

EXECUTIVE BOARD DECISION



REPORT OF: Executive Member for Growth and Development

LEAD OFFICERS: Director of Growth & Development

DATE: Thursday, 10 September 2020

PORTFOLIO(S) AFFECTED: Growth and Development

WARD/S AFFECTED: (All Wards);

KEY DECISION: Y

SUBJECT:

Update to S106 process & Infrastructure Funding Statement 2019/20

1. EXECUTIVE SUMMARY

The Infrastructure Funding Statement (IFS) is produced annually and provides a summary of financial contributions the Council has secured within the year via Section 106 agreements from new developments for off-site infrastructure works and affordable housing, in addition to highway works completed as part of new developments through Section 278 agreements. It also identifies the projects that have been delivered as a result of the contributions across the borough.

This report presents the 2019-20 IFS.

As allowed by the Community Infrastructure Levy (Amendment)(England)(No.2) Regulations 2019, the Council will begin to add a monitoring fee to any s106 agreement associated with planning applications received from 1st October 2020. These fees will cover the costs involved in the monitoring and reporting on the delivery of these agreements. The IFS sets out these fees which will be reviewed as part of the annual update to the IFS. Future updates to the IFS will report on the amount of monitoring fees received each year.

2. RECOMMENDATIONS

That the Executive Board:

Approves an update to the Council's s106 procedure to introduce a monitoring fee to any s106 agreement associated with planning applications received from **1st October 2020** (as set out in the 2019-20 Infrastructure Funding Statement) and to note the 2019-20 Infrastructure Funding Statement.

3. BACKGROUND

Infrastructure Funding Statement 2019-20

The Community Infrastructure Levy (Amendment)(England)(No.2) Regulations 2019 now requires authorities (from December 2020) to prepare an Infrastructure Funding Statement (IFS) to set out their annual income and expenditure relating to section 106 agreements.

Blackburn with Darwen's 2019-20 IFS provides a summary of financial contributions the Council has secured through section 106 agreements from new developments for off-site infrastructure works and affordable housing, in addition to highway works completed as part of new developments through section 278 agreements within the 2019-20 monitoring period. It also includes information on the infrastructure works funded through s106 contributions.

In summary, the report provides:

- an overview of s106 and s278 agreements;
- the Council's internal process relating to s106 contributions;
- information on the introduction of monitoring fees;
- the s106 contributions paid to the Council in the 2019/20 monitoring period;
- s106 contributions and s278 works estimated for future years; and
- projects delivered in the Borough via s106 and s278 agreements in the 2019/20 monitoring period.

The information included in the report is updated annually and published on the Council's website. This will ensure the most up to date information on the amount of developer contributions received from new developments, in addition to information on where these monies have been spent is readily available to members of the public and other interested parties.

The report does not include information on the infrastructure delivered on site as part of new developments in the borough.

Introduction of monitoring fees to s106 agreements

The Community Infrastructure Levy (Amendment)(England)(No.2) Regulations 2019 also allows authorities to charge a monitoring fee through section 106 planning obligations to cover the cost of the monitoring and reporting on delivery of that section 106 obligation.

The approval of a fee schedule aims to enable the Council to recover its costs in monitoring future s106 agreements. In all cases, monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. The following monitoring fees are presented in the 2019-20 IFS and will be added to any s106 agreements associated with planning applications received **from 1st October 2020**. The fees set out below are considered to be proportionate and will contribute to the Council's reasonable costs of monitoring each obligation. The fees will be reviewed on an annual basis to reflect up to date costs and reported on through the Infrastructure Funding Statements.

Type of obligation	Monitoring fee	Comment
Commuted sum	1% of each payment instalment	To be included within each invoice sent to developers requesting payment at appropriate time.
Land Contribution	£1,000 per development site	Payment to be made at the time land transfer takes place.
On-site Affordable Housing	£1,000 per development site	Payment to be made on first occupation of affordable units.

4. KEY ISSUES & RISKS

There are no identified risks with the production of the Infrastructure Funding Statement. It presents a useful summary of the contributions the Council has received in the 2019-20 monitoring period and the infrastructure projects delivered as a result of s106 contributions across the borough. Its production on an annual basis meets the legal requirements set out in the Community Infrastructure Levy Regulations introduced in 2019.

The 2019-20 IFS introduces a new section setting out the monitoring fees that will be added to s106 agreements associated with planning applications received from 1st October 2020. These

fees are necessary to cover the resources required to cover the preparation, monitoring and reporting on s106 agreements. Not introducing these monitoring fees would mean that this work would have to be completed within existing budgets.

The monitoring fees set are proportionate and reasonable, reflecting the actual cost of monitoring and reporting on the agreements. The Council will report on the monitoring fees collected each year in the annual Infrastructure Funding Statement (IFS), in addition to annually reviewing the fees to ensure they remain proportionate and reasonable.

5. POLICY IMPLICATIONS

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

The reforms to the planning obligations process introduced by the Community Infrastructure Levy Regulations 2019 contain a number of key elements, which includes the ability for authorities to charge a monitoring fee and the requirement to prepare an annual Infrastructure Funding Statement (from December 2020).

The need to produce an Infrastructure Funding Statement has increased the substantial workload and cost the Council has to cover when producing, monitoring and reporting on s106 agreements, work which is currently unfunded by the developer. Introducing monitoring fees will help to offset these costs and are set at an amount which is proportionate and reasonable.

6. FINANCIAL IMPLICATIONS

The funding that can be collected to assist in the monitoring of s106 agreements will help to offset the resources required to carry out the Council's rigorous process of financial monitoring and management of s106 monies received and spent, in addition to the resources required to report on these contributions through the production of an Infrastructure Funding Statement. The monitoring fee will be added to the s106 requirements.

If the monitoring fee is not collected, this additional work would have to be completed within existing budgets. The fees will be reviewed each year to ensure they remain proportionate and reasonable.

7. LEGAL IMPLICATIONS

The Community Infrastructure Levy (Amendment)(England)(No.2) Regulations 2019 now allow Local Authorities to charge a monitoring fee through section 106 planning obligations, to cover the cost of the monitoring and reporting on delivery of that section 106 obligation as described above. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation. However, monitoring fees should not be sought retrospectively for historic agreements.

The Council will begin to add a monitoring fee to any s106 agreement associated with planning applications received from **1st October 2020**. These will cover the cost of the monitoring and reporting on delivery of the agreements, including the production of the IFS (which is a new requirement), on an annual basis. Fees will be reviewed on an annual basis to ensure they remain proportionate and reasonable.

The IFS will be used to report on the amount of fees collected each year.

8. RESOURCE IMPLICATIONS

If the monitoring fee is not collected, this additional work would have to be completed within existing budgets.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision.

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision.

10. CONSULTATIONS

The Infrastructure Funding Statement 2019-20 will be available on the Council's website for members of the public and other interested parties to view and comment on if necessary.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

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DATE:	27/07/2020
BACKGROUND PAPER:	