

Report to: Scrutiny Committee



Date of Meeting 7 September 2023

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Exemption applied: None

Review date for release N/A

Section 106 and CIL Resources and Processes

Report summary:

The report highlights a number of issues in relation to the Council's work in administering planning obligations such as Community Infrastructure Levy (CIL) and Section 106 agreements. Some of these issues were highlighted in an audit in 2020 and while the actions recommended by the audit were completed due to various staffing issues there is a significant backlog again. The report proposes measures to address this including a new staffing structure within the planning team that would be funded by a revised S106 Monitoring fees charging schedule as well as changes to the process for the spend of Section 106 monies to try and reduce the administrative burden on the council.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That Members:

1. Recommend that Cabinet support the proposed revised S106 Monitoring Fees charging schedule appended to this report and recommend to Council that these charges be applied with effect to Section 106 agreements associated with planning applications received once the new charges have been published on the Council's website.
2. Recommend to Cabinet and to Council that the proposed Planning Obligations Team incorporating the existing CIL and Section 106 Officer posts and the proposed new Planning Obligations Manager and Planning Obligations Support Officer posts be created with the new posts to be funded from S106 Monitoring Fees and CIL admin funds.
3. Recommend to Cabinet that the current spend process for S106 receipts for spend in the community on play areas, open space and other community spaces be amended as per option 2 as detailed in the report and delegated authority be given to the Assistant Director – Planning Strategy and Development Management to issue best practice guidance on the Council's website on how town and parish councils should engage their communities on spend decisions.
4. Agree that Scrutiny Committee receive an update report in late Summer 2024 to advise of progress in forming the new Planning Obligations Team and their progress in addressing the issues highlighted in this report.

Reason for recommendation:

To ensure Members are informed of the current position with regard to S106 and CIL processes and that additional resources are found to enable this work and that this be funded through S106 Monitoring Fees and CIL admin monies.

Officer: Ed Freeman – Assistant Director – Strategic Planning and Development Management

Portfolio(s) (check which apply):

- Climate Action and Emergencies
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Culture, Tourism, Leisure and Sport
- Democracy and Transparency
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information Audit and Governance Committee Report 28th Jan 2021 - [S106CILAuditandGovernanceReport.pdf \(eastdevon.gov.uk\)](#); SWAP Audit Report - [S106CILFinalInternalAuditReport.pdf \(eastdevon.gov.uk\)](#); Audit and Governance Committee Report 23rd September 2021- [Section 106 and CIL Update.pdf \(eastdevon.gov.uk\)](#)

Link to [Council Plan](#):

Priorities (check which apply)

- Outstanding Place and Environment
- Outstanding Homes and Communities
- Outstanding Economic Growth, Productivity, and Prosperity
- Outstanding Council and Council Services

Background

In December 2020 SWAP completed an audit into the S106 and CIL planning contributions system. The objective of the audit was to ensure that appropriate arrangements are in place to manage the receipt and expenditure of S106 and CIL contributions. The audit noted that a number of weaknesses were already known to the service at point of testing, such as the Exacom system not being up to date and work was ongoing at the time of the audit to ensure that the system was brought up to date before the end of the 2020/21 financial year.

The audit gave a rating of “limited assurance” and a number of actions to address the findings were agreed. These actions were all completed as noted in the SWAP follow up audit in the 21/22 audit work. The key findings and proposed actions of the audit are set out below with a comment on the current position with regard to the issues raised.

Findings, Actions and Progress

Finding 1: The audit identified a large number of outstanding actions on the Exacom system.

Action: It was agreed that we would review resources and look to appoint a temporary member of staff to assist with the backlog of actions by April 2021.

A review of resources was carried out and it was concluded that additional temporary staff were needed to help to get the system up to date and that this could be funded through money held in the S106/CIL admin and monitoring fees held by the Council. Two additional members of staff were in place for much of 2021 and into 2022 and over half of the outstanding actions were resolved including the most pressing ones. The temporary staff were not replaced when their contracts ended as it was felt that having substantially reduced the number of outstanding actions to a more manageable number the S106 Monitoring Officer would be able to manage the remaining tasks.

Finding suitable officers to undertake this work is also very challenging in the current employment market. Unfortunately progress with reducing the number of outstanding tasks since that time has been slow and there remain around 600 outstanding tasks. There were 1249 noted in the audit of 2021.

