Adur & Worthing Councils s106 Monitoring Fee - 2025 update

Summary
The s106 monitoring for both Adur District Council and Worthing Borough Council has been set at £300 per trigger for all s106 agreements signed after 1st February 2021. From 1st May 2025, all legal agreements signed after this date will include a monitoring fee contribution to Adur District Council/Worthing Borough Council at the rates set out in Table 1 below.

The monitoring fee for each signed S106 agreement will be payable upon commencement of the development. There will be no cap on the maximum fee charged for a s106 agreement, however there will be some flexibility for major applications with multiple obligations, which could allow a single monitoring fee to be negotiated and agreed. The same fee will apply for any Deed of Variation or Supplemental Agreement, which introduces new trigger points.

The monitoring fee will be reviewed on an annual basis and updated as required. The amount of money collected each year, through the charge, will be reported in each Council's Infrastructure Funding Statement (IFS) published on the website.

Background for charging
Section 106 (s106) agreements are private agreements made between local authorities and developers, which are attached to a planning permission to make acceptable development which would otherwise be unacceptable in planning terms. The planning obligations contained within s106 agreements represent an important funding stream for the provision of infrastructure services needed to deliver sustainable growth. Both Adur District and Worthing Borough Councils enter into s106 agreements (planning obligations) to mitigate the impact of development on infrastructure such as affordable housing. In addition, for larger schemes s106 agreements can be used to mitigate flood and water management issues, open space, and transport impacts. This may take the form of a financial contribution towards infrastructure improvements or as non-financial obligations to be undertaken by the site developer or their sub-contractors.

Many Local Planning Authorities, including Worthing Borough Council, are now CIL charging authorities which reduces the use of s106 agreements to mitigate the impact of development. However the introduction of a CIL charging regime does not eradicate the need for planning obligations. They will continue to be required under certain conditions:

A. In those areas where CIL has not been implemented
B. Where CIL is introduced there will remain a need for such obligations on strategic and other zero-rated sites where infrastructure delivery is expected to be funded through a section 106 agreement
C. Obligations will continue to provide infrastructure items which are being delivered on-site, such as on-site affordable housing, open space and leisure facilities and so on

All legal agreements require monitoring to ensure compliance with site specific mitigation requirements and to ensure that financial obligations are fully met. The s106 sets out when a

payment or infrastructure improvement has to be made and is often called the trigger point/date. In recent years there has been a rise in the number of Local Planning Authorities (LPAs) and County Councils who have introduced a fee for monitoring compliance with planning obligations. This charge has been levied to cover the administrative burden on local authorities that monitoring generates.

The CIL Regulations 2010, as amended from 1st September 2019, allow for an authority which collects contributions through the use of s106 agreements, to lawfully charge a fee for monitoring the planning obligations contained in the agreement (whether or not that authority charges CIL). Specifically, the guidance states:
"Authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of the 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." Planning Obligations Guidance (NPPG) Paragraph: 036 Reference ID: 23b-036-20190901

The s106 monitoring fee must be fairly and reasonably related in scale and kind to the development and must not exceed the authority's estimate of the cost of monitoring the development over the lifetime of the planning obligation.

Methodology
National Planning Practice Guidance states:
"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." Planning Obligations Guidance (NPPG) Paragraph: 036 Reference ID: 23b-036-20190901

The monitoring fee charge has been calculated based on the monitoring work undertaken by officers, calculating the actual cost of monitoring over the course of a s106 agreement. There is no distinction between financial triggers and non-financial triggers, meaning they carry the same monitoring overheads as a result of the length of time they require monitoring.

However, there is a difference between the average amount of monitoring for legal agreements based on the size of development. Therefore, a higher monitoring fee will be charged for larger scale residential development. Some small sites can take up a lot of monitoring time, but we have to bear in mind applying a higher monitoring cost to such sites would be disproportionate to their scale and be unreasonable. A sliding scale of fees across different sizes of application sites is a fairer way to proportionately apply fees and create a simple table that officers can use without having to do lots of bespoke calculations on each application.

Table 1: S106 Monitoring Fee rates, from 1st May 2025

Type of Development	S106 monitoring fee
Smaller developments (up to 9 dwellings)	£140.00
Medium-sized developments (between 10 and 99 dwellings) & Non-residential	£305.00
Large-sized developments (100 or more dwellings)	£400.00

A more detailed calculation of the monitoring fee can be made available on request.

In order for the fee to be related in scale and kind to the development (as required by CIL Regulations) the fee should be based on the amount of monitoring for the specific s106 agreement in question. Contributions are met by the introduction of specific triggers, such as commencement of development, or occupation of a number of units. Consequently, the overhead for monitoring a s106 agreement is based on the number of triggers it contains, and the fee should reflect this. As a result, and in line with many other local authorities, AWC will take a fee on a per-trigger basis, for each s106 agreement that it monitors.

What do we mean by a 'trigger'?
Typically, legal agreements will have a 'trigger point' when payments are required to be made or when affordable housing or other infrastructure should be delivered. In many cases, a trigger point will be related to the number of new houses that have been built and/or occupied.

Collection of fees
Monitoring fees are to be paid by no later than commencement of the development.

Example
An s106 agreement has 5 financial obligations and 3 non-financial obligations. The agreement contains 6 different trigger points (e.g. Upon commencement of development, prior to occupation of the first dwelling, prior to occupation of 50th dwelling etc.). The development is for 150 dwellings. The s106 monitoring fee would be:

6 trigger points x £400 per trigger = £2,400 monitoring fee