

Section 106 Monitoring Fee

From 1st April 2021



GOSPORT
Borough Council

Current Section 106 monitoring fee

The current section 106 monitoring fee charged by Gosport Borough Council is set out below. Further information relating to the rationale behind the introduction of a fee, how it was established, the exceptions, and how the fee will be used are contained in this document.

Table 1: Current Section 106 monitoring fee

	Fee 2021/2022	Comment
Section 106 – financial	5% of financial obligation	Monitoring fee capped at a maximum of £10,000 per Section 106 agreement.
Section 106 – non-financial	No charge	There is no monitoring fee for non-financial obligations. This will be reviewed on an annual basis.

1 Section 106 monitoring fees

- 1.1 **From 1st April 2021, Gosport Borough Council will charge a fee for the monitoring, reporting and delivery of planning obligations.** This document sets out the Borough Council's monitoring fee and provides the rationale for its introduction.
- 1.2 The introduction of a monitoring fee was approved at the meeting of the Economic Development Board on 18th November 2020.
- 1.3 Historically, some Local Planning Authorities have charged monitoring fees for planning obligations due to the administrative burden the activity can generate. Gosport Borough Council has not previously charged monitoring fees due to the lack of explicit law or national policy allowing this. Following a legal challenge in February 2015 (Oxfordshire County Council v Secretary of State for Communities and Local Government and Others¹) the High Court held that administration and monitoring fees imposed in relation to Section 106 agreements were not necessary to make the development acceptable in planning terms and thus failed the tests set out in the law. As a result, many local authorities with a monitoring fee ceased charging.
- 1.4 In 2018/19 the Government acknowledged the administrative burden monitoring Section 106 agreements can place on local planning authorities. In a 'technical consultation on draft regulations to reform developer contributions'² the Government proposed to permit authorities to seek a proportionate and reasonable monitoring fee towards the monitoring and reporting of planning obligations through Section 106 agreements. This was met with support by respondents to the consultation and was

¹ High Court Decision available from: <https://www.bailii.org/ew/cases/EWHC/Admin/2015/186.html>

² Government consultation available from: <https://www.gov.uk/government/consultations/developer-contributions-reform-technical-consultation>

subsequently introduced as part of The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 which became law in September 2019.

- 1.5 The change in the CIL Regulations offers the Council the opportunity to introduce a Section 106 monitoring fee and ensure the appropriate resources are in place to ensure ongoing compliance with the Government's new requirements to publish developer contributions data and the Infrastructure Funding Statement (published online: www.gosport.gov.uk/infrastructure).

2 Establishing the monitoring fee

- 2.1 To establish the monitoring fee the Council has followed the Government advice set out in the Planning Practice Guidance (PPG).

Planning Practice Guidance: How can local authorities fund reporting on 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.'

www.gov.uk/guidance/planning-obligations (Paragraph: 036 Reference ID: 23b-036-20190901 Revision date: 01 09 2019)

- 2.2 In the Government's response to the 'Reforming Developer Contributions' consultation in June 2019, it stated its intention to provide guidance on methods that could be used to calculate monitoring costs. No such guidance has been published, nor what 'fair and reasonable' represents. The Borough Council is therefore required to establish its monitoring fee in line with the broad guidance set out in the PPG.
- 2.3 Table 2 shows a summary of what some local authorities are currently charging. The approach varies widely, some authorities use a percentage fee (typically 5%) and others use a fixed fee (for example £500 per obligation). It is also worth noting that some authorities do not have CIL so use section 106 agreements more regularly.

