

Decision under Delegated Powers

Officer Requesting Decision

Head of Planning and Growth

Officer Making the Decision

Head of Paid Service

Recommendation

That a new full time post of S106 Developer Contributions Monitoring Officer is created on the establishment at Grade SO1 in P499 Cost Centre.

Reason

To ensure there is sufficient resource to monitor S106 legal agreements and the receipt and expenditure of financial contributions towards community infrastructure in Charnwood.

Authority for Decision

Under the Council's constitution delegation is afforded to the Head of Paid Service under Section 8.2 (6) to agree changes to the establishment, within budget and without major operational disruption or interruption of services or involving a change from direct to indirect provision or vice-versa or other policy implications.

Decision and Date



Robert Mitchell (he, him, his)
Chief Executive

10th November 2022

Background

Contributions to infrastructure are a key element to the work of the planning service, contributing to the Council's corporate objective to support and foster strong economic growth in Charnwood, as well as wider objectives of sustainable development, biodiversity net gain and climate change.

The Council has a successful track record of securing developer contributions for a wide variety of infrastructure, ranging from investment in the strategic road network through to facilitation of community-led projects at a local level. At present, these are achieved through the completion of S106 agreements in which the details of contributions secured are set out in terms of their amount, purpose and timing (in relation to the progression of development). There are numerous separate agreements governing these contributions, whose content can be complex especially for the very large developments which contain multiple contributions over lengthy timetables. Very significant continuous monitoring is required to ensure funds are collected when due and expended correctly and in timely manner in accordance with the law (n.b. collected and unspent contributions are required to be returned to their provider). Oversight of this activity happens through the Corporate Section 106 Officer Working Group.

Funding of a post to monitor S106 agreements has historically been met by the general fund albeit this has been subsidised in part by monitoring fees incorporated into the individual s106 agreements themselves. Securing monitoring fees in this way was subject to a prominent legal challenge in 2015 leading to a national hiatus in their inclusion. However, following a period of contention they were legitimised in law by the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 and guidance provided in the National Planning Practice Guidance on their use. Following the legitimisation of s106 monitoring charges, there has also been an increase in monitoring responsibilities afforded to the local planning authority by government. With this in mind, officers reviewed monitoring costs in February 2022 and revised the range of fees applied in the service from 1 March 2022 with a view to recovering the actual costs of monitoring at a chargeout rate for an SO1 post. The monitoring fees employ a sliding scale of charges reflecting the scale and complexity of the development concerned based on the officer time involved ([DD 021](#) 21/22, February 2022 refers).

Prior to October 2020, monitoring of existing s106 agreements was carried out by the Planning Compliance Technician (Post P139 Grade C). This post became vacant in 2020 and was subsequently deleted as part of in year service pressures and its substantive duties temporarily covered by the Planning Enforcement Assistant (Post M365 Grade D), supported by various other staff from the Planning Service. The deletion of the post was seen as an opportunity at the time: both to make a saving but also to redesign the post in line with government thinking and cost recovery. However, the establishment of a new post has been delayed and the temporary arrangement currently in place cannot be sustained, as it has diminished enforcement and management capacity in the service at a time of increased scrutiny from members and other service pressures. It was anticipated the new post would be self-financing and established in 2022/23.

Discussions about the work of the corporate S106 Officer Working Group and how it might be simplified or made more efficient are outside the scope of this decision. Nevertheless, it is agreed that the new post will be the corporate lead for s106 matters and responsible for managing the Officer Working

Group, under the direction of the Team Leader of Strategic Development (Post P110). This proposal will in part address the current disconnects following the deletion of the Head of Neighbourhood Services in the Leadership Review.

Proposal

A new post is required on the establishment to monitor S106 legal agreements. This post is necessary to:

1. manage and monitor the collection and subsequent spend of planning obligations funding, ensuring that legal requirements are met and spending supports the delivery of infrastructure set out in the Local Plan, Infrastructure Delivery Plan and other relevant strategies to benefit local community.
2. proactively monitor investigate and secure receipts (including, where required, instigating action against breaches of section 106 agreements)
3. ensure the effective allocation and expenditure of receipts for their correct purpose(s)
4. lead on the production of the statutory Annual Infrastructure Funding Statement under the Community Infrastructure Levy Regulations in 2019 (amended).
5. provide professional advice and training to the Council, elected Members, Committees and senior officers as well as external organisations on developer contributions and associated issues.
6. undertake effective partnership working with key stakeholders including Leicestershire County Council, Leicestershire Police and the CCG/NHS.

