

SECTION 106 LEGAL AGREEMENTS

FEEES FOR MONITORING LEGAL AGREEMENTS

There are two aspects to monitoring and managing section 106 legal agreements, these being:

- Financial monitoring and management of the monies associated with receiving the income, and;
- Physical monitoring.

This Council has modeled the approach to monitoring legal agreements on best practice advice. It now has an officer and systems in place to provide a quality service to applicants in the preparation of legal agreements and the monitoring of the fulfilment of the obligations by both the applicant and the Council.

Monitoring

From 1 April 2009, the Monitoring Fee will be £325 for each obligation contained within the Legal Agreement. This fee covers the officer's time in the checking of the legal agreement, processing it once it becomes "live", monitoring the obligations of the applicant to ensure that they are fulfilled at the relevant trigger point and then the Council's undertaking of their covenants within the agreement.

This fee is the minimum fee applied to any legal agreement clause charged to unilateral public open space agreements which are relatively straightforward. Even these simple agreements require monitoring and the maintenance of a proper audit trail in respect of the collection and expenditure of the contributions received.

Physical Monitoring

From 1 April 2009, the Physical Monitoring Fee will be £400 per year for each obligation contained within the Legal Agreement and for those years where there are deferred triggers for the fulfilment of the obligations requiring monitoring.

For example:-

- Checking development triggers (i.e. number of houses built or occupied).
- A minimum monitoring period of one year will be applied for those obligations requiring physical monitoring. For larger developments where there are a number of obligations requiring monitoring and it will take a number of years to complete, an assessment of the development proposed will be undertaken with the applicant to establish which years physical monitoring will be required.

NOTE: Both Monitoring and Physical Monitoring Fees are payable on execution of the legal agreement. Where it is necessary for solicitors to be involved in the preparation of a legal agreement, the applicant is required to pay the Council's solicitor's fees (excluding VAT).

OTHER MONITORING

There are occasions where a Section 106 legal agreement is required but there is little ongoing monitoring required. Examples would be Affordable Housing Rural Exception schemes or holiday let restrictions. A new category of Other Monitoring Fee has been introduced from 1 April 2009. This will be calculated using a multiplier of £100 and dependant upon the amount of monitoring required will be negotiated with the applicant.

WORKED EXAMPLES

1. Public Open Space - contribution

The Council would enter into a legal agreement to secure the cost of the public open space based on the size of dwelling multiplied by the number of units provided on sites below 1.5 hectares in size.

A monitoring charge would be applied at £325.

2. Legal Agreement requiring Other monitoring

A Registered Social Landlord would enter into a legal agreement to cover the type of affordable housing on a rural exception site. The Monitoring Fee payable would be applied at £100.

3. Rural Housing Development 5 dwellings

A development of five dwellings built over two years this would require a legal agreement to address the following obligations:

- Public open space contribution – paid prior to commencement
- Onsite affordable housing provision – the legal agreement provides for these to be released in year 2

The monitoring charges for this would be; the standard monitoring charge for each item i.e. £325 X 2 = £650 plus physical monitoring of housing element over two years i.e. £400 x 1 years = £400. Thereby the total monitoring charge applied would cost £1050.

4. Large Development of 200 units

A large development of 200 units built over 4 years requiring a legal agreement to address the following obligations:

- Harwich Masterplan contribution – payable on commencement
- 10% on site provision of Open Space and payment for ongoing maintenance – to be laid out, equipped and payment made before 75% of the development completed
- 40% Onsite provision of affordable housing – 20 units out of first 60 completed, 30 out of the next 60 completed and 30 out of the next 60 completed
- Education contribution – prior to first occupation

OBLIGATION	Monitoring Fee	Year 1	Year 2	Year 3	Year 4	Total
Harwich Masterplan	325					325
Open Space	325			400	400	1125
Affordable Housing	325		400	400	400	1525
Education	325	400				725
Total	1300	400	400	800	800	3700