

**ADMINISTRATION AND MONITORING FEES
FOR SECTION 106 AGREEMENTS**

1. Introduction

Following a recent court case, it has been held that local planning authorities should not be regularly charging fees for administering, monitoring and enforcing clauses in Section 106 agreements. This report proposes that the Council withdraws its scheme for charging, unless there are exceptional circumstances.

2. Background

Since October 2012 (PLN1254 report to Cabinet on 25 September 2015), Rushmoor Borough Council has been imposing an administration and monitoring levy comprising 5% of the total contributions offered in any S.106 agreement or undertaking, up to a maximum figure. Charging a fee for this was common practice amongst authorities, until the recent ruling.

3. Court Case

In February 2015, the case of *Oxfordshire CC v. Secretary of State and others* considered the matter of local authority requests for administration and monitoring fees in S.106 agreements. The court could not find any indication that the planning authority could or should charge the cost of administration and monitoring to the developer. It noted that nowhere in the provisions for the payment of fees for the discharge of local planning authority functions were administration and monitoring charges covered. The court concluded that it envisaged that the cost of essential administration, monitoring and enforcement would be met out of the authority's own budget.

It was accepted that only in exceptional circumstances would the request for administration and monitoring fees meet the tests of a valid obligation now set out in Regulation 122 of the Community Infrastructure Regulations 2010 (as amended). There may be exceptional reasons, for example with a very complex development and agreement or where a very small authority deals with an exceptional large development, but in most cases, it has now been held unlawful.

4. Financial Implications

In 2013-14, the fees on administering and monitoring S.106 agreements brought in £17,000 and in 2014-15, income was £64,000, largely due to the Wellesley scheme. This loss of income to the Council has been offset recently since planning application fee income last year was significantly up on the estimate by some £36,000.

5. Recommendation

It is recommended that the Council cease the scheme of charging administration and monitoring fees on Section 106 Agreements, other than in exceptional and justifiable circumstances.

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