Unfortunately the S106 Monitoring Officer left the Council in October 2022. We have a temporary monitoring officer in post who continues to work through the outstanding tasks list.

Action: It was also agreed that the Planning Obligations Officer would provide a quarterly report on the status of the outstanding actions from Jan 2021.

Managers have access to the system and can generate the report themselves to check on progress and act upon the information.

Finding 2: Not all demands are raised on a timely basis and the recovery processes are ineffective.

Action: It was agreed that we would start to utilise Exacom to track the recovery process including using further notices and date tracking by June 2021.

A new invoicing and recovery process was produced following the audit which clearly documents the relevant stages and actions needed using the Exacom system. This process has been in place since then and work is ongoing to work through the outstanding invoices and overdue payments.

This work faltered following the departure of the Development Manager (August 2022) and S106 Monitoring Officer (October 2022), however meetings with Revenues and Benefits Officers who are working on the debt recovery side of this work are recommencing with the temporary S106 Monitoring Officer and the Assistant Director.

Finding 3: Participatory Budgeting Guide is out of date and not easily located.

It was agreed that we would review and update the Participatory Budgeting Guide, to include recommending that Parish and Town Councils should take minutes of the steering/working groups and publish them on their website. This to be done by the end of Jan 2021.

The participatory budgeting guide was updated and the recommended amendments incorporated into the new guide which was published in January 2021. The guide is available at: [Participatory Budgeting - East Devon](#)

The guide remains in place, however resourcing issues mean that it has not been possible to provide support to town and parish councils seeking to pursue spend on projects in recent months. The departure of the Section 106 Monitoring Officer initially led to some delay but with a temporary officer now in place and up to speed it is considered that it is the long term absence of relevant officers in the communications and engineers teams that is causing most delay. Options for addressing this situation have recently been discussed by the Senior Management Team and a report will be prepared setting out the options and seeking Members views on how this is to be resolved.

Finding 4: Parish and Town Councils are not advised on how much S106 has been collected.

It was agreed that we would ensure that the Public Facing Exacom is made available as soon as we have been given assurance that Exacom is complete and accurate. This to be done by the end of March 2021.

The public facing module for Exacom has been live on our website since July 2021. The system can be found at: [East Devon PFM - Home \(exacom.co.uk\)](#).

It is understood that the data as presented does unfortunately cause some confusion and leads to requests for clarification from officers. The data includes that for habitats mitigation and the non-neighbourhood proportion of CIL which the town and parish councils are not able to spend as these come to the district council and either go to delivery of the joint habitats mitigation strategy or into the central CIL pot for spend on strategic infrastructure. This is something that needs to be reviewed with the software provider to try and remove these fields and simplify the data so that this can be relied on by the town and parish councils and other interested parties.

Current Issues

Outstanding Tasks on Exacom

Although a lot of tasks on Exacom were cleared by the temporary staff referred to above these tasks did not close off the issue. In many cases the task was to serve a notice of payment on a developer where a trigger point in a section 106 agreement had been reached. As a result a notice of payment was served but in many cases payment was never actually received and this has not been followed up. As a result there are around 150 cases where a notice of payment has been issued and monies remain outstanding. In some cases these are small amounts of a few pounds where partial payment has been made but some interest or indexation has not been included. In these cases it may not be expedient to pursue the outstanding funds. In other cases the amounts are many thousands of pounds and urgent action is required to chase up and recover these funds where it is still possible to do so.

The task list on Exacom also includes a number of cases where trigger points appear to have been reached but a notice of payment has not been issued – these being among the remaining

outstanding tasks from the time of the SWAP audit that has never been completed. These will further add to the outstanding funds that need to be recovered.

Staff Resources

The Section 106 Monitoring Officer post is currently the only post dedicated to the monitoring of Section 106 agreements and ensuring that obligations are complied with. Over the years the post had various temporary staff to support in this role notably during the implementation of the Exacom system and following the SWAP audit referred to above.

The previous post holder left the authority in November 2022 shortly after her line manager had departed in August 2022. This left a significant gap in knowledge and understanding of the S106 system while even before this we were struggling to address a growing backlog in S106 work. The hard work of our interim Section 106 Monitoring Officer has highlighted that a significant increase in resource in this area is required to not just keep on top of new work but to address the backlog.

It has become clear that not only is some form of permanent Section 106 Monitoring Officer required but that further permanent resources are needed to oversee this work not least a dedicated manager who can fully understand and oversee this distinct area of work. The work often involves the handling of significant financial payments and the recovery of financial debts which are not areas of work that the management team within Development Management are usually involved with or have particular knowledge or skills in.