The Post will be managed day to day by Post P110 Team Leader Strategic Development (Grade PO4). This post already has responsibilities for oversight of S106 matters but it is considered appropriate to amend the Job Profile to further clarify the relationship between the two roles.

Job Evaluation

A job description has been prepared for the proposed post and, together with Post P110, has been subject to a Job Evaluation process to determine the grades. Post P110 remains unchanged. The proposed post has been graded at SO1. While minor changes have been made to the job description of Post P110, these have not affected the grading under Job Evaluation.

Income and costs

As confirmed above, the CIL Regulations provide for contributions to be secured for monitoring s106 agreements. However, they do not provide a basis for recovering the costs of the council's day to day work in discharging obligations. With this in mind, table 1 below summarises the expected income for monitoring by year from existing and new S106 agreements based on a SO1 level post (including on costs).

Category	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30
Very Low	4,614	9,413	19,003	23,797	28,738	22,792	36,443	36,053
Low	0	4,652	818	526	4,088	11,766	0	0
Medium	5,100	29,300	16,080	18,050	5,600	1,700	6,700	18,550
High	0	0	0	0	0	0	0	0
TOTAL	9,714	43,365	35,901	42,373	38,426	36,258	43,143	54,603

The table shows that income for monitoring derived from S106 agreements will vary from year to year depending on development activity and risk but is expected to average £38k. The cost of a new post at SO1 is £43k (inc on costs).

SLT considered the business case on 7 September 2022 and have agreed that there is a robust basis for establishing the monitoring post. The income from s106 agreements cannot meet the full range of duties the post is expected to cover as not all duties would meet the three tests set out in the CIL Regulations 2019. It therefore accepted that there will be a residual cost to the Council for undertaking some of the duties that arise as a consequence of the Leadership Review and the need to preserve certain activities and reconnect reporting lines.

Comments from HR

HR Adviser: S Choudhury (03/11/22)

Comments: The newly created role post has gone through JE and came out as SO1, Once DD is signed off normal recruitment process will need to be followed.

Financial Implications

The proposed post will fall within cost centre P499. Additional budget of £10.7k will be required in 2022/23 to fund the post from expected appointment in the New Year 2023 until the financial year end. The income forecast for 2022/23 from S106 contributions is £9.7k. The cost of the new post in P499 A0101 at top grade is £43k. A S106 earmarked reserve will be set up to hold all of the S106 Administration Income and this will be monitored each financial year to transfer and offset the total cost of this post

Risk Management

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
That the forecast income is delayed as a consequence of delays in the	Likely (3)	Minor (1)	Low (3)	Maintain a watching brief on delivery rates

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
delivery rates of agreed development sites due to macroeconomic or other factors				
That the proposed role proves to be unattractive or is difficult to recruit to leading to delays	Unlikely (2)	Minor (1)	Very low (2)	Ensure post is advertised widely. Ensure the council is aware that the full range of Duties will not be possible until this post is filled.

Key Decision

No

Appendix

- Job Profile – S106 Developer Contributions Monitoring Officer

Background Papers

- Job Profile – Post P110 Team Leader Strategic Development
- SLT Business Case Report 7 September 2022



Division:	Customer Experience
Job Title:	S106 Developer Contributions Monitoring Officer
Grade:	SO1
Post Number:	TBC
Base/Location:	Southfields
Responsible To:	P110 Team Leader Strategic Development
Responsible For:	N/A
Key Relationships/ Liaison with:	Elected representatives, Council officers, developers and key stakeholders

Job Purpose

1. To manage and monitor the collection and subsequent spend of planning obligations funding, ensuring that legal requirements are met and spending supports the delivery of infrastructure set out in the Local Plan, Infrastructure Delivery Plan and other relevant strategies to benefit local communities.
2. To be responsible for proactively monitoring, investigating and securing receipts (including, where required, instigating action against breaches of section 106 agreements)
3. To ensure the effective allocation and expenditure of receipts for their correct purpose(s)
4. To lead on the production of the Annual Infrastructure Funding Statement under the Community Infrastructure Levy Regulations in 2019 (amended).
5. To provide professional advice and training to the Council, elected Members, Committees and senior officers as well as external organisations on developer contributions and associated issues.
6. To undertake effective partnership working with key stakeholders including Leicestershire County Council, Leicestershire Police and the CCG/NHS.
7. To lead on the development of policy and procedure around the topic of developer contributions

Main Duties and Responsibilities

1. Establish and maintain effective arrangements for proactively securing compliance with all Section 106 planning obligations, including 'trigger points' for either payments or specific actions.

