

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Portfolio Holder and New Communities Portfolio Holder 26 January 2010
AUTHOR/S: Executive Director (Operational Services) / Corporate Manager (Planning and Sustainable Communities)

ADMINISTRATION FEE FOR SECTION 106 AGREEMENTS

Purpose

1. The purpose of this report is to outline the proposal whereby the District Council applies an administration fee, as a result of handling planning obligations achieved via Section 106 agreements that require the payment of financial contributions.
2. This is a key decision because
 - it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates.
 - it is in conflict with a policy, plan or strategy approved by the Council or a committee of the Council.
 - it raises new issues of policy, or is made in the course of developing proposals to amend the policy framework, or is a decision taken under powers delegated by the Council to amend an aspect of the policy framework.

Background

3. Under section 106 of the Town and Country Planning Act 1990 a local planning authority (LPA) is permitted to enter into a legally-binding agreement or planning obligation with a landowner, in association with the granting of planning permission. The obligation is termed a Section 106 Agreement. Alternatively, developers may secure planning obligations through the mechanism of presenting a unilateral undertaking (normally, but not exclusively, in appeal situations).
4. The planning obligations circular 05/2005 outlined 5 tests that a planning obligation is to satisfy.
 - (i) Relevant to planning
 - (ii) Necessary to make the proposed development acceptable in planning terms
 - (iii) Directly related to the proposed development
 - (iv) Fairly and reasonably related to the proposed development
 - (v) Reasonable in all other aspects
5. The District Council has adopted several formal and informal policies that require planning obligations for contributions to be paid in respect of local infrastructure required as a result of development (open space SPD, public art SPD, informal policy on indoor community facilities). In many cases, these contributions, once collected, are applied to third parties, such as parish councils, who oversee delivery of the infrastructure at a local level.

6. The Council employs a Section 106 officer, and Section 106 Implementation Officer, planning, legal and finance officers who all facilitate the securing and delivery of planning obligations.
7. On November 5th 2009 the Council approved a proposal whereby contributions were to be required from developers to underwrite costs of Section 106 monitoring.
8. The District Council has undertaken an acute efficiency savings programme, as a result of the economic downturn, and has identified substantial savings throughout the Council. Councillors approved a significant amount of these savings to come from the Planning and New Communities budgets.
9. During this programme, potential income generation schemes were proposed and investigated. One proposal was that, to secure the timely distribution of planning obligations, the Council could apply a small administration fee for handling monies received to secure the staff required to fulfil this work. Officers were asked to undertake further work and report back on findings.

Considerations

10. What could be considered a contentious proposal the portfolio holders are to apply diligence when considering this report, with appropriate regard given to the Council's aims and objectives. Consideration should also be given to the planning policies that require the planning obligations to be paid and for the potential introduction of either a Community Infrastructure Levy (CIL) or Variable Rate Tariff (VRT), and the impact it will have on services.
11. Of the other District Councils in Cambridgeshire only Cambridge City requires planning obligation contributions from single dwelling applications. The City Council is, however, in a position whereby monies received via planning obligations are centrally pooled and allocated within the remit of officer's roles, therefore reducing the call against administration resources. Huntingdonshire currently only require contributions for major developments (10 units plus). Fenland District Council will only require them on applications from 14 units plus. Whilst East Cambridgeshire District Council has now adopted a core strategy (October 09) that allows for single unit charging, in relation to planning obligations, their previous local plan would only warrant this on applications greater than 9 units.
12. Many other District Councils apply a charge for the monitoring of Section 106 agreements, as outlined in the previously approved Section 106 monitoring fee report. Investigations showed that some Authorities applied a less rigorous policy (such as a percentage rate of the overall agreement) thereby inadvertently generating a greater income than the direct cost of undertaking the service. It can be considered that additional income generated covers supplementary administration costs. The Section 106 monitoring fee report only went so far as to recover the cost of employing the Section 106 Implementation Officer, and not the costs of receiving contributions and administering the transfer of these monies to Parish Councils etc. Due to the current economic environment and pressure on services it is appropriate to consider how this work is to be funded. It should be borne in mind that this work would not be necessary but for the development proposals that give rise to the same, many of which are speculative in nature.