Linked to the Section 106 work is a related capacity issue in relation to the collection of Community Infrastructure Levy (CIL) we have an excellent CIL Officer who is successfully calculating the liabilities due from developments and issuing liability notices to the liable parties. This work also involves handling applications for exemptions such as in relation to affordable housing and self and custom build developments. There is however a lack of resource currently to monitor compliance with exemptions, phased payments and other areas of work to ensure that we are maximising income from CIL.

Section 106 and CIL are in themselves a separate area of planning work that most professional planners have little involvement with and yet require a great deal of knowledge of the complex legislation and regulations that control these areas of work. Management of this area by the Development Manager, Assistant Development Manager or a Principal Planning Officer has shown that they are unable to provide the time and support needed for this area of work alongside their more traditional planning work.

It should also be noted that the government through the Levelling Up and Regeneration Bill are proposing to replace CIL with a new Infrastructure Levy which would also significantly change the role of Section 106 agreements. The new levy seeks to capture more value through the process by applying charges based on the value of a property at the time of first occupation. This is likely to however generate a lot of administrative work in valuing the proposed development potentially at 3 different times during the process. A recent government consultation proposed valuing the development at application stage, determination stage and then again at occupation stage. This was to give the developer certainty and to enable the LPA to charge the rate at determination stage so that money was paid upfront and only secure any further uplift at occupation stage. This multi-stage process could significantly increase the resources needed to administer it which could be far in excess of those currently required for CIL. Substantial resources would also be needed to set up any new system and the relevant processes.

It is considered that it would now be appropriate to take the existing CIL and S106 Monitoring Officer posts and form a Planning Obligations Team supported by an additional support officer post, an extra CIL Officer and with a dedicated Planning Obligations Manager. A potential structure could look like the following:



It is considered that this structure would provide the additional capacity to address the current issues with the retention of the existing interim Monitoring Officer for a number of months to ensure a smooth transition to the new recruits and provide additional capacity to address the backlog. The new structure would then be sufficient to ensure that the proper monitoring of Section 106 and CIL continues into the future.

Monitoring and Admin Fees

Clearly the additional staff resources referred to above would come at a not insignificant cost. The legislation does allow us to secure Monitoring Fees to help recover the cost of monitoring compliance with Section 106 agreements. These can be imposed on all agreements but should be proportionate to the obligations included in the agreement and the costs of monitoring them. Historically we have only been securing monitoring fees on the most major of developments where there are a significant number of complex clauses in need of monitoring. It is considered that this approach should be reviewed and we should look to maximise the monitoring fees being imposed and minimise the costs to the council. A review of these charges is included at Appendix 1 of this report which concludes with the proposed charges:

| Scale of development | Charge per financial obligation | Charge per non-financial obligation |
|----------------------|---------------------------------|-------------------------------------|
|----------------------|---------------------------------|-------------------------------------|

| | | |
|------------------------------------|------|--------|
| Major developments (>10 dwellings) | £476 | £1,058 |
| Minor developments (<10 dwellings) | £476 | £476 |

There is also at least £10k in uncollected Monitoring Fees under the current charges which if secured could help to fund additional staff resources.

In terms of CIL it is possible to spend upto 20% of CIL receipts on the administration of CIL. The CIL administration monies already held equal £320k with a further £200k estimated to be collected in CIL admin monies in the current financial year. There is also a future potential CIL admin income of £500k if developments granted are implemented.

In conclusion on this issue it is anticipated that between the CIL admin monies and the S106 Monitoring Fees there should be sufficient funding available to fund the additional posts referred to above. This would however be reliant on income in monitoring fees and CIL admin continuing into the future which is not guaranteed and so there is an element of risk associated with creating new posts funded from these sources.

The Spend Process

We have a long established spend process for S106 monies which is based on a participatory budgeting framework whereby when there are sufficient funds available to deliver projects in a given area the town or parish council should instigate a public consultation on potential projects in their area. Essentially the projects that have community support should then be funded and delivered. There is then often further community engagement over the detailed design of play and sports facilities to ensure that they are what the community want. Details of the spend process can be found at: [Guide for town and parish councils - East Devon](#)

As far as we are aware we are the only Local Planning Authority that does this. Many simply spend the monies themselves on delivering whatever facilities they see fit on their own land as part of the capital programme. While some may see this as desirable it is difficult to roll back from the current position which has many benefits in terms of delivering projects that the community want and care about and it has important synergies with neighbourhood planning.

