



Leicester
City Council

WARDS AFFECTED:

ALL WARDS

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

Cabinet

21st April 2008

Development Contributions and the Planning Process

Report of Corporate Director, Regeneration and Culture

1. PURPOSE OF REPORT

- 1.1 To seek approval of funding for the Developer Contributions Officer and admin support posts from a surcharge on developer contributions.

2. SUMMARY

- 2.1 This report explains the level of surcharge estimated to secure sufficient funding for the proposed Developer Contribution posts, approved previously by Cabinet, and the likely implications for the Council.

3. RECOMMENDATIONS

- 3.1 Cabinet is asked to approve:

- (i) The introduction of a monitoring surcharge for Section 106 Agreements at a level of 5.0% of developer contributions secured through the agreement, or in the event that the level of contribution is not identified at the time of completing the agreement, a charge of £2,500.00 per unidentified financial contribution likely to be between £0.00 and £50,000 and a charge of £5,000 for unidentified contributions likely to be above £50,000.
- (ii) A review of this approach should be made after two years and a revised charge be approved by the Service Director, Planning and Policy if needed to maintain adequate funding for the posts.

4. REPORT

Background

- 4.1 Work was undertaken in 2006 to identify possible funding routes for the Developer Contributions Officer post, and supporting admin officer, to develop the Council's use of Section 106's, and undertake monitoring duties to service the Developer Contributions Officer Group. The cost of this was based on employing the Developer Contributions Officer on a grade of PO2, the admin officer at SC3 and a working budget of £5,000. The total annual cost of this was estimated to be £62,000. The recommended option for funding these posts was to 'top slice' developer contributions and to make this self-

funding through improvements by the developer contributions officer in the effectiveness of negotiating Section 106 agreements.

- 4.2 The Head of Planning Management and Delivery recently recruited an Interim Developer Contributions Officer who is currently in post on a six months basis temporarily funded through Planning Delivery Grant. The permanent post was created in response to a corporate need to improve the Council's approach to, and monitoring of, developer contributions and will be advertised again early in 2008.
- 4.3 The post will help to reinforce the image of the Council as a business-like organisation that is working with the development industry and local communities to deliver key objectives contained in the adopted City of Leicester Local Plan. A more proactive stance on developer contributions through dedicated staffing resources will maximise income and consequently regeneration activity and community benefit.

Alternative Options

- 4.4 Through researching how some of the surrounding council's and also Council's recommended in the DCLG "Planning Obligations: Practice Guide" secure a monitoring fee for Section 106 Agreements it has been established that out of the 20 councils, 8 do not charge for the monitoring of Section 106 Agreement and the others have adopted different approaches to securing a monitoring charge. Of these, a surcharge on agreed contributions best met the council's needs. A period of five and half years has been reviewed to indicate the income the Council would have received had this approach already been adopted. Any charge is not retrospective and will only be introduced following the approval of the recommendation in this report.

Application of a % surcharge

- 4.5 There has been an increase in the level of contributions secured over the last four year through the use of agreements and conditions with an increase thus far in this financial year. This level of increase is unlikely to be sustained indefinitely, particularly in view of a predicted downturn in development activity, and it is difficult to anticipate the overall level of income likely to be generated, as this is dependent on major development coming forward and the complexity of the agreements. Changes may arise from the government's proposals for a Community Infrastructure Levy. It is therefore recommended that the method of funding should be reviewed after two years. Different surcharge levels have been reviewed in order to establish what would be required to cover the estimated costs of the proposed posts as follows.

4.6 Percentage of Contributions Secured by Agreements

Year April -March	at 0.5%	at 1.0%	at 5.0 %	at 3%	at 2%	at 1.5 %
2005-2006	Secured £2,157,543.00 £10,787.71	£21,575.43	£107,877.56	£64,726.29	£43,150.86	£32,363.14
2006-2007	Secured £970,417.00 £4,852.08	£9,704.17	£48,520.85	£29,112.51	£19,408.34	£14,556.25
2007- Dec 07 NB. 9 month period	Secured £3,012,503.00 £15,062.51	£30,125.03	£150,625.15	£90,375.09	£60,250.06	£45,187.54

N.B "Secured" means secured by legal agreement and not money received.

- 4.7 A calculation of all contributions secured through agreements in this financial year to end of December 2007 is **£3,012,503.00**. Over a nine month period in this financial year a surcharge of 5.0% of this sum would have equated to a revenue income of **£150,625.15** payable on completion of the agreement.
- 4.8 If this approach were to be adopted a charge of 5.0% would currently achieve self-funding and is considered to be set at the correct level to take into account volatility in the housing market in the immediate future. Where the sum has not been identified at the time of completing the agreement, a standard charge could be used, and I recommend that £2,500 be payable on completion of the agreement, equal to 5.0% of £50,000 on contributions likely to be between £0.00 and £50,000 and, for contributions likely to be over £50,000, £5,000 be charge for each unidentified contribution clause.

5. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

Financial Implications

- 5.1 The monitoring charge will be in addition to the developer contributions secured to mitigate the impact of the development proposal and is payable at the time of completing the agreement. The payment will fund the Developer Contribution Officer who will input the necessary information into the database system and to set up a reminder system for the triggers contained in the agreement.
- 5.2 The level of income generated will be variable. Any excess income above running costs will be ring fenced at the end of the year and carried forward as an earmarked reserve. This can be used to fund any deficits in future years.
- 5.3 Ultimately any shortfall in income over costs (including any earmarked reserve) will need to be funded by the Planning and Policy division.

Martin Judson, Head of Finance Regeneration & Culture (Ext.297390)

Legal Implications

- 5.4 Government guidance on Planning Obligation's contained in Circular 05/2005 indicates that s106 obligations should be:
- (i) relevant
 - (ii) necessary
 - (iii) directly related to the proposed development;
 - (iv) fairly and reasonably related in scale and kind to the proposed development; and
 - (v) reasonable in all other respects
- 5.5 Circular 05/2005 states " Once a Planning Obligation has been agreed, it is important that they are implemented or enforced in an efficient and transparent way, in order to ensure that contributions are spent on their intended purpose and that the associated development contributes to the sustainability of the area. This will require monitoring by Local Planning Authorities, which in turn may involve joint working by different parts of the authority. The use of standardised systems is recommended, for example, IT databases, in order to ensure that information on the implementation of planning obligations is readily available to the local authority, developer and members of the public."

- 5.6 I therefore consider that the introduction of a monitoring fee meets the tests of Circular 05/2005 in that the need for monitoring would not arise if planning obligations were not required, and as such it is appropriate for the monitoring costs to be recovered through the application of a monitoring charge for each obligation in order to ensure the development takes place in a satisfactory manner.
- 5.7 The securing of a fee in relation to the monitoring of conditions requiring a contribution is not justified in legislative terms under the scope of planning fees, which are charged solely for the purpose of considering a deemed application.
- 5.8 In light of this, the Council is unable to introduce a charge for monitoring conditions and can only legitimately charge for the monitoring of Section 106 Agreements.

Anthony Cross, Head of Litigation (Ext.296362)

6. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph references within the report
Equal Opportunities	No	
Policy	NO	
Sustainable and Environmental	No	
Crime and Disorder	No	
Human Rights Act	No	
Elderly/People on Low Income	No	

7. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

- 7.1 Reports and notes prepared for the Developer Contribution Officers Group held on 5th July 2006, 30th October 2006, 12th Nov 2007.

8. CONSULTATIONS

Developer Contribution Officers Group

9. REPORT AUTHOR

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Decision Status

Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive (Cabinet)