

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

26 January 2021

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Executive Key Decisions

1 SECTION 106 PROTOCOL AND MONITORING

Summary: This report seeks approval for the adoption of a planning obligations protocol and associated monitoring fee which is intended to provide a clear and transparent framework in respect of how the service will negotiate and secure planning obligations under Section 106 of the Town and Country Planning Act 1990 in order to mitigate the impact of development taking place across the Borough. Successful negotiation of planning obligations requires effective management and monitoring to ensure timely and appropriate use of collected obligations.

1.1 Background

- 1.1.1 The report of the Director of Planning, Housing and Environmental Health recommended the adoption of a Planning Obligations Protocol and associated monitoring fee. This was intended to provide a clear and transparent framework in respect of how planning obligations under Section 106 of the Town and Country Planning Act 1990 would be negotiated and secured, in order to mitigate the impacts of development across the Borough.
- 1.1.2 In addition, the report recommended that a flat fee of £300 per obligation contained within each legal agreement be required to cover the cost of monitoring and reporting on delivery of s106 obligations and outcomes.
- 1.1.3 Members raised concern that the protocol was too prescriptive which may have been to the detriment of smaller developers and applicants with limited knowledge of the planning system and the requirements of legal agreements. As such, Members asked that consideration be given to amending the Protocol to maintain a level of flexibility to assist and support all types of applicant. Discussions have now taken place regarding the detailed content in these respects and amendments have now been made in liaison with the Cabinet Member for Strategic Planning and Infrastructure. The amended Protocol is contained at Annex 1 to this report.
- 1.1.4 Reference was also made to the new requirement for Local Planning Authorities to publish an annual Infrastructure Funding Statement which identified

infrastructure needs, the total costs of this infrastructure, anticipated funding from developer contributions and the choices made by the authority about how these contributions would be used. Unfortunately, given the timescales involved it was not possible to provide a draft Statement for Member consideration and the Director for Planning, Housing and Environmental Health, in consultation with the Cabinet Member for Strategic Planning and Infrastructure, undertook to develop a final Statement for publication. The Statement has now been published in accordance with those requirements. All Members have been provided with a copy of the Statement and officers will answer individual questions as they arise and also take the opportunity to review content for the 2021 Statement at the earliest opportunity with a view to sharing with Members during the course of the coming year.

1.2 Legal Implications

- 1.2.1 The Local Government Act 2003 provides the power for local authorities to charge for discretionary services (as defined in the Local Government Act 1999). Discretionary services are those services that an authority has the power but not a duty to provide. An authority may charge where the person who receives the service has agreed to its provision. The power to charge under this provision does not apply where the power to provide the service in question already benefits from a charging power or is subject to an express prohibition from charging.
- 1.2.2 The Local Government Act 2003 places a duty on authorities to ensure that, taken one year with another, the income from charges for each kind of discretionary service does not exceed the costs of provision. An authority may set charges as it thinks fit, and may, in particular, charge only certain people for a service or charge different people different amounts.
- 1.2.3 Local authorities are required to have regard for any guidance that may be issued by the Secretary of State in terms of carrying out their functions under the 2003 Act. Section 93(7) of the Act provides that certain prohibitions in other legislation preventing authorities from raising money are specifically dis-applied in relation to the exercise of the charging power.
- 1.2.4 Local Planning Authorities therefore have powers to recover the costs of monitoring work in recognition of the time officers have to spend ensuring compliance with obligations.

1.3 Financial and Value for Money Considerations

- 1.3.1 It is appropriate to review the protocol and charging schedule every year, to ensure the evidence base is up to date and that the monitoring is fairly applied.

1.4 Risk Assessment

- 1.4.1 Robust monitoring should be carried out every year to ensure the protocol and charging schedule in place is based on up to date evidence.

1.5 Equality Impact Assessment

1.5.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.6 Recommendations

- (1) the Planning Obligations Protocol in its revised form **BE ADOPTED**; and
- (2) the associated monitoring fee of £300 per planning obligation (as set out in Annex 1 of the report) be adopted;

Background papers:

Annex 1: Finalised Section 106 Protocol (with associated Annexes)

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