In recent years with the development of neighbourhood plans we have encouraged communities to identify projects in their neighbourhood plan which is itself consulted on and indeed is subject to a community referendum. Where this is the case monies can be committed to the identified projects in the neighbourhood plan without the need for further consultation. There are however a significant number of communities that do not have a neighbourhood plan and are not progressing one or have done so without addressing this issue. Hence there is still a lot of work to be done in support of the participatory budgeting process.

It should be noted that with the implementation of the Community Infrastructure Levy (CIL) off site infrastructure is now delivered through CIL payments a proportion of which goes to the town and parish councils to spend as they see fit. We have no real say over how they spend this money or how they engage with their community to decide on spend. Similarly this means that S106 receipts for off-site spend are no longer being collected, however we do still get involved in the consultation

with communities on on-site open space, sport and play areas and this is written into Section 106 agreements.

Although we do not have to be so involved in terms of consultation it is essential that we ensure that the monies are spent for the purposes for which they were received.

Capacity Issues

The spend process has always been quite labour intensive largely using resources from the planning team, namely the Section 106 officer and the Engagement and Funding Officer from the communications team. Resources are often drawn from the engineer's team in street scene as well. Projects often involve council land and even when they don't play and sports equipment have to be designed to meet health and safety standards, drainage requirements etc.

In recent years it has been a struggle for the various officers to support the demand from town and parish councils to undertake consultation and design projects for the spend of S106 monies. Over the last year the situation has been exacerbated with the departure of the Section 106 Officer in Planning and long term sickness of the relevant officers in the Communications and Engineers teams. As a result projects have not progressed for more than 6 months and the town and parish councils are getting increasingly frustrated with us. This has put a lot of pressure on the planning team not least the temporary Section 106 officer. Escalating costs at the moment only make the delays even more frustrating for the town and parish councils and in some cases is putting projects at risk as there may no longer be sufficient funding available to deliver it.

Linked to this is the fact that some of the monies are time limited and should technically be returned if not spent within 5 or 10 years of receipt. On more recent agreements this has been changed so that the time limit relates to the allocation of a project but even identifying and allocating monies is impossible with current resourcing and the required process. There is therefore a significant risk of the council needing to hand back monies received to help deliver important infrastructure in our communities which the evidence suggests is needed to support developments that have either been built or are in the process of being built.

There is therefore an urgent need to take action to address these issues and ensure that Section 106 monies can be spent.

Options

1. Bring in further resource – Recruit more staff or bring in consultants

Although we have a temporary Section 106 officer who is able to answer queries from the town and parish councils, undertake monitoring, invoicing developers etc. she is not able to progress the delivery of projects without support from the communications and engineers teams. It is understood that resources are not currently available in these areas because of long term sickness. One option is therefore to recruit additional resource in these areas to assist.

The additional posts within planning referred to earlier in this report could provide some of the support needed but it is considered even then that a lighter touch approach would be required.

2. Amend the spend process – An alternative option would be to amend the spend process so that it is less onerous on EDDC.

We could empower our town and parish councils by saying that we will no longer dictate the level of consultation and engagement that they need to undertake and simply leave them to assure themselves that the projects that they put forward to us reflect the wishes of their community. We could do this by issuing guidance and a consultation statement to be submitted with any proposed project to us or we could simply leave them to it. This could remove the need for the communications team to be involved in the spend process and could be supported by the proposed Planning Obligations Team. As long as the monies are available and the project meets the purpose to which the monies were paid to us then they could be signed off by SMT+.

In terms of Engineers support SMT+ have recently agreed that up to 15% of funding for any project can be used on project management so potentially town and parish councils could use this to bring in design and engineering advice themselves. This would limit the monies available for spend on delivery of the project but would reduce the burden on Engineers. It would not remove it entirely however as they would still need to be involved to some extent where projects are on our land, however if a list of recommended engineers were provided to them and clear guidance issued the burden of this work on the engineers could potentially be reduced.

Similarly moving forward we could require developers to engage directly with town and parish councils on the delivery of play, sport and open space areas on their own land rather than coming through us and us overseeing the whole process. We would need to continue with legacy agreements but depending on the wording of specific agreements a lighter touch approach could be taken.

