitor non-financial obligations and it is not sustainable to continue the current approach in the long term. It is proposed that income derived from the monitoring fee would support the introduction of dedicated monitoring resources, taking responsibility for monitoring and reporting on-site infrastructure delivery, and enabling the planning authority to take early appropriate action where non-compliance occurs. The additional resource would support Development Management, Planning Enforcement and Spatial Planning.
- 1.4 While the CIL regulations allow for the introduction of monitoring fees, they do not specify how these fees should be set. Regulation 122(2A) simply indicates local authorities are permitted to charge a fee providing:
- (i) the sum to be paid fairly and reasonably relates in scale and kind to the development.
 - (ii) 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.

2. Setting a monitoring fee

- 2.1 To be able to comply with regulation, it is necessary to estimate the cost of s106 monitoring to the Council. Costs include both salaries of officers involved in s106 monitoring and peripheral costs. These costs fall within three main areas:
- (i) Administrative monitoring of s106 obligations that are recorded and managed through a back-office database system
 - (ii) Physical monitoring of developments on site for compliance with the requirements of the s106 obligation agreement, e.g. to assess

whether trigger points have been met, thereby requiring the payment of contributions, or to agree positioning and specification of infrastructure, such as play equipment, landscaping and open spaces.

- (iii) Financial monitoring and management of the monies associated with the receipt of developer contributions towards local infrastructure and mitigation measures.

2.2 To determine the method and level at which to set s106 monitoring fees for Dorset Council, several approaches have been considered including assessing methods used by other local planning authorities that already charge for monitoring. These methods include one or a combination of the following, and a summary is shown in appendix A.

- Setting a cost per agreement
- Setting a cost per obligation
- Setting a cost per financial contribution
- Setting a cost per non-financial contribution
- Setting a cost per affordable housing obligation.

2.3 The choice of method needs to suit the way in which contributions are collected in Dorset. As things stand, the use of planning obligations varies across Dorset. Where the Community Infrastructure Levy operates, s106 planning obligations are largely limited to securing affordable housing and site-specific infrastructure necessary to support the grant of planning permission. Planning obligations are used exclusively on some major housing allocations which are zero-rated from paying CIL. In North Dorset where CIL doesn't operate, planning obligations are used much more extensively on major planning applications (applications of 10 or more dwellings). Planning obligations often have different requirements and triggers, placing different demands for monitoring and demands on staff time to ensure that each requirement is fulfilled. Failure to monitor properly can result in delays in the delivery of development, leading to additional staff resources being used to resolve problems. Prolonged delays and problems can have a knock-on effect on the community.

2.4 The recommended approach is to establish a cost per planning obligation, as this best reflects the variation of development that is subject to legal agreement. The approach is evidenced by estimating the number of legal

agreements that will be entered into over a 12 month period, based on previous trend data and the hourly cost of monitoring the agreements.

- 2.5 On average over a three-year period, 61 legal agreements were completed annually for development in the Dorset Council area. Approximately half were related to major development and half were related to minor development. On average, each major application legal agreement had 6 planning obligations, and each minor application legal agreement had 1.5 obligations. The highest number of planning obligations recorded in a single agreement during that period was 21.
- 2.6 The hourly cost incorporated in the fee accounts for time that would be spent by Planning Officers in the Development Management Service, and CIL & Legal Agreement Officers in the Infrastructure & Delivery Team (Spatial Planning) over the course of the lifetime of the obligation.
- 2.7 The recommended approach distinguishes between major and minor planning applications and schemes involving simple s106 agreements and unilateral undertakings which involve no or single value financial contributions. This ensures that the monitoring fee is set proportionate to the complexity of the agreement and is both fair and reasonable.

| Type of agreement | | Cost per obligation |
|----------------------------|---------------------------|----------------------------|
| Major Planning application | | £835 |
| Minor Planning application | | £495 |
| Simple S106 / UU | Small single contribution | £92 |
| | No contribution | £37 |

- 2.8 It is proposed that the monitoring fee will be payable on completion of the legal agreement in order to ensure funding is available to resource the monitoring of agreements from the outset. It is not proposed to apply index linking to the monitoring fee. Instead, the fee will be monitored annually against the latest trend data of agreements received, and associated staff costs. It is proposed that delegation be given to the appropriate officer to agree and implement any changes in fee.
- 2.9 Income from applying the monitoring charge will vary year on year, as it will be driven by planning applications received and any planning

obligations required in connection with specific planning permissions. Based on the evidence of completing an average of 61 agreements in a 12-month period, the annual fee projection is approximately £160,000. This revenue would be used to fund dedicated resource within the Planning Service to proactively monitor and report on planning obligations.

3. Implementation

- 3.1 It is recognised that the timing of introducing a fee is an important consideration, for there are several agreements currently at various stages of development. Introducing a new obligation without sufficient lead-in could adversely affect the target time for planning decisions and have a bearing on the delivery of development. It is therefore proposed that the introduction of a monitoring fee applies to all planning applications submitted from the 1st of April 2025 which require a planning obligation.

