

REPORT TO:
PLANNING COMMITTEE
26.10.10

REPORT OF:
Director of Place Shaping
and Enterprise

Part 1

**Subject: Introduction of a Section 106
Management Fee**

Wards: All

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1. EXECUTIVE SUMMARY

- 1.1. A section 106 (S106) agreement (or planning obligation) is an agreement negotiated in the context of some planning applications between the Local Planning Authority and a developer. S106 can be used, for example, to secure non monetary benefits such as affordable housing and environmental improvements, and financial contributions for social, physical and green infrastructure.
- 1.2. At its meeting on the 4th October 2010, the Council's Overview and Scrutiny Committee agreed to confirm the portfolio decision to approve the charging of a S106 management fee for all S106 agreements signed relating to planning applications received after 1st October 2010.

2. RECOMMENDATIONS

- 2.1 That the Planning Committee note that a Section 106 management fee has been introduced for all S106 agreements signed relating to planning applications received after 1st October 2010, as follows:
- 5% of the total value of financial contributions
 - a fixed charge to manage non-monetary obligations of £350 per head of term
 - a separate one-off fee of £250 will be charged for a deed of variation

The revenue generated from this fee will be used for S106 administration, monitoring and management purposes only.

The fee will be reviewed and if necessary amended on 1st April 2011 and every 12 months thereafter as part of the annual review of fees.

3. BACKGROUND

- 3.1 Circular 05/05 states that once planning obligations have been agreed, it is important that they are implemented or enforced in an efficient and transparent way, in order to ensure that contributions are spent on their intended purpose and that the associated development contributes to the sustainability of the area.
- 3.2 In March 2008 the London Assembly published 'Who gains? The operation of section 106 planning agreements in London' . This found that at that point in time 61 per cent of London Boroughs were charging developers for monitoring fees. Charges are increasingly being introduced as awareness of the relevance of monitoring grows. The report made the following recommendation *'Boroughs should prioritise the monitoring of section 106 agreements and ensure they have enough staff, who are sufficiently skilled and experienced to do it. We recommend all section 106 agreements contain clauses that allow boroughs to charge developers for monitoring their agreements.'* A more recent benchmarking exercise carried out by the Council has found that over 75% of London boroughs now consistently charge a monitoring/ management fee.
- 3.3 The Council's S106 service was subject to an internal audit in July 2009. The report identified the possibility of the S106 monitoring post being funded through S106 receipts. Core Policy 46 of the Pre-Submission Core Strategy states that: *'Prospective developers will meet the Council's costs in drafting the planning obligations relevant to their proposals, together with a financial contribution to the Council's subsequent administration and monitoring costs'*.

4. S106 MANAGEMENT FEE

- 4.1 The cost of managing S106 is a cost incurred in relation to the relevant development. Management is essential to ensure that S106 agreements are delivered, and that the development is, therefore, acceptable in planning terms. The proposed management fees are considered to be fairly and reasonably related in scale and kind to the development and the Council will only seek to recover the costs incurred in the administration, monitoring and management of obligations - the costs incurred by way of officer time needed to properly monitor throughout the lifetime of the agreement and any necessary software or hardware to support this work.
- 4.2 The introduction of a management fee will enable the Council to comprehensively manage all S106 agreements. The failure to adequately manage S106 agreements could result in the potential repayment of financial contributions to developers if money is not spent by the claw back date specified in the S106 agreement. It could also result in the failure to identify obligations that have not been paid. The management of S106 is beneficial to the developer: developers may be liable to penalty clauses/ additional payments if requirements of the agreement are not met when due. It will also lead to greater accountability and transparency by enabling more effective reporting, beneficial to developers, councillors, and internal departments such as finance.