Table 2: Monitoring fees charged by other local authorities

Local authority	Non-financial obligation	Financial obligation
Portsmouth City Council	£620	£310 for contributions with commencement trigger £620 for contributions with future trigger
Havant Borough Council	£739 per non-financial head of term	5% of cost per financial head of term. Capped at £10,670
South Downs National Park	£440 per eligible covenant	£440 per eligible covenant. Exemptions apply
New Forest National Park	£284 per covenant with percentage increase for certain type/size thresholds. Capped at £10,000	£284 per covenant with percentage increase for certain type/size thresholds. Capped at £10,000
Hampshire County Council	£500 per obligation	£500 per obligation. Capped at £10,000

3 What does monitoring involve?

- 3.1 The monitoring of the receipt and spending of financial developer contributions secured through Section 106 agreements is primarily undertaken by the Development Management Section within the Planning and Regeneration Service and the Accountancy Section within the Finance Service. The reporting and publishing of information relating to the Council's collection and expenditure of developer contributions is undertaken by the Planning Policy Section within the Planning and Regeneration Service. From start to finish, the process can involve many officers across the Council and can therefore be resource intensive.
- 3.2 The monitoring of financial obligations involves:
- Recording the details of the section 106 agreement on an IT system;
 - Recording the triggers for the obligations contained within the agreement;
 - Monitoring the progress of the development to identify when obligations are due to be paid, this includes site visits to monitor development progress;
 - Invoicing for financial contributions and ensuring they are paid by the deadline;
 - Recording how financial contributions are spent by the Borough Council; and
 - Publishing detailed information on the collection and spending of financial contributions in spreadsheets and the IFS on the Councils website annually.

4 Setting a proportionate fee

- 4.1 In setting a proportionate fee, the Borough Council considers it fair and reasonable to base its monitoring fee on the 5% CIL administration fee used by the Government.
- 4.2 The Government allows 5% of CIL receipts to be used for administration of the Community Infrastructure Levy. The Borough Council has collected this administration fee since introduction of CIL on 1 February 2016. The Government considers this a proportionate fee for CIL given the actions local authorities are required to undertake to effectively monitor the collection and spending of CIL. Given the Government considers this percentage fee sound, the Council considers this a proportionate fee for the monitoring of Section 106 agreements.
- 4.3 The Council's use of Section 106 agreements has reduced significantly since the adoption of CIL. Nonetheless, Section 106 agreements continue to be used in some circumstances and can be more complex to monitor. The Council could therefore consider charging a greater amount than 5%, in line with some other local authorities, however, given this is the first time the Council will be charging a monitoring fee for Section 106 agreement, it is considered appropriate to start with a 5% fee as used for CIL administration.
- 4.4 **The percentage charge will be reviewed annually to ensure the fee continues to cover the costs of monitoring Section 106 agreements.**
- 4.5 Monitoring fees for section 106 agreements will be secured by way of contractual covenant in the Section 106 agreement itself and will be in addition to the legal charge for drafting and checking the obligation. Fees will be payable at the same time as any legal costs or on the execution of the legal agreement. An overview of the Section 106 monitoring fee is published on the Borough Council's website.
- 4.6 **The total monitoring fee per Section 106 agreement is capped at £10,000.** This will ensure the fee is reasonable and does not exceed the actual cost of monitoring.

5 Exceptions to the monitoring fee

- 5.1 Approximately half of the section 106 agreements associated with planning applications approved by the Borough Council since 1 February 2016 involve Hampshire County Council in some way. From 1 October 2020, Hampshire County Council has introduced a monitoring fee for all agreements that it enters into. In addition to making sure the fee is proportionate and reasonable, it is important the fee is set at a level that is not likely to significantly impact developers and therefore give rise to challenge. The Borough Council will therefore only charge a monitoring fee to monitor the financial obligations that it will be responsible for monitoring, collecting and using, and not for those elements that Hampshire County Council could charge a monitoring fee for. This will avoid developers being charged twice for monitoring fees.

- 5.2 Any payment secured towards the Solent Recreation Mitigation Strategy and any subsequent scheme of a similar nature will be exempt from a monitoring fee as methods of payment are already established.
- 5.3 Any exemptions will be set out on the Borough Council's website and reviewed regularly to ensure the monitoring fee is being applied reasonably.
- 5.4 At this stage the Council will not charge for non-financial obligations, but this will be kept under review following the experience of any forthcoming non-financial S106 agreements secured over the next monitoring period.

6 Monitoring expenditure and reporting

- 6.1 The Borough Council reports income and expenditure relating to the Section 106 monitoring fee in the Infrastructure Funding Statement (IFS) annually by the 31 December. The latest IFS can be found online: www.gosport.gov.uk/infrastructure