13. The adopted charge schedule for monitoring section 106 agreements is detailed in the table below.

Type	Fee
Single and annexe	£50.00
2-9 dwellings	£250.00
10-50 dwellings	£1,500.00
50+ dwellings	£3,000.00
Commercial	£500.00
Other	£500.00

Options

14. The portfolio holders have 5 options available
- (a) To approve a process whereby any contributions, passed on to Parish Councils or other third-party infrastructure providers, are debited an amount to cover the cost of administration
 - (b) To recharge the recipient providers, as a separate process, to cover the cost of administration
 - (c) To increase the Councils legal costs, in relation to the approval, completion and registration of planning obligations requiring contributions, thereby applying any fee to land owners/developers
 - (d) To include this charge as a supplemental fee to the previously approved Section 106 monitoring charge, thereby applying this fee to land owners/developers
 - (e) To note this report

Implications

15. Due to the range of options available, there are several implications that need to be highlighted in detail.
16. Option (a) needs to be considered alongside the planning obligations circular 05/2005 and the planning policy that requires the relevant planning obligations. This option would in effect be diminishing the full value of the contribution in terms of its effectiveness in mitigating the impact of the development. Not only would this contradict the intention of the planning policy, and arguably be contrary to the intentions of planning obligations circular, but would also leave the Council open to challenge. Recipient providers may have negative perceptions of this option additionally.
17. Option (b) would apply a charge to the Parish Council or other provider as a result of the administration time spent by the District Council to process the monies received. To adopt this process would in effect be counter productive, as a separate process would be required to run alongside the existing one. This method of charging would reduce the budget of the Parish Council and have an adverse impact on the delivery of local projects. Additionally, such recharges would require the prior agreement of the providers concerned, which might not be forthcoming if the charge was negatively perceived as is perhaps likely.
18. Option (c) would effectively 'bolt on' an additional sum of money to the legal fee as a result of drafting and/or approving the relevant planning obligation. This additional fee

would be paid by the developer to cover the administration process, as a result of the Council entertaining the planning obligation. Legal fees are directly related to the amount of time the legal officer spends on the task and there may be cases (with unilateral undertakings) where the reactive nature of the work means no charge is appropriate to be levied. Adopting this approach would require a degree of additional work in finance to segregate the legal fee into the 2 different cost centres.

19. Option (d) would expand on the previously approved proposal to apply a fee to developers as a result of monitoring Section 106 agreements. The previous proposal recommended that the policy would be implemented as of 1st January 2010, therefore the first monies would not be expected until the new financial year.

20. Financial	The proposals will increase the revenue budget for the District Council, whilst potentially (depending on option adopted) passing on this cost to Parish Councils.
Legal	Where planning obligations are applied and contributions collected as per planning policy, the most significant legal implication is whether this approach accords with the intention, and tests of planning obligations circular 05/2005
Staffing	The proposals will secure additional funding to offset the cost of employing staff required during the process of invoicing, receiving and transferring the monies obtained pursuant to planning obligations.
Risk Management	Any contradiction to planning policy or planning obligations circular could leave the Council open to challenge during or subsequent to planning applications.
Equal Opportunities	N/A

Consultations

21. During the drafting of the report officers from New Communities, Planning and Legal discussed the options available to be included within the report.
22. Due to the variety of options available no external consultation has taken place.

Effect on Strategic Aims

23.	Commitment to being a listening council, providing first class services accessible to all.
	Risk of negative reaction should either Parish Councils be required to contribute an administration fee or have section 106 contributions administered less frequently.
	Commitment to ensuring that South Cambridgeshire continues to be a safe and healthy place for all.
	Risk of inability to provide real time funding allowing for the improvement to and provision of recreation land and children's play facilities
	Commitment to making South Cambridgeshire a place in which residents can feel proud to live.
	Commitment to assisting provision for local jobs for all.
	Commitment to providing a voice for rural life.

Conclusions/Summary

24. South Cambridgeshire District Council has been a pioneering Authority in relation to the Local Development Framework and the adoption of policies that achieves a good level of planning gain. This has come at a cost with the policies requiring additional staff to undertake this additional work.
25. As a result, the District Council requires additional funding with which to continue securing the timely delivery of planning obligations in the public interest. Without an administration fee, the Council may be in a situation whereby resource pressures mean future planning obligations are not negotiated successfully, or contributions distributed among Parish Councils or other providers as quickly as they are presently.
26. Investigations into the time spent managing this process calculated at a minimum of 4 hours with involvement from a lawyer, Section 106 implementation officer and finance officer.
27. Based on planning application figures in the last full financial year (2008/09), and applying adopted policy, the Council would have required a total of 150 Section 106 agreements or undertakings securing planning obligations.

Recommendations

28. This report does not recommend which option the District Council should approve. It does, however, recommend that option (a) is not pursued due to the conflict with planning policy, planning obligation guidance and the effect on the Councils strategic aims.
29. Should the Planning and New Communities Portfolio Holders be minded to proceed with an administration fee for handling Section 106 monies, it is recommended that a fee of £100 per agreement should be levied.
30. If introduced, the fee should be implemented as from 1st January 2010
31. The District Council should review any charge on an annual basis, taking account of the budget situation and working practice.
32. The District Council should also undertake a review of this charge in conjunction with the proposed CIL or VRT.
33. The Planning and New Communities Portfolio Holders should agree any proposed future changes to the charging level.

Background Papers: the following background papers were used in the preparation of this report:

Section 106 monitoring fees

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