



COTSWOLD
DISTRICT COUNCIL

Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	CABINET – 13 MARCH 2023
Subject	S106 Monitoring Fee Schedule
Wards affected	All
Accountable member	Councillor Rachel Coxcoon Cabinet Member for Planning Policy, Climate change and Energy Email: rachel.coxcoon@cotswold.gov.uk
Accountable officer	Andy Barge – Assistant Director for Communities Email: andy.barge@publicagroup.uk
Report author	Jasper Lamoon – Senior Infrastructure Delivery Officer Email: jasper.lamoon@cotswold.gov.uk
Summary/Purpose	The Council is allowed to charge 'S106 monitoring fees' to help cover the cost of monitoring Section 106 legal agreements. The government suggest doing this via the publication of a 'S106 Monitoring Fee Charging Schedule' which sets out the fees which will be charged. This report proposes the introduction of such a schedule at Cotswold District.
Annexes	None
Recommendation(s)	<i>That Cabinet resolves to:</i> <i>1. Approve the introduction of a S106 Monitoring Fee Charging Schedule as detailed in this report</i>
Corporate priorities	<ul style="list-style-type: none">• Deliver the highest standard of service• Make our local plan green to the core
Key Decision	No
Exempt	No
Consultees/ Consultation	Development Management Officers

Executive Summary

The Council is allowed to charge 'S106 monitoring fees' to recover some of the costs of monitoring and report on S106 obligations. There is no set way to calculate these fees, although they need to meet two legal tests in the CIL legislation.

To determine the method and level to set S106 monitoring fees at CDC, officers looked at the methods used by other district and county councils and chose the method that will give the best return for CDC while complying with the legal tests.

The following **S106 Monitoring Fee Charging Schedule** is proposed:

Registration charge	£500
Monitoring charges:	
Less than 10 dwelling units	£500
10 - 100 dwellings units	£1,000
101 - 250 dwelling units	£5,000
251+ dwelling units	£10,000

All S106 agreements would be subject to a registration charge of £500 to cover the cost of registering the agreement and its obligation on the system. The majority of S106 agreements in the district relate to housing developments, where the monitoring work involved increases in relation to the size of the development. The remainder of the monitoring charge would therefore be based on the amount of houses being delivered.

The schedule would not cover developments which are considered strategic sites in the local plan. Such developments will require a bespoke fee negotiated with the developer.

The report recommends that Cabinet approves the introduction of a S106 Monitoring Fee Charging Schedule as detailed in the report

1. BACKGROUND

- 1.1 The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) allow Local Authorities to charge a fee in relation to section 106 agreements (S106) for the monitoring and reporting of planning obligations.
- 1.2 As of 2020, there is an annual requirement for Councils to report on all aspects of CIL and S106 funds received, allocated and spent in an Infrastructure Funding Statement. The above

provision in the CIL Regulations is designed to enable authorities to be adequately resourced to effectively monitor and report on planning obligations.

- 1.3** This report proposes the introduction of a S106 monitoring fee charging schedule at Cotswold District Council.

2. S106 MONITORING COSTS

- 2.1** Although the CIL Regulations allow for the introduction of monitoring fees, they do not specify how these fees should be set. Regulation 122(2A) indicates the Council is permitted to charge a fee providing:
- i. the sum to be paid fairly and reasonably relates in scale and kind to the development; and
 - 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.
- 2.2** To be able to comply with Regulation 122 (2A) (ii), an estimate is required of the cost of S106 monitoring to the Council. This can include both salaries of officers involved in S106 monitoring and peripheral costs such as the Exacom maintenance fee (S106 monitoring software) and travel expenses for site visits.
- 2.3** At Cotswold District, there are multiple officers involved in the monitoring of S106 obligations including the Senior Infrastructure Delivery Officer, the Infrastructure Delivery Technician and the Housing Enabling Officer as well as development management, legal and finance officers.
- 2.4** The Council rarely performs site visits solely for the purpose the monitor S106 agreements, but uses the data collected by the Forward Planning Team during their yearly site visit regarding housing land monitoring. Therefore only a percentage of the cost of these visits can be assigned to S106 monitoring.
- 2.5** The Exacom software system is used to both administer CIL and S106. As it is used more intensely for CIL purposes, 20 per cent of the Exacom maintenance fee has been considered to be used for S106 monitoring.
- 2.6** The combined cost of the above comes to a total estimated cost of £12,595 per annum. Note that this does not mean the Council can collect that amount in monitoring fees each

year, the rates need to be fair and reasonable in relation to the scale and kind to the development, regardless of the cost of monitoring to the Council.