With some work it is considered that a lighter touch approach that empowers the town and parish councils could work and may even be welcomed by the town and parish councils given their current frustrations. Given that they get to spend CIL monies however they see fit it would also address a current contradiction where we are applying a level of control over the spend of Section 106 monies which doesn't apply to CIL.

3. Leave things as they are – Wait until the officers that are on long term sick return

This option carries significant risks of further frustration on the part of the town and parish council, monies needing to be returned and/or underwritten by EDDC and ultimately required infrastructure not being delivered.

Conclusion

Action is needed to address this issue. The participatory budgeting process has ensured that we have been instrumental in delivering high quality play, sports and open space facilities that are valued by the community and popular and so it seems a shame to move away from this approach and lose the good news stories that this generates but the system has ground to a halt.

Realistically option 2 seems like the best option at least on a trial basis since the current process creates a lot of work that we simply do not have to do.

Future work

It is understood that the Chair has met with a number of town and parish councils in recent weeks to discuss S106 and CIL issues. Out of these positive and helpful discussions have come a

number of issues which will need to be addressed once the additional staff resources are in place and up to speed. These include:

- Training for town and parish clerks on how CIL and S106 monies are collected, distributed and the responsibilities of town and parish councils.
- A clear plan for the spend of S106 monies held and timelines for spending the monies so that all parties are clear on priorities and when support will be available.
- Greater support and guidance to town and parish councils on the spend of the neighbourhood proportion of CIL and how they can work together with EDDC, DCC and other infrastructure providers to get best value for money when making spend decisions.
- Investigate improvements to the dashboard and training to help town and parish council's understand the monies that are held and what they can be used for.
- Clear points of contact for CIL and S106 so that town and parish councils know who to contact.
- Investigate opportunities for more proactive engagement with town and parish councils to identify projects through neighbourhood planning and other routes so that they are known in advance.

These issues will need to form part of a work programme for the new team once established. Unfortunately this will take time while the posts are recruited to and the new staff get up to speed. It is therefore likely to be early next spring before significant progress can be made on these issues.

In order to keep Members advised of progress with the establishment of the team and addressing all of the issues highlighted in this report it is proposed that an update report be brought to Scrutiny Committee late Summer 2024 to advise on progress with these matters.

Financial implications:

The financial implications and the currently available administration funds are contained within the body of the report.

Legal implications:

There are no legal implications requiring comment.

Appendix 1:

Section 106 Monitoring Fees Review

Background

The governments Planning Practice Guidance is clear that charges can be imposed to recover the reasonable costs to the authority of monitoring and reporting on planning obligations – see paragraph 36 below:

“How can local authorities fund reporting on planning obligations?”

Authorities, including county councils, should work together to ensure that resources are available to support the monitoring and reporting of planning obligations.

Authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 obligation. Monitoring fees can be used

to monitor and report on any type of planning obligation, for the lifetime of that obligation. Monitoring fees should not be sought retrospectively for historic agreements.

Fees could be a fixed percentage of the total value of the section 106 agreement or individual obligation; or could be a fixed monetary amount per agreement 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. Authorities could consider setting a cap to ensure that any fees are not excessive.

Authorities must report on monitoring fees in their infrastructure funding statements (see [paragraph \(2\)\(h\)\(iii\) of Schedule 2](#)).

Paragraph: 036 Reference ID: 23b-036-20190901

Revision date: 01 09 2019”

The Council has been charging monitoring fees particularly on large scale major developments when there may be a series of trigger points for planning obligations whether that be a financial contribution or delivery of a piece of infrastructure on the site. In some cases a trigger point may be for the submission of further information only. In either case trigger points are usually based on a number of homes occupied or completed and this can require checking against Council records for council tax or building regulations completions. Checking compliance can involve checking records of payments received and issuing invoices or reminders or in other cases checking on site whether a play area, footpath, open space or other piece of infrastructure has been delivered and if not taking appropriate action. This can be a significant piece of work requiring officer time and other council resources and the cost of doing this should be borne by the developer without whose development the need for monitoring would not exist.

