West Sussex County Council S106 Monitoring Fee

Summary

The West Sussex County Council S106 Monitoring Fee is £285 per trigger, per year of monitoring. Financial triggers are monitored for an average of three years and will therefore produce a fee of £855 per trigger, with non-financial triggers taking around six years to fulfil and therefore costing £1,710.

However, for agreements where there are both financial and non-financial triggers – the majority – the fee for non-financial obligations will only be calculated for the three years beyond the completion of financial obligations, assuming that they have the same triggers for completion.

The monitoring fee will be reviewed on an annual basis and updated as required.

Background for Charging

Planning obligations contained within Section 106 (S106) agreements represent an important funding stream for the provision of county-wide services needed to deliver sustainable growth. These obligations are necessary to mitigate the impact of new development.

In recent years there has been a rise in the number of Local Planning Authorities (LPAs) and County Councils who have introduced a fee for monitoring compliance with planning obligations. This charge has been levied to cover the administrative burden on local authorities that monitoring generates.

The CIL Regulations 2010 (as amended by the CIL amendment Regulations 2019) which came into force on 1st September 2019 clarify that an authority collecting contributions through the use of S106 agreements may now lawfully charge a fee for monitoring the planning obligations contained therein. This assumes that the fees meet the three CIL tests and do not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the relevant obligations. The fee can include the cost of reporting on S106, including the new annual Infrastructure Funding Statement that the 2019 Regulations introduced. It allows for: "a sum to be paid to a local planning authority in respect of the cost of monitoring (including reporting under these Regulations) in relation to the delivery of planning obligations in the authority's area." (Regulation 122 (2A) CIL Regulations 2010 (as amended)).

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Specifically the Guidance states that:

> "Authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of the 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." CIL Guidance (NPPG) Para 180 Ref ID: 25-180-20190901.

WSCC currently enters into S106 agreements to mitigate the impact of development on infrastructure such as highways, education, libraries, fire and waste and the mitigation may take the form of a financial contribution towards infrastructure improvements in these services or as non-financial obligations to be undertaken by the site developer or their sub-contractors. All agreements require monitoring to ensure compliance with site specific mitigation requirements and to ensure that financial obligations are fully met.

Many LPAs, including some within West Sussex, are now CIL charging authorities which reduces the use of S106 agreements to mitigate the impact of development. However the introduction of a CIL charging regime does not eradicate the need for planning obligations in West Sussex. They will continue to be required under certain conditions:

a) In those areas where CIL is not yet implemented;

b) Where CIL is introduced, there will remain a need for such obligations on strategic and other zero-rated sites where infrastructure delivery is expected to be fund through a Section 106 agreement;

c) Obligations will continue to provide infrastructure items which are not being funded by CIL such as on-site highway schemes, Travel Plans and so on.

Methodology

National Planning Practice Guidance states that '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).' In all cases monitoring must reflect the actual cost of monitoring.

At WSCC monitoring is undertaken by officers within the Information Management team within Planning Services and involves:

- Recording the obligations of an S106 agreement onto an IT database;
- Highlighting the triggers for the obligations contained within the S106 agreement;
- Monitoring the progress of the development in order to identify when obligations are due;
- Calculating the sums due after interest and indexation are applied, and establishing the contact who will be required to make payment;
- Undertaking site visits to ensure non-financial contributions have been completed;
- Updating the IT database with payments made and works completed in compliance with the S106 Agreement;
- Production of an annual Infrastructure Funding Statement to demonstrate how obligations have been applied to infrastructure projects within WSCC, and subsequently spent.

More than one member of staff is involved in this work but it equates to approximately 1FTE in order to manage efficiently. An average salary base for the team members undertaking these tasks is currently estimated at £40,000 per annum, inclusive of pension, employer NI contributions, and other packaged benefits. This, therefore, is the basis for the calculation of the fee, reflecting the actual cost of monitoring, that WSCC will charge for S106 monitoring, as provided for by the CIL Regulations 2010 (as amended by the CIL Amendment Regulations 2019).

