

YORKSHIRE DALES NATIONAL PARK AUTHORITY
FINANCE AND RESOURCES COMMITTEE

13th February 2006

CHARGING FOR SECTION 106 AGREEMENTS

Purpose of report

To invite the Committee to agree to charges being made by the Authority for work carried out in relation to Section 106 Agreements, and if this is agreed, then determining what the level of charges should be.

Strategic Planning Framework

The information and recommendation(s) contained in this report are consistent with the Authority's statutory purposes and its approved strategic planning framework:

- ***Best Value Performance Plan***

The BVPP states that the Authority actively seeks to supplement its annual grant from central government, to enable it to deliver its objectives to the full. This includes income from sales, fees, charges and grants. In view of the budget settlement for 2006/07 and subsequent years, this objective is likely to become increasingly important.

Background

Section 106 of the Town and Country Planning Act 1990 enables the owners of land to enter into planning obligations. The obligation can either be by agreement with the Authority or unilateral. Any such obligation is then enforceable by the Authority. Planning obligations can be used for any of the following purposes:

- (1) restrict the development or use of land ;
- (2) require specified operations or activities to be carried out on it ;
- (3) prescribe its use; or
- (4) require sums of money to be paid to the Authority.

The need for planning obligations most commonly arises as a result of a planning application. The Authority, either by Committee or under delegated powers, resolves to grant planning permission subject to the prior completion of a legal agreement. Only on completion of the planning agreement is the planning decision notice issued.

Planning obligations are used in many different ways but are most commonly used to secure local and/or affordable housing and holiday accommodation on farm holdings as part of farm diversification. In view of the emerging local plan policies it is envisaged that the need for these sorts of agreements will increase.

There are also from time to time requests for the subsequent variation or release of existing agreements due to changes in circumstance which, if acceded to, require further legal input.

Information has been sought from other National Park Authorities, and from local authorities in the area, as to whether they charge for the work involved in Section 106 agreements. The results are summarised in the Appendix to this report.

Although there is obvious sensitivity in introducing new charges, Section 106 agreements are usually required for relatively high value developments: typically residential development worth over £100,000. A modest charge to cover the Authority's legal costs would, proportionately, be a very small part of overall development costs, which developers would only have to pay after a decision to grant planning permission had been made in their favour.

The Authority deals at present with approximately 45 – 55 legal agreements per year. The Legal Department spends approximately 9 – 10 hours on average per agreement, though this can be as little as 4 - 5 hours on a straightforward Agreement. The exact time spent is, of course, dependant upon the nature and complexity of each individual Agreement.

Committee Members will be aware, from the report on the budget for 2006/07 which was presented to the meeting of the Authority on 31st January 2006, of the difficult financial situation facing the Authority. DEFRA have confirmed that the grant for 2006/07 has been frozen at the 2005/06 level, without any increase for inflation or other cost pressures. They have indicated that the same financial grant settlement will apply for 2007/08. This situation will result in severe budgetary pressure for the Authority. The Audit Commission's annual Audit and Inspection Letter, issued in November 2005, refers to this situation and states that it is important that, as well as identifying potential savings, consideration is also given to the potential for additional income to be generated, including through fees and charges.

Conclusions

There are of course arguments for not charging for the work involved in relation to Section 106 agreements. The agreements are usually required by the Authority, and charges would effectively therefore be an additional cost of development. On the other hand, it can be said that applicants are charged for making a planning application in the first place, and if the extra work for the Authority in preparing a Section 106 agreement is done at the Authority's cost, that is a subsidy to development, given that the purpose of the agreements is to make acceptable a development which otherwise may not have been so.

If a charge is to be made, it is suggested that this should be linked to the amount of work involved in the agreement. Agreements can vary from very simple to very complex, so a standard flat rate charge would not seem appropriate. Most of the legal work in preparing agreements is done by the Legal Services Officer, with input from the Senior Legal Officer. In view of the costs to the Authority of employing these staff, a charge of £35 per hour is suggested, which is considered to be a fair "blended" rate, taking into account the different rates of pay of the staff and different levels of their input. The charge would relate only to work on the Section 106 agreement, and not to other planning issues. Charges would also be imposed in relation to changes to existing Section 106 agreements, where these were made other than at the request of the Authority. If Members agree to the introduction of

such charges, it is recommended that they also agree to them being increased annually in line with inflation, the first such increase to be in April 2007.

Apart from the time of legal staff, planning officers also spend time working on Section 106 agreements. However, considering the "principle" in the previous paragraph that charges would be restricted to work directly related to the legal agreement, and not to other planning issues, then it is the case that the work of Planning Officers in relation to the Agreements is limited to providing instructions to legal staff, and checking that the draft agreement meets the planning requirements. It is therefore not proposed to charge for the time of Planning Officers.

In any case where a Section 106 agreement was thought to be required, the Authority's policy on charging would be explained to the Applicant, and an estimate given of what the charge was likely to be. If circumstances changed, this estimate would be updated.

Based on the average amount of work involved and the average number of agreements per annum (as mentioned above), the charge for the work involved in a straightforward Section 106 agreement would be around £160, the average charge £330, and the likely total income to the Authority per annum would be £16,500.

It is proposed that charges would be introduced in respect of any Agreement the need for which is determined after 31st March 2006. In the interim, Planning Officers can inform applicants about the change of policy on charging, and estimates of likely cost can be given.