The Council's adopted SPD on Planning obligations available at: [final-version-for-adoption.pdf \(eastdevon.gov.uk\)](#) sets out the types of planning obligations that we often require from developments and also says that we will impose monitoring fees in the circumstances and as set out below:

| | | |
|---|---|------------------------------|
| Planning obligation monitoring and administration support contributions | This would depend upon the scale and nature of the development. Such as where a very large development is proposed to be delivered in several phases with a wide suite of planning obligations which would place an added burden on the local planning authority requiring additional resources to cover the administration and monitoring of the site above that already provided. | Before development commences |
|---|---|------------------------------|

In reality we have not imposed monitoring fees in many cases but it is clear that in the case of significant major developments where there is a number of obligations which require monitoring and have significant resource implications then we have done so.

Proposed changes to the framework for charges

It is considered that there is no reason why we should not be charging monitoring fees on virtually all section 106 agreements as long as they are proportionate to the obligations to be monitored and are simply recovering the costs associated with monitoring those obligations. The wording of the first sentence within the DPD referred to in the box above makes this clear, however the example that follows implies that only very large developments will be charged. Changing the wording in the SPD is not straight forward as this requires a wider review and consultation on a

new version. However it is considered appropriate to provide further guidance on the website within the Section 106 pages to make it clear that Monitoring Fees will be imposed in all cases albeit they will be in proportion with the scale and nature of the development and the obligations to be monitored. It is considered that this change would give us a strong basis to request monitoring fees for many more Section 106 agreements and ensure that wherever possible the cost of monitoring compliance with obligations can be recovered.

Calculating an appropriate Monitoring Fee

Back in 2012 Members agreed a fee structure for monitoring fees. The agreed rates were:

Financial Monitoring

- £44.60 (hourly rate including overheads) with 7 hour average officer time handling the contribution - £312.20 per financial contribution

Physical Monitoring

- Based on an hourly rate of £44.60 including overheads
- Checking triggers – assuming commencement/completion are checked 10 times a year = £446.00
- A minimum monitoring period of one year should be applied. If it can be shown that monitoring will be for a greater defined period the charge would be increased proportionally
- For those obligations which need monitoring indefinitely a minimum 10 years should be incorporated into the equation with a quarterly monitor only i.e. 1 clause to be monitored indefinitely would incur a charge of £44.60 x 4 (quarterly visits) x 10 (years) = £1784.00.

Below are some examples taken from the report showing how these are applied in practice:

| Clause | Topic | Summary | Monitoring Cost |
|--------|----------------------------|--|---|
| 1 | Notification /Commencement | The developers duty to notify | £0 costs of monitoring this via subsequent clauses. |
| 2 | Highway Works | Commencement, occupation triggers. Specific Highway Works | Based upon 2 year physical monitoring £892.00 |
| 3 | Travel Plan | Compliance following occupation | Indefinite monitoring so cost based on quarterly visits over a 10 year period £1784.00 |

| | | | |
|---|---------------------------|--|---|
| 4 | Footpath Link | Commencement trigger | Based upon 1 year physical monitoring £446.00 |
| 5 | Landscape Management Plan | Prior to commencement triggers and completion triggers relating to relevant landscaping | Based upon 3 year quarterly physical monitoring £535.20 |
| 6 | Sustainability Strategy | Prior to occupation triggers relation to BREEAM accreditation and ongoing responsibilities | Indefinite monitoring so cost based on quarterly visits over a 10 year period £1784.00 |
| 7 | HGV Route Plan and CEMP | Commencement triggers linked to the site route | Based upon 2 year physical monitoring £892.00 |
| 8 | Maintenance Regime | Ongoing compliance with maintenance regime | Indefinite monitoring so cost based on quarterly visits over a 10 year period £1784.00 |

Clearly these charges are now over 10 years old and out of date. It is also considered that the charging schedule is overly complicated and not very transparent. It can take a significant resource simply to calculate the fee and it is questioned as to whether this is a sensible use of resource for the difference it makes in terms of the amount being charged compared with a more simple charging schedule.

An investigation of other authorities and how they charge for the monitoring of Section 106 agreements reveals that there are a variety of approaches from very simple flat rate costs per obligation through to complex calculations based on hourly rates for different types of obligations and scales of development.

