

DCE

Fees and Charges – s106

REPORT OF HEAD OF PLANNING AND PLACE SHAPING

At the present time Development Control Officers negotiate Developers Contributions based on the Supplementary Planning Guidance “Development Requirements” adopted by the Council in 2003 based on provisions in the main legislation the Town and Country Planning Act 1990. The Supplementary Planning Guidance refers to “reasonable legal costs” of the Council being re charged to the developer. The subsequent Circular 05/2005 “Planning Obligations” highlights the need for proper monitoring and implementation of obligations secured under legal agreements. The DCLG “Planning Obligations: Practice Guide” 2006 gives advice to authorities and quotes authorities as exemplars of good practice such as Colchester. Since that time a joint report by CLG, RTP, the Joseph Rowntree Trust and the Greater London Authority published in 2007 “Shaping and Delivering Tomorrow’s Place: Effective Practice in Spatial Planning” recommends to local authorities that agreements include funds for implementation and monitoring. Many other Councils are now charging for the monitoring and implementation of obligations under s106 Agreements.

Planning application fees were introduced in 1983 under legislation contained in the Local Government Planning and Land Act 1980, to provide income for planning authorities with which they could improve the speed and efficiency of their development control service. However, the fees do not take specific account of whether an application requires a planning obligation, and it could be argued that the management of agreements does not form part of the development control service covered by the application fee and should therefore be paid by the developer in addition to this fee. This is consistent with payment by the developer of the Council’s legal costs incurred in the drafting and engrossment of legal agreements. At Rushcliffe we do not charge for monitoring and implementation of Agreements although last year we invested in a new database for managing contributions based on a package designed by Colchester as the number and complexity of obligations requiring monitoring and managing has increased substantially.

The updating of the Development Requirements SPG to the new format Supplementary Planning Document is linked to the Local Development Framework process and will therefore face substantial delay. In the meantime developers are submitting complex applications on major unallocated sites of a scale not seen in Rushcliffe in recent years. These proposals will require substantial infrastructure which is expected to be delivered via a s106 agreement, and will be increasingly difficult to monitor and manage given the scale of likely obligations and the need for phasing over long timescales. Developers are prepared to pursue these cases at appeal. Should planning permission be forthcoming (at appeal or otherwise) subject to a s106 Agreement it is considered appropriate to seek a contribution to the costs of implementing these Agreements and this eventuality needs to be addressed ahead of the LDF process. There are various ways in which charges could be set eg a percentage of the value of the monies arising, a fixed amount per agreement, by negotiation, by staff costs and so on. A straightforward and understandable method is a rate per principal type of contribution, informed by staff costs, (which is how Colchester set their charges).

Most obligations require physical monitoring at regular intervals until a trigger point is reached or indefinitely. Examples might include monitoring the prevention of the commencement of a particular se until financial contribution is made or monitoring development on site to identify a trigger point for a financial payment. Here consideration must be given to officer time and travel costs.

As a follow up to the inspection it will usually be necessary to report/record the situation and contact the developer and the body responsible for spending the money such as the County or the health Authority. Physical monitoring may also be needed where there is no financial contribution in respect of the agreement. In exceptional cases, it may be necessary to enforce compliance with an agreement by way of an injunction and this would incur significant officer time and legal cost.

It is therefore proposed to charge a fee of £273 per principal obligation. (This is based on an hourly rate of £39 including overheads for 1 day of staff time at grade LS10 per 1 year of monitoring). Where the scheme is expected to take a significant period of time to complete or where phasing is involved the amount would be multiplied by the expected time taken eg 15 years.

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