

PLANNING OBLIGATIONS AND MONITORING FEES

Regulation 122(2A) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) permit local authorities to charge a fee for monitoring and reporting on planning obligations. The Regulation 122 tests do not apply in relation to a planning obligation which requires a sum to be paid to a local planning authority in respect of the cost of monitoring (including reporting) provided that:

- the sum to be paid fairly and reasonable and relates in scale and kind to the development, and
- the sum to be paid to the authority does not exceed the authority's estimate of its costs of monitoring the development over the lifetime of the planning obligations which relate to that development

The Planning Practice Guidance currently states (in relation to charging planning obligation monitoring fees):

Authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 obligation. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation. Monitoring fees should not be sought retrospectively for historic agreements.

Fees could be a fixed percentage of the total value of the section 106 agreement or individual obligation; or could be a fixed monetary amount per agreement obligation (for example, for in-kind contributions). Authorities may decide to set fees using other methods. However, 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.

Babergh and Mid Suffolk District Council's monitoring fee

From 31st January 2025, Babergh and Mid Suffolk District Council's will charge a monitoring fee as follows:

- Each S106/UU will require the following Monitoring Fee to be charged:
£495 - for the monitoring of commencement/completion.
£495 - for each subsequent trigger either non-financial or financial contained within the S106/UU agreement
- Each DOV will require a Flat Rate Monitoring Fee to be charged for the administration of the DOV = cost £100.00

The monitoring fee will be paid once the s106 legal deed is completed and the planning permission has been granted. A demand notice will be raised to enable the council to cover the costs of monitoring the commencement of development or other pre-commencement triggers.

All new instructions from the 1st February 2026 will pay the new revised monitoring fee charges as outlined above. There will be transitional arrangements for any S106 agreements which are currently in process. Any S106 agreements in draft or in negotiation will not be charged the revised fee if they are completed by the end of February 2026. Those not completed by this date will be subject to the revised fee.

The monitoring fee will be reviewed annually to ensure that all administrative costs associated with the monitoring and managing of developer contributions are covered by the fee.

Babergh and Mid Suffolk District Councils monitoring and reporting activities

Babergh and Mid Suffolk District Councils undertakes a number of monitoring activities in relation to planning obligations which include:

- data entry and maintenance of planning obligations database and public facing module (Exacom/Exacom PFM)
- monitoring of trigger points for obligation actions and for receiving payments.
- developer liaison and confirmation of compliance of obligations.
- monitoring financial obligation time limits and spend
- calculation of indexation and interest applied to planning obligations
- issuing of s106 Demand Notices
- processing of s106 payments
- chasing unpaid Demand Notices
- arranging bank transfers of financial obligations
- contacting infrastructure providers and organising drawdowns
- ensuring timely delivery of infrastructure projects funded through s106
- gathering and recording of spend data evidence
- reviewing projects to comply with legal obligations
- monthly reconciliation of data
- regular reporting and production of s106 Reports, Infrastructure List and Infrastructure Funding Statement

Babergh and Mid Suffolk District Councils monitoring fee is based on an estimated number of planning obligations managed by the councils annually, the percentage of officer time spent on the above activities per obligation and trigger, and the annual cost of software licences per obligation and trigger. Planning obligations will require some degree of the above activities even if they are triggered prior to commencement, therefore the approach ensures that the monitoring fee is fair and reasonable.