3. SETTING THE CHARGING SCHEDULE

3.1 To determine to method and level to set S106 monitoring fees, officers looked at the methods used by Gloucestershire County Council and other neighbouring district and county councils. For each of these methods officers calculated how much it would have raised if CDC had such a charging schedule in place in recent years.

3.2 Officers have selected a method that will provide the best return to the Council while complying with CIL regulation 122 (2A) (i) as per paragraph 2.1 above.

3.3 The following **S106 Monitoring Fee Charging Schedule** is proposed:

Registration charge	£500
Monitoring charges:	
Less than 10 dwelling units	£500
10 - 100 dwellings units	£1,000
101 - 250 dwelling units	£5,000
251+ dwelling units	£10,000

3.4 All S106 agreements, including Deeds of Variation, would be subject to a registration charge of £500 to cover the cost of registering the agreement and its obligation on the system. The majority of S106 agreements in the district relate to housing developments, where the monitoring work involved increases in relation to the size of the development. The remainder of the monitoring charge would therefore be based on the amount of houses being delivered.

3.5 Payment of the registration fee would be required upon completion of the agreement. The remainder of the monitoring fee would become due upon commencement of the development. The fees would not be refundable if the development does not go ahead or is halted halfway.

3.6 The proposed schedule would have raised £8,500 at CDC in the 2020/21 financial year and £9,000 in 2021/22. This is less than the anticipated costs, however, the Council needs a buffer to ensure it meets the legal requirement of CIL regulation 122 (2A) (ii) as per paragraph 2.1 above.

3.7 The proposed schedule comes with a number of benefits:

- The method of charging by housing numbers is a common approach and, for example, a similar schedule is used by Cherwell District Council, a comparable authority.
- It is a simple and transparent schedule and fees will be easy to calculate.
- It meets both tests as set out in the CIL regulations.

3.8 It is proposed to link the schedule to the 'CIL index'. This is the index the Council legally has to use to index its CIL charging schedule and is published once a year in October by the Royal Institute of Chartered Surveyors.

3.9 The schedule would not cover developments which are considered strategic sites in the local plan. Such developments involve more complex monitoring and would require a (part-time) dedicated monitoring officer. For each strategic site, the Council will negotiate the required fees based on the estimated cost of recruiting such an officer. The fee will be calculated on a yearly basis and should be paid each year for the anticipated duration of the development. Note that the current local plan has one strategic site for which the monitoring fee has been calculated in line with the method above.

3.10 The proposal would come into effect as soon as the S106 Monitoring Fee Charging Schedule is published on the Council's website, which can be done once Cabinet approval has been received.

4. ALTERNATIVE OPTIONS

- 4.1** There is no legal definition regarding how S106 monitoring fees should be calculated and there are many different approaches currently being used by other Councils.
- 4.2** The council could chose to assume the costs of monitoring S106 agreements.

5. FINANCIAL IMPLICATIONS

- 5.1** The report provides a positive financial implication to the Council's revenue. The fee will aid the council to transition to a cost neutral service by covering existing costs.

6. LEGAL IMPLICATIONS

- 6.1** The Council incurs a cost of managing and administering developer contributions. Regulations allow the council to be compensated in accordance with prescribed rules as set out earlier in the report.
- 6.2** The fee and the trigger for payment will need to written into each S106 agreement.



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7. RISK ASSESSMENT

- 7.1** The purpose of the planning system is to contribute to the achievement of sustainable development. Securing funds will help to ensure resources are available to actively monitor the collection and spending of developer contributions, which will help to ensure the timely delivery of infrastructure and ultimately aid the delivery of sustainable development.

8. EQUALITIES IMPACT

- 8.1** Not Applicable

9. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS

- 9.1** S106 contributions help deliver the Council's Local Plan. Introducing a S106 monitoring fee charging schedule will therefore assist in delivering the Council's 'Green to the Core' agenda.

10. BACKGROUND PAPERS

- 10.1** None

(END)