In order for the fee to be related in scale and kind to the development the fee should be based on the amount of monitoring for the specific S106 agreement in question. Contributions are met by the introduction of specific triggers, such as commencement of development, or occupation of a number of units.

Consequently, the overhead for monitoring a S106 agreement is based on the number of triggers it contains, and the fee should reflect this. As a result, and in line with many other local authorities, WSCC will take a fee on a per-trigger basis, for each S106 agreement that it monitors.

Calculation

WSCC has entered into an average of one hundred and fifty S106 Agreements, per year, over a three year period covering 2017-2019. Based on evidence from previous agreements, financial obligations need to be monitored for an average of three years before they are fully paid, whilst non-financial obligations are, on average, fully complied with after a six-year period.

There is an average of 1.3 triggers across all live S106 agreements, causing around 200 triggers to be monitored on an annual basis.

£40,000 salary/200 triggers = £200 per trigger.

There is a distinction between financial triggers and non-financial triggers, which carry different monitoring overheads as a result of the length of time they require monitoring.

From April 2023 the fee will rise to £240 per trigger after application of inflation rate adjustments.

From April 2024 the fee will rise to £260 per trigger after application of inflation rate adjustments.

From April 2025 the fee will rise to £270 per trigger after application of inflation rate adjustments.

From April 2026 the fee will rise to £285 per trigger after application of inflation rate adjustments.

Collection of Fees

Fees are to be collected on the signing of the S106 agreement.

Example 1

All financial obligations due on first occupation; non-financial obligations also due on first occupation.

Financial obligations = 3 years x £285 = £855.

Non-financial obligations = 6 years x £285 = £1,710.

However, they are not monitored separately and the trigger is the same for both so the fee for monitoring the financial obligations can be disregarded as an overlap. **The Monitoring Fee will be £1,710.**

Example 2

Financial contributions due on first and 20th occupation; non-financial contributions due on commencement.

Financial contributions = 3 years x 2 triggers x £285 = £1,710 Non-financial contributions = 6 years x 1 trigger x £285 = £1,710.

These two elements will need monitoring for different triggers and there is no overlap. **Consequently the Monitoring Fee with be £3,420.**

First published: 28 February 2020.

Updated April 2023: indexation has increased the fee from £200 to £240 per trigger.

Updated April 2024: Indexation has increased the fee from £240 to £260 per trigger.

Updated April 2025: Indexation has increased the fee from £260 to £270 per trigger.

Updated April 2026: Indexation has increased the fee from £270 to £285 per trigger.

Travel Plan Monitoring Fees

WSCC also seeks Travel Plan Monitoring Fees to cover the cost of the ongoing monitoring of development-related Travel Plans and is a separate charge to the S106 Monitoring Fee. In line with best practice, Travel Plans are generally monitored for a period of fives years post occupation. This enables travel habits to and from the development to be established and sufficient time to monitor and assess the success of measures within a Travel Plan.

- The charges for the financial year of 2026/27 are:
- Travel Plan Statement - £1,765
- Travel Plan - £4,110
- Large strategic residential development in excess of 500 units or more - £5,865

The Travel Plan Monitoring Fees reflect the amount of local authority officer time required to evaluate the initial plan, assess the monitoring data, and participate in the ongoing review and agreement to any amended plans in the future, post planning once the development is built out and occupied. The costs have been benchmarked against the fees charged by other Local Authorities and are considered to be proportionate and reflective of the costs incurred. The Travel Plan Monitoring Fees increase by inflation in April each year.

Auditing fees will be secured via legal agreement alongside the need to produce a Travel Plan. Auditing fees do not apply to and will not be sought for any land use where education is the primary purpose, regardless of whether these are

privately or publicly-funded establishments. This includes (but is not limited to) nurseries, primary and secondary schools, and places of further education. WSCC will review monitoring reports associated with these uses without seeking a fee.