

**CABINET  
8TH MARCH 2022**

**REVIEW OF DISCRETIONARY PLANNING FEES IN RELATION TO THE MONITORING OF SECTION 106 AGREEMENTS AND RESPONDING TO ENQUIRIES CONCERNING COMPLIANCE WITH PLANNING OBLIGATIONS**

**Cabinet Member(s):** Councillor Andrew Moore; Cabinet Member for Finance  
**Responsible Officer:** Dean Emery; Corporate Manager for Income, Benefits, Recovery and Planning

**Reason for Report:** A review of discretionary planning fees associated with Section 106 Agreements is long-overdue and should be completed prior to the end of the fiscal year.

**Recommendation: That Cabinet:**

- 1) approves the introduction of a £100 fee for basic Section 106 compliance enquiries, with a further charge of £50 per additional clause, applicable from 1<sup>st</sup> April 2022;
- 2) approves the reviewing and setting of these fees, with a further review being undertaken after 12 months;
- 3) approves that monitoring fees contained within Section 106 Agreements be delegated to the Corporate Manager for Income, Benefits, Recovery and Planning in conjunction with the Section 151 Officer and the Cabinet Member for Finance.

**Financial Implications:** The charging of relevant fees in line with increasing costs will generate valuable revenue to assist in covering the costs associated with providing this service.

**Legal Implications:** Providing Section 106 compliance information is a non-statutory function of the Council. Requests are predominantly associated with conveyancing transactions and are usually quite demanding. This has the potential to adversely impact on other statutory work undertaken by the Planning Obligations Monitoring Officer.

**Risk Assessment:** Ensuring discretionary fees associated with the monitoring of Section 106 Agreements are kept up-to-date mitigates against the cost of development being borne by the tax-payer

**Equality Impact Assessment:** No issues identified for this report.

**Relationship to Corporate Plan:** The Planning Service is a statutory service, the effective operation of which is central to the delivery of Corporate Plan priorities of community, housing, economy and environment. The effective monitoring of planning obligations will ensure that legally binding requirements are adhered to.

**Impact on Climate Change:** No issues identified for this report.

## 1.0 Introduction

- 1.1 Section 106 Agreements are formal Deeds made pursuant to Section 106 of the Town and Country Planning Act 1990 (“the Act”) to secure planning obligations which are required in order to make a proposed development acceptable in planning terms. The idea is that the planning obligations mitigate the impact of a proposed development.
- 1.2 Section 106 of the Act states that a planning obligation can:
- Restrict development and/or use of land;
  - Require specified activities or operations to be carried out on or over land;
  - Require land to be used in a specific way; or
  - Require a sum(s) to be paid to the local authority
- 1.3 The legal Agreement contains specific trigger points as to when the each obligation needs to be fulfilled.
- 1.4 A record of planning obligations to the District Council and their status is maintained by Planning Obligations Monitoring Officer (POMO).

## 2.0 **The cost to the Council of monitoring and administrating planning obligations and responding to enquiries regarding the status of planning obligations (compliance enquiries)**

### 2.1 **Monitoring Fees**

2.1.1 On 9<sup>th</sup> June 2016 a report was submitted to the Cabinet regarding the charging of a monitoring fee within future Section 106 (S106) Agreements with a resolution as follows.

2.1.2 Extract of the **MINUTES** of a **MEETING** of the **CABINET** held on 9<sup>th</sup> June 2016;

*The Cabinet had before it a report of the Chief Executive requesting consideration of the introduction of a monitoring fee within future legal agreements made pursuant to S106 of the Town and Country Planning Act 1990.*

*The Cabinet Member for Planning and Economic Regeneration outlined the contents of the report stating that a lot of time was spent monitoring Section 106 agreements and that there was a need to incorporate an administration fee into the S106 agreements to recover the cost of monitoring the provisions of planning agreements from applicants.*

*Consideration was given to:*

- *The types of planning obligations*
- *The monitoring activity that took place*
- *How the Planning Obligations Monitoring Officer was fed information*
- *The fact that the charge could not exceed the cost of the provision of the service*

**RESOLVED** that the introduction of a planning obligation monitoring fee be approved and that delegated authority be given to the Head of Planning and Regeneration in conjunction with the Cabinet Member for Planning and Economic Regeneration to set the fees and any future review of fees.

*(Proposed by Cllr R J Chesterton and seconded by Cllr R L Stanley)*

2.1.3 In 2018 the post of POMO was revised and increased from part-time to full-time hours. There was no corresponding increase applied to the monitoring fees to assist in recovering the additional expenditure on salary and on-costs. The charging structure introduced in 2016 is still in use and a review of the monitoring fees charged is long-overdue.

2.1.4 In 2021 the post of POMO was transferred to the Corporate Recovery Team. In light of the deletion of the post of Head of Planning and Regeneration, it is proposed that the Cabinet agrees to the reviewing and setting of these fees, now and in the future, be delegated to the Corporate Manager for Income, Benefits, Recovery and Planning in conjunction with the Section 151 Officer and the Cabinet Member for Finance.

## **2.2 Introduction of a fee for providing responses to compliance enquiries**

2.2.1 In conjunction with the reviewing of monitoring fees, it is considered that a review of other non-statutory planning fees is necessary in order to align us with other neighbouring authorities in the South-West.

