

# Report to Cabinet

**12 March 2025**

<b>Subject:</b>	Section 106 Monitoring Fees
<b>Cabinet Member:</b>	Cabinet Member for Regeneration and Infrastructure Councillor Peter Hughes
<b>Director:</b>	Alan Lunt Executive Director - Place
<b>Key Decision:</b>	Yes
<b>Contact Officer:</b>	Alison Bishop Development Planning Manager Alison_bishop@sandwell.gov.uk

## 1 Recommendations

For the reasons set out in the report, it is recommended that Cabinet:-

- 1.1 introduce a charge for the monitoring of planning obligations under Section 106 of the Town and Country Planning Act 1990 (As Amended);
- 1.2 approve the charges for Section 106 monitoring as set out in Appendix 3, with effect from 1 April 2025.

## 2 Reasons for Recommendations

- 2.1 Planning permission will set out various measures, known as obligations, which are set out in legal agreements known as s.106 agreement, that are required to make the development compliant with policy or legislation, such as highway works, affordable housing, Biodiversity Net Gain (BNG). The introduction of charges is permissible and the proposed fees would cover the costs to the council of monitoring compliance of these agreements in accordance with the Community Infrastructure Levy (Amendment)(England)(No.2) Regulations 2010 (As Amended).

### 3 How does this deliver objectives of the Council Plan?

Living in Sandwell	Improving the local environment with a focus on cleanliness, ensuring that the community takes pride in its surroundings. Namely Safe and affordable homes and quality green spaces.
Thriving Economy in Sandwell	Securing s.106 agreements in line with Planning Policy ensures that developers contribute towards Sandwell's infrastructure needs, for example, through the provision of affordable housing, improvements to green-spaces, and by contributing to necessary highway works. Securing these contributions supports Sandwell's economy by ensuring we have the right infrastructure in place to support growth.

### 4 Context and Key Issues

- 4.1 Sandwell council's local planning authority determines approximately 1,000 planning applications each financial year. The planning process will consider each planning application in accordance with national and local policy and other material considerations.
- 4.2 Policy considerations are set out in the National Planning Policy Framework and the council's Black Country Core Strategy and the Sandwell Allocation and Delivery Development Plan. These documents set out requirements to deliver affordable homes, appropriate transport infrastructure and high-quality sustainable developments.
- 4.3 Following the introduction of the Environment Act in 2021 a new process was also introduced to deliver Biodiversity Net Gain (BNG) on new development that requires planning permission. The Environment Act was subsequently embedded into the Town and Country Planning Act with effect from January 2024 (major schemes) and April 2024 (small to medium schemes). As such planning applications are now required to demonstrate how they will deliver developments to include 10% biodiversity net gain, subject to some exemptions. The net gain provision whether within the development site or on another site must be maintained for a period of 30 years. In the instance where it is delivered off site, a s.106 agreement is required to ensure delivery, maintenance

and ongoing monitoring over a 30-year period (e.g. 2, 3, 5, 10, 15, 20, 25 and 30 years).

- 4.4 An agreement made under S.106 of the Town and Country Planning Act 1990 is known as a planning obligation which requires the applicant/developer and/or other interested parties to enter into an agreement with the local planning authority (known as a s.106 agreement) which can:
- (a) Restrict the development or use of the land in any specified way.
  - (b) Require operations or activities to be carried out.
  - (c) Require the land to be used in a specified way.
  - (d) Require a sum or sums to be paid to the authority on a specified date or dates or periodically.
- 4.5 These agreements will secure a variety of measures which if not provided would make the development unacceptable. Once the agreement has been executed, the s.106 Monitoring Officer will monitor the agreements to ensure that they are complied with.
- 4.6 The extent of monitoring will rest with the obligation that has been sought and this can be a one-off event, namely provision of affordable housing, a payment made to the council for highway works or it may be a number of actions that are required, namely maintenance of habitats works under BNG and associated monitoring reports over a 30-year period.
- 4.7 The council did historically ask for a monitoring fee as part of their s.106 agreement to monitor that the obligations are met, but this was removed over 10 years ago following a High Court ruling that it was unlawful to charge fees for the monitoring and administration of s.106 agreements.
- 4.8 Subsequent to this ruling, the Community Infrastructure Levy (Amendment)(England)(No.2) Regulations 2010 were amended in 2019 which now allows local authorities to charge a monitoring fee under section 106 planning obligations to cover the cost of the monitoring and reporting of delivery of that obligation. This is also now set out in Planning Practice guidance: Use of planning obligations and process for changing obligations specifically paragraph 036 (see background

papers). The legislation and practice guidance allows local authority to charge fees, specifically it states that:

*‘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’.*

- 4.9 These monitoring fees are calculated depending on the obligations sought and for the period of monitoring that is required under the terms of the s.106 agreement. Appendix 1 and 2 provides details of charges that have been introduced by other local authorities. The appendix separates BNG obligations from other planning obligations due to the timeframe required to monitor BNG under the Environmental legislation.
- 4.10 This report seeks to introduce charges to cover some of the administration costs of monitoring future s.106 agreements. Appendix 3 provides a schedule of these costs which are proportionate to the obligations set out on in each agreement.
- 4.11 It is proposed that the following fees are introduced:
- i) a flat rate of £1,000 for non-financial obligations, such as affordable housing provision,
  - ii) a flat rate of £2,500 for non-financial where more than one planning obligations or a number of actions as part of one obligation is required, and
  - iii) 5% of a financial contribution, capped at £10,000 is proposed as this requires additional monitoring to establish that the funds are spent in accordance with terms of the agreement and evidence provided.
- 4.12 In the instance of BNG, given the extensive timescales that monitoring is required, the charges will be more significant and range from £6,146 to £22,860. These charges have been calculated on the basis of the site area (small - 0 to 10ha, medium - 10+ to 20 and large - 20+ha to 40ha) together with the complexity of the habitats that need to be monitored ranging from low, moderate and high. The fees are based on monitoring at the intervals of 2, 3, 5, 10, 15, 20, 25 and 30 years with an inflation rate of 5% applied.

4.13 To conclude, the council is compliant with the legislation to introduce these charges, based on the costs that they would incur to monitor the agreements. The charges are proportionate in relation to the specific obligations.

## 5 Implications

<p><b>Resources:</b></p>	<p>Legislation allows the collection of fees to cover the actual costs of monitoring only.</p> <p>The s.106 monitoring officer is currently an established post and is funded via a mixture of council revenue and income from the Community Infrastructure Levy. Income from CIL currently has a budget pressure of £10,000 and the income from charging from s.106 monitoring will help mitigate this income pressure.</p> <p>Monitoring BNG requires additional software. It is intended to use the income from charging towards the cost of this software.</p> <p>Since BNG legislation is relatively new and its impact on the number of s.106 agreements the council will need to monitor remains uncertain, the revenue from charging may be allocated in the future to expand staffing resources if the volume of agreements grows beyond the capacity of existing resources, this could include additional ecology expertise and/ or monitoring officer requirements.</p>
<p><b>Legal and Governance:</b></p>	<p>S.106 of the Town and Country Planning Act 1990 requires the local planning authority to secure certain obligations to ensure that the development is acceptable. Community Infrastructure Levy (Amendment)(England)(No.2) Regulations 2019 allows councils to charge for monitoring of the agreements.</p>
<p><b>Risk:</b></p>	<p>There are no significant risks associated with the recommendations being sought.</p> <p>If the monitoring fees were not proportionate and covered more than the council's cost to monitor the</p>

	agreement there could be risk of a legal challenge. The fees proposed, have been tested against other local authority monitoring fees are calculated based on salary costs and time to ensure that they comply with regulations.
<b>Equality:</b>	There are no equality implications associated with this report.
<b>Health and Wellbeing:</b>	Monitoring agreements will ensure that obligations are met to ensure that developments provide good quality developments.
<b>Social Value:</b>	Planning permission for large scale development provide opportunities for social value, through apprenticeships and training.
<b>Climate Change:</b>	Biodiversity Net Gain (BNG) will contribute toward providing new habitats (i.e. planting tree, water features) that will support climate change initiatives
<b>Corporate Parenting:</b>	There are no corporate parenting implications associated with this report.

## 6 Appendices

Appendix 1- comparison of charges from other local authorities for non BNG s.106 monitoring fees.

Appendix 2 – comparison of charges from other local authorities for BNG s.106 monitoring fees.

Appendix 3 – Sandwell councils proposed fee structure for monitoring s.106 agreements.

## 7. Background Papers

Legislation framework to allow monitoring fees for s.106 agreements.