The following options have been identified:

| Option | Approach | Comments |
|--------|-----------------------------|--|
| 1 | Set fee for each obligation | This is a clear approach, easy for all to calculate. However it would be based upon an average time spent, and does not take account of more complex Section 106's with a number of trigger points which |

| | | |
|---|---|--|
| | | will take longer to monitor than a more simple S106. |
| 2 | Bespoke fee for each obligation | Separating each obligation with a separate fee can become more complicated to calculate and time consuming. Also it is not always possible to identify every different type of obligation, as some can be bespoke to the development. This could provide a more accurate cost for each obligation; however it doesn't take into account the greater time spent on more complex Section 106 agreements applying to larger developments. |
| 3 | Standard fee per agreement with the fee increasing in increments for more complex development/applications. | This is a clear approach which will be easy to calculate and also takes into account that the larger the development the more complex the Section 106 becomes and amount of time spent monitoring it increases. |
| 4 | A fee per agreement multiplied by the number of obligations/trigger points | This uses the assumption that the more triggers there are, the more complex the Section 106 agreement is. This can often be the case, but not always. Also this could be quite time consuming to calculate and will need a final draft of Section 106 agreement to give an accurate figure, this could result in time delays and more resources needed to calculate the monitoring fee. |

On balance it is considered that a simple, easy to understand, clear and transparent approach is favoured and a tailored approach where a fee is calculated based on an hourly rate in each case is not favoured. It is however important that any charges reflect as closely as possible the actual cost of monitoring the agreement and so a simple flat rate that does not reflect the complexity of the case is not favoured either. It is therefore considered that option 3 is the best option with a scale of charges by scale of development calculated based on an hourly rate for the staff and other resources required.

How much to charge?

As highlighted at the start of this report it is important that charges reflect the actual cost of undertaking the work involved as we can only seek to cover our reasonable costs and may be challenged if the charges are seen to be unreasonable. Previously resources involved in the monitoring of section 106 agreements has simply been the Section 106 Monitoring Officer with time of the Assistant Development Manager and Development Manager also included appropriately as this was the structure at the time the current charges were calculated. It is proposed as part of this review to introduce a new structure that puts additional resource into this important area of work. This is to ensure that we can better ensure that obligations are met and support the spend of monies to deliver infrastructure in a more timely way.

With this in mind the following structure of a newly formed “Planning Obligations Team” within Development Management is envisaged.



Essentially a new Planning Obligations Team Leader post would be created whose responsibility it would be to oversee and manage the CIL collection and spend process and Section 106 work. It is envisaged that the post holder would have the capacity to not simply manage the staff and processes but also to get involved in dealing with CIL appeals and considering requests for exemptions to CIL but also to help with supporting communities with the spend of S106 receipts and the CIL neighbourhood proportions. This would free up the existing (but currently vacant) S106 Monitoring Officer to focus on the monitoring of compliance with S106 obligations both in terms of financial contributions and on-site delivery. The Planning Obligations Support Officer would be a further new post who would be able to support both the S106 Monitoring Officer and CIL Officer with more straight forward tasks around data collection and organisation, general customer enquiries etc.

Based on this structure it is considered that a new hourly rate of £68 per hour should form the basis of a new Monitoring Fees Charging Schedule. This rate is based on the whole time of the Section 106 Monitoring Officer and a proportion of the time of the Team Leader and Support Officer that would be dedicated to this work. The remaining cost of these posts would be covered from the CIL administration monies which make up 5% of all CIL receipts received. This is considered to be a relatively modest increase in the charges given the current charges and the fact that 10 years has elapsed since they were reviewed but it reflects the fact that less time of the Development Manager and Assistant Development Manager would be involved with this work with these being more expensive roles to be involved. The benefit of this approach however is to allow the work to be done at the appropriate level and for a team leader to specialise in planning obligations work rather than a qualified planner be involved in issues which do not necessarily require their expertise on a day to day basis. The new team leader role would also give greater management oversight of this area of work.

Based on these hourly rates and carrying forward the previous approach that around 7 hours work is involved on average for the monitoring of a financial obligation and around 16 hours for a non-financial obligation; bearing in mind this could involve site inspections, liason with town and parish councils etc; it is considered that a suitable charging schedule would be as follows:

| Scale of development | Charge per financial obligation | Charge per non-financial obligation |
|------------------------------------|---------------------------------|-------------------------------------|
| Major developments (>10 dwellings) | £476 | £1,058 |
| Minor developments (<10 dwellings) | £476 | £476 |

The charging rate for non-financial obligations on minor developments is deliberately lower as these smaller scale developments are not usually required to deliver infrastructure on site and so such obligations are likely to be less onerous to monitor than those on larger sites where delivery is more likely to be on site. It is acknowledged that in some cases these charges may be too low or too high for the scheme in question but they reflect an average cost and so overall they should reflect a fair and justified charge based on the costs incurred.