## **2.3 Background**

2.3.1 Compliance enquiries, usually submitted by Solicitors when undertaking conveyancing transactions, are those enquiries received by the Council asking us to confirm in writing that the planning obligations (or clauses) contained within a Section 106 Agreement have been complied with and/or that no responsibility for fulfilling an obligation will pass to the new property owner. These requests usually follow on from Local Authority searches where the Section 106 Agreement is revealed as a land charge.

2.3.2 Providing Section 106 compliance information is a non-statutory service. Compliance checks can be time consuming and there is often pressure to meet a tight deadline associated with a house sale or purchase. It is common practice that authorities charge a fee for this service. Mid Devon presently provides this service free-of-charge. The introduction of a fee would generate valuable revenue to assist in covering the costs associated in providing this service.

## **2.4 Appropriate fee level**

2.4.1 Officers have undertaken a benchmarking exercise to compare similar fees across other authorities in the South-West. The results are shown in the table below. In the interest of treating our customers fairly we have arrived at a proposed fee schedule that is just below the regional average and closely

aligned with neighbouring authorities, East Devon District Council and North Devon District Council.

<b>Authority</b>	<b>Compliance Search Fee £</b>	<b>Additional Clauses Charge £</b>
Cornwall Council	156.00	78.00
East Devon District Council	90.00	30.00
Mendip District Council	40.00	-
North Devon Council	120.00	70.00
Plymouth City Council	46.00	30.00
Somerset West and Taunton	116.00	-
South Hams District Council	160.00	
Teignbridge District Council	116.00	-
<b>AVERAGE CHARGED</b>	<b>105.50</b>	<b>52.00</b>

2.4.2 Based on the above average values above it is proposed to introduce a charge as follows:

- £100 for the first request per development site
- £50 per additional clause to the District Council for the same development site, requested at the same time

2.4.3 Each search request is unique and most requests are for blanket confirmation that all the obligations contained within the Section 106 Agreement(s) have been complied with. Therefore the major sites with a large number of planning obligations will attract a greater fee.

2.4.4 The following table shows a number of development sites across Mid Devon where compliance information has been provided within the last twelve months. The final column provides examples of the fees that could have been accrued. The average fee, based on a random selection of 5 enquiries, is £250. This is the potential average based on a limited number of sites and this amount is for indicative purposes only.

<b>Development Site</b>	<b>S106 Agreement(s) Dated</b>	<b>Obligations to MDDC</b>	<b>Potential Fee £</b>
Belmont Hospital Tiverton	23 April 2009	Public open space contribution	100.00
	5 Sept 2012	Public open space on-site provision	50.00
	24 March 2014	Affordable housing provision	50.00
	13 May 2014	Hill Crest parking area	50.00
	16 Feb 2016		
		<b>Total potential fee</b>	<b>250.00</b>
Hawkins Way Crediton	16 April 2019	Air quality contribution	100.00
		Public open space contribution	50.00
		<b>Total potential fee</b>	<b>150.00</b>
Cummings Nursery Cullompton	9 Oct 2014	Air quality contribution	100.00
	23 Feb 2016	Recycling contribution	50.00
	16 July 2018	Public open space contribution	50.00
	5 May 2021	Affordable housing provision	50.00
		Public open space on-site provision	50.00
		Footpath contribution	50.00
		<b>Total potential fee</b>	<b>350.00</b>
Farleigh Meadows Tiverton	17 Dec 2013	Affordable housing provision	100.00
	17 Dec 2013	Public open space on-site provision	50.00
	20 Jan 2015	Recycling contribution	50.00
	29 Oct 2015	Air quality scheme	50.00
	29 Oct 2015	Boundary fencing	50.00
	17 May 2017	Feasibility study contribution	50.00
		Affordable housing contribution	50.00
		<b>Total potential fee</b>	<b>400.00</b>

<b>Development Site</b>	<b>S106 Agreement(s) Dated</b>	<b>Obligations to MDDC</b>	<b>Potential Fee £</b>
Old Butterleigh Road Silverton	24 Oct 2018 9 Jan 2020	Public open space contribution	100.00
		<b>Total potential fee</b>	<b>100.00</b>
		<b>Average potential fee</b>	<b>250.00</b>

2.4.5 Over the previous 2-year period, when no fee has been charged, the Council has received approximately 120 compliance enquiries. It is anticipated that the number of enquiries received will decrease with the introduction of a fee, however even an **estimated** 45 queries per annum generating an average fee (see above) of £250.00 each has the potential to generate income of up to £11,250.00 towards the costs of providing this service.

2.4.6 In addition, it is proposed that the Cabinet agrees that the future reviewing and setting of these fees be delegated to the Corporate Manager for Income, Benefits, Recovery and Planning in conjunction with the Section 151 Officer and the Cabinet Member for Finance.

2.4.7 If introduced, the proposed charging structure will be applicable from 1<sup>st</sup> April 2022.

**Contact for more Information:** Fiona Wilkinson; Principal Officer for Revenues & Benefits: [FWilkinson@middevon.gov.uk](mailto:FWilkinson@middevon.gov.uk)

**Circulation of the Report:** Cabinet Member, Cabinet, Leadership Team