4. Monitoring and review

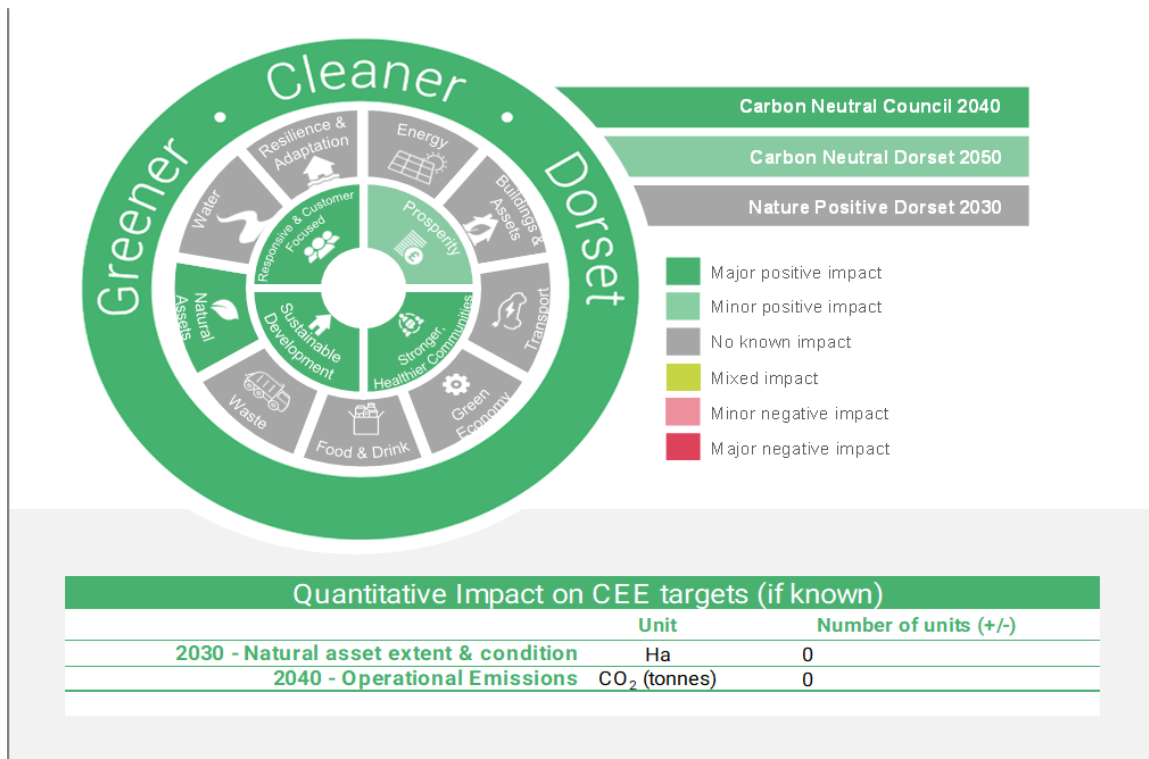
- 4.1 In 2020, the government introduced an annual requirement for councils to report on all aspects of CIL and s106 funds received, allocated and spent in an Infrastructure Funding Statement. Dorset Council has produced statements each year since this requirement was introduced, reference to these statements can be found in the background papers section of this report. If Cabinet members agree to the introduction of a monitoring fee, the infrastructure statement will report on the income received through the administration fee.
- 4.2 It is proposed that the charging regime for monitoring planning obligations is reviewed as part of the annual Infrastructure Funding Statement. This will ensure that the fees collected reflect the true monitoring costs.
- 4.3 It should be noted that charges for monitoring planning obligations will remain separate from the Council's legal costs for drafting and signing legal agreements, which will remain independently recovered by Legal Services. Biodiversity Net Gain (BNG) monitoring fees will also be applied separately, noting that BNG compliance is managed under a separate, statutory, process, albeit compliance with specific s106 requirements will still need to be monitored and reported.
- 4.4 It is considered that the preferred method outlined in detail in this report will provide the best balance between ensuring the Council recovers associated cost whilst being simple to apply and administer and compliant with the requirements of the CIL regulations.

5. Financial Implications

5.1 The introduction of a monitoring fee in this report will positively impact the Council’s revenue. Introducing monitoring fees will assist the Council to improve cost recovery and provide a better service to customers.

6. Natural Environment, Climate & Ecology Implications

6.1 The introduction of a monitoring fee will support the monitoring and reporting of infrastructure designed to mitigate the impacts of new development.



7. Well-being and Health Implications

7.1 The introduction of a monitoring fee will support the monitoring and reporting of infrastructure designed to mitigate the impacts of new development.

8. Other Implications

8.1 The Council incurs a cost of managing and administering developer contributions. Regulations allow the Council to recover these costs. The

appropriate monitoring fee and trigger point for payment will need to be included in the drafting of every legal agreement.

9. Risk Assessment

9.1 HAVING CONSIDERED: the risks associated with this decision; the level of risk has been identified as:

Current Risk: Low

Residual Risk: Low

10. Equalities Impact Assessment

10.1 There are no equalities impact issues resulting from the subject of this report.

11. Appendices

11.1 Appendix A – Benchmarking Exercise

11.2 Appendix B – Accessible Impact Assessment and Table of Recommendations

12. Background Papers

12.1 Infrastructure Funding Statements – Dorset Council [Dorset Council Community Infrastructure Levy - Dorset Council](#)

13. Report Sign Off

13.1 This report has been through the internal report clearance process and has been signed off by the Director for Legal and Democratic (Monitoring Officer), the Executive Director for Corporate Development (Section 151 Officer) and the appropriate Portfolio Holder(s)