2.	Manage and monitor the distribution and spend of planning obligations, including the delivery of community infrastructure in partnership and collaboration with key internal and external partners.
3.	Review planning approvals to identify extant S106 agreements and to ensure that any urgent actions required to safeguard payments is taken.
4.	Coordinate and manage a One Council approach to ensure that satisfactory internal IT, revenue collection, enforcement and other technical systems are in place to secure and utilise planning obligation receipts.
5.	Review processes and procedures used regarding planning obligations, both within the planning team and across a range of Council services. Make recommendations for further developments to improve the efficiency, effectiveness and quality of the service.
6.	Monitor, respond to, and advise the Council on the implementation of changes to government policy on developer contributions in liaison with the Local Plans Team.
7.	Support and liaise with the Local Plans Team and key stakeholders, to review and implement Planning Policies and Strategies in relation to planning obligations and developer contributions, as part of on going work to ensure Council Policies are up to date and fit for purpose.
8.	Under the direction of the Team Leader Strategic Development, manage and administer the work of the Council's s106 Working Group and work in partnership with other Council services (including Legal and Finance) to ensure effective corporate procedures are in place to maintain accountability and transparency and that these are adhered to.
9.	Create / maintain close working links with key external partners, including Leicestershire County Council (education, highways, libraries, waste), Leicestershire Police, NHS, Clinical Commissioning Group, and neighbouring Councils.
10.	Investigate potential breaches of section 106 agreements, through checking and researching planning histories, other sources of information, making site inspections, and interviewing site owners and where necessary instigate enforcement action to secure compliance.
11.	Undertake negotiations to rectify any breaches of Section 106 agreements and where necessary instigate legal action and provide support to senior officers should court action be required.
12.	Keep accurate records of investigations in any breaches of Section 106 agreements.
13.	Prepare reports on matters relating to Planning Obligations or Community Infrastructure Levy, and verbally present them at Council meetings (including Executive and Scrutiny) and Corporate Management Team.

14.	Offer advice on planning obligation matters to developers, elected representatives and the general public as appropriate.
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15.	Responsible for protecting and managing information securely, and reporting breaches or suspected information security breaches, in line with Council policies.
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Special Factors

<p>This job description sets out the duties and responsibilities of the job at the time when it was drawn up. Such duties and responsibilities may vary from time to time without changing the general character of the duties or the level of responsibility entailed. Such variations are a common occurrence and cannot in themselves justify a reconsideration of the grading of the job.</p>
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<p>Charnwood Borough Council is seeking to promote the employment of disabled people and will make any adjustments considered reasonable to the above duties under the terms of the Equality Act 2010 to accommodate a suitable disabled candidate.</p>
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<p>Prepared by: Team Leader Strategic Development Date: October 2022</p>
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The ability to converse at ease with customers and provide advice in understandable spoken English is a requirement of the post.	✓		App/Int
Demonstrate a working knowledge of the major aspects of current legislation and Government advice relevant to development planning and management.	✓		App/Int
Able to write and present clear and concise reports in relation to more complex planning policy matters.	✓		App/Int
Able to use database and spreadsheet software.	✓		App/Int
Relevant experience of Microsoft Office.	✓		
Familiarity with GIS.		✓	App/Int
Interpersonal Skills			
Good verbal skills with the confidence and clarity to deal sensitively with delicate situations.	✓		App/Int
Negotiation skills.		✓	App/Int
Disposition/Attitude			
Must be able to organise own work programme and contribute effectively to a team effort.	✓		App/Int
Must be willing and able to be flexible and adaptable.	✓		App/Doc
Self-motivated.	✓		App/Int
Able to work under pressure and meet strict targets with minimum supervision.	✓		App/Int
Personal Circumstances			
Must be mobile throughout the Borough	✓		App/Doc
An understanding of, and commitment to equal opportunities, and the ability to apply this to all situations.	✓		App/Int

Must be able to perform all the duties and tasks of the job with reasonable adjustments, where appropriate, in accordance with the provisions of the Equality Act 2010.	✓		App/Int
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Key: App = Application form Test = Test Int = Interview	Pre = Presentation Med = Medical questionnaire Doc = Documentary evidence (e.g. certificates)
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Prepared by: Date:	Team Leader Strategic Development October 2022
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