Licensing and Planning Policy Committee
10 March 2026

SECTION 106 MONITORING FEES

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Wards affected:	(All Wards);
Urgent Decision?	No

Summary

Legislation and planning practice guidance enables the Council to charge a monitoring fee for Section 106 Agreements.

This report seeks to introduce new charges to cover some of the administration costs of monitoring future Section 106 agreements which if approved will be added to the Councils Planning Fees and Charges Schedule.

Recommendation (s)

The Committee is asked to:

(1) Approve the introduction of new fees from the 1 April 2026 to help cover:

a) Administration and monitoring of Section 106 agreements as set in paragraph 3.4 table 1

b) Long term monitoring of legal agreements in relation to biodiversity net gain provision as set out in paragraph 4.6 table 2.

(2) To publish the monitoring fee as set out in tables 1 and 2 on the Council's website.

1 Reason for Recommendation

1.1 Some planning permissions require supporting legal agreements to make the development acceptable in planning terms. These legal agreements are known as Section 106 agreements and in the borough are typically used to secure affordable housing provision.

1.2 This report seeks to introduce charges to cover some of the administration costs of monitoring future Section 106 agreements.

2 Background

2.1 Some planning applications require supporting legal agreements to make the development acceptable in planning terms. These legal agreements are known as Section 106 agreements and in the borough are typically used to secure affordable housing provision.

2.2 An agreement made under Section 106 of the Town and Country Planning Act 1990 is known as a planning obligation which requires the applicant/developer and/or other interested parties to enter into an agreement with the local planning authority (known as a Section 106 agreement) which can:

(a) Restrict the development or use of the land in any specified way.

(b) Require operations or activities to be carried out.

(c) Require the land to be used in a specified way.

(d) Require a sum or sums to be paid to the authority on a specified date or dates or periodically.

2.3 These agreements will secure a variety of measures which if not provided would make the development unacceptable. Once the agreement has been executed, the Councils Developer Contributions Lead Officer will monitor the agreements to ensure that they are complied with.

2.4 The extent of monitoring will rest with the obligation that has been sought and this can be a one-off event, namely provision of affordable housing or it may be a number of actions that are required, namely maintenance of habitats works under Biodiversity net gain.

2.5 The Community Infrastructure Levy Regulations 2010 (as amended) allow local authorities to charge a monitoring fee under section 106 planning obligations to cover the cost of the monitoring and reporting of delivery of that obligation.

2.6 This is also set out in Planning Practice guidance: Use of planning obligations and process for changing obligations. The legislation and practice guidance allows local authority to charge fees, specifically it states that:

'*in all cases, monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. Authorities could consider setting a cap to ensure that any fees are not excessive*'.

2.7 The introduction of charges is permissible, and the proposed fees would cover the costs to the council of monitoring compliance of these agreements in accordance with the Community Infrastructure Levy (Amendment)(England)(No.2) Regulations 2010 (As Amended).

2.8 The local authorities that will form part of the East Surrey Unitary Authority[1] all charge Section 106 Monitoring Fees, although there are variations in the approach taken and the scale of development to which they apply. The charges proposed in Table 1 align with those charged by Mole Valley District Council.

Biodiversity Net Gain

2.9 Following the introduction of the Environment Act in 2021 a new process was also introduced to deliver Biodiversity Net Gain (BNG) on new development that requires planning permission. The Environment Act was subsequently embedded into the Town and Country Planning Act with effect from January 2024 (major schemes) and April 2024 (small to medium schemes).

2.10 As such planning applications are now required to demonstrate how they will deliver developments to include 10% biodiversity net gain, subject to some exemptions. The net gain provision whether within the development site or on another site must be maintained for a period of 30 years.

3 Section 106 administration and monitoring fee

3.1 It is proposed that the Council introduces a standard administration and monitoring fee for all planning applications requiring a Section 106 legal agreement.

3.2 The administration and compliance fees are based on the size of development. The fee covers the cost of matters including:

- Data entry and database maintenance;
- Issuing outstanding Section 106 planning obligation demands;
- Planning obligation compliance;
- Following up unpaid invoices or outstanding contribution demands;
- Processing payments;
- Gathering, recording and reporting the planning obligation spend.

3.3 The monitoring fee would cover a proportion of the staffing costs incurred by the Council in producing section 106 legal agreements and towards the monitoring of the legal agreements which is required to satisfy the legal duty upon the Council to produce an Annual Infrastructure Funding Statement.

[1] Elmbridge Borough Council, Mole Valley District Council, Reigate and Banstead Borough Council, Tandridge District Council and Surrey County Council

3.4 The proposed fees for Section 106 monitoring and compliance are detailed in Table 1. The fees vary by the size of development to reflect that larger schemes typically have more complex section 106 agreements that require increased resource to administer and monitor.

Table 1: S106 administration and monitoring Fees

Threshold	1-9 homes and/or 0-999m2 of commercial floorspace	10-49 homes and/or 1,000-3,499m2 of commercial floorspace	50-99 homes and/or 3,500-10,000m2 of commercial Floorspace	Over 100 homes and/or 10,000m2+ of commercial floorspace
Fee per application	£1,000 (where an obligation is required)	£5,000	£15,000	£20,000

3.5 The above fees will provide applicants with certainty as to what they are to be charged on implementation of the development. They will be in place until the new East Surrey Unitary Authority reviews fees and implements its own fees and charges.

3.6 The amount of income received will vary dependent upon the number and size of planning applications permitted with a supporting section 106 agreement.

3.7 It is important to note that the Council charges a separate fee legal fee for preparing deeds. In addition, Surrey County Council charge their own fees for monitoring travel plans which is currently set at £5,000.

4 Biodiversity Net Gain Monitoring Fees

4.1 The law requires that new biodiversity net gain habitat is secured for at least 30 years via planning obligation or conservation covenants.

4.2 The Council are required to monitor all significant on-site Biodiversity Net Gains and relevant off-site Biodiversity Net Gains. A Habitat Management and Monitoring Plan detailing how significant gains will be maintained, will be submitted in draft prior to the determination of planning applications and if planning permission is granted must be submitted as final, for approval by the Council, in support of the discharge of a Biodiversity Gain Plan condition.

4.3 A monitoring fee is proposed to be introduced to cover the costs of monitoring the delivery of BNG for the 30-year period where it is provided on-site or off-site. The fee is a single one-off payment to cover monitoring and compliance of the 30 year monitoring period.

4.4 The Biodiversity Net Gain monitoring fees will not apply in instances where off-site compensation is being secured through Biodiversity Units from a formally registered Habitat Bank delivered by a registered third party, or credits purchased from the national scheme of statutory biodiversity credits.

4.5 The proposed fees detailed in Table 2 vary based on the amount (area) of biodiversity net gain habitat being secured from a development and the technical difficulty of the habitat creation and habitat enhancement. Difficulty is a measure used in the Statutory Biodiversity Metric to represent the uncertainty in the effectiveness of management techniques used to enhance or create habitat and is categorised as low medium or high. This reflects the variations in the amount of officer time that will be required to monitor BNG compliance.

4.6 Payment of the Biodiversity monitoring fee will be secured either by Section 106 agreement or a Unilateral Undertaking and will be in addition to the S106 administration and monitoring Fees detailed in Table 1.

Table 2: Biodiversity Net Gain Monitoring Fees

Biodiversity Net Gain	**Level of difficulty**		
Area of significant habitat (including length of linear features multiplied by 5m)	Low Difficulty	Moderate Difficulty	High Difficulty
Small: less than 10ha	£6,480	£7.355	£7,495
Medium: greater than 10ha but less than 20ha	£6,667	£7,588	£7,880
Large: 20ha plus	£6,900	£7,880	£8,317

5 Risk Assessment

Legal or other duties

5.1 Equality Impact Assessment

5.1.1 None

5.2 Crime & Disorder

5.2.1 None

5.3 Safeguarding

5.3.1 None

5.4 Dependencies

5.4.1 None

5.5 Other

5.5.1 None

6 Financial Implications

6.1 The introduction of fees will enable the council to recover the costs of monitoring Section 106 legal agreements resulting from planning consents in the borough.

6.2 **Section 151 Officer's comments**: It is necessary to recover the costs of monitoring development agreements so that the cost does not become a burden to council tax payers.

7 Legal Implications

7.1 S.106 of the Town and Country Planning Act 1990 requires the local planning authority to secure certain obligations to ensure that the development is acceptable. Community Infrastructure Levy (Amendment)(England)(No.2) Regulations 2019 allows councils to charge for monitoring of Section 106 agreements.

7.2 **Legal Officer's comments**: The legal implications of the proposals have been considered and taken into account in the preparation of this report and as set out , the Regulations allow monitoring fees to be included in section 106 agreements.

7.3 **Policies, Plans & Partnerships:** N/A

7.4 **Council's Key Priorities**: N/A

7.5 **Service Plans**: The matter is not included within the current Service Delivery Plan.

7.6 **Climate & Environmental Impact of recommendations**: None

7.7 **Sustainability Policy & Community Safety Implications**: None

7.8 **Partnerships**: None

7.9 **Local Government Reorganisation Implications**: It is anticipated that the new East Surrey Unitary Authority will set standard charges for section 106 monitoring at a future date.