

COUNCIL 14TH FEBRUARY 2024**Cabinet 11th December 2023****87 SECTION 106 AGREEMENT GOVERNANCE AND IMPLEMENTATION OF MONITORING AND MISCELLANEOUS FEES**

The Leader, Councillor Scullion presented a written report of the Director, Regeneration and Strategy that provided information on the issue of governance around the management of planning obligations entered into via planning agreements made under section 106 of the Town and Country Planning Act 1990 (as amended) ("Section 106 agreements"). It recommended a way forward in relation to the aforementioned issue, including the implementation of a fee system to cover the cost of effective monitoring of Section 106 agreements. For the avoidance of doubt, all references to "Section 106 agreement" in the report should be taken as applying equally to planning obligations contained in:

- i) a bilateral planning agreement entered into between the Council and a landowner or developer under section 106 of the Town and Country Planning Act 1990; and
- ii) a unilateral undertaking given by a landowner or developer alone under section 106 of the Town and Country Planning Act 1990.

The scope of the report covered the initial activities carried out at the planning application stage and the subsequent processes of ensuring compliance with the Section 106 agreement by developers in the first instance (i.e., developers paying the money or delivering the infrastructure) and then Council services spending the money or managing the infrastructure secured through a Section 106 agreement. Section 106 agreements supported the delivery of infrastructure, including affordable housing, transportation, open space, education, and blue/green infrastructure. Good governance of Section 106 agreements therefore supported the Council's priorities to reduce inequality; deliver strong and thriving towns and places; and respond to the climate emergency. It was important that the Council had appropriate oversight and procedures in place for the management, receipt and spending of financial developer contributions to the Council and the monitoring of non-financial developer contributions.

The proposals set out in the report should be seen in the context of the wider programme of improvements to planning related processes at Calderdale, following further revenue investment in the financial years 2022/23 onwards. A decision was required on the approach that the Council takes to managing Section 106 agreements that were signed in connection with planning permissions, including effective monitoring covered by a proportionate fee charged to developers. Good governance required the Council to adopt a Council wide approach to managing this issue.

The report outlined background information, options considered, financial, legal, human resources and organisational development, environmental, health and economic implications.

During discussions Members welcomed the recommendations and advised the importance of having the right controls in place following the implementation of the Local Plan. Members noted that often the planning fees did not cover costs and having the right governance in place would benefit developers, the Council and residents.

***RESOLVED that it be recommended to Council that:**

(a) the approach to monitoring and general governance outlined in the Director, Regeneration and Strategy's written report be implemented for all new Section 106 agreements completed after 1 January 2024;

(b) all Section 106 agreements completed after 1 January 2024, shall include provision for a monitoring fee in accordance with Appendix 1 of the Director, Regeneration and Strategy's written report;

(c) the Council implements the miscellaneous Section 106 related fees set out in Appendix 1 of the Director, Regeneration and Strategy's written report from 1 January 2024; and

(d) the Director, Regeneration and Strategy in consultation with the Cabinet Member with responsibility for Resources be given delegated authority for reviewing the fees on an annual basis.

(Parts (b) to (d) only)

Original reports considered can be found on the Council's website as follows:

[Cabinet on Monday, 11th December, 2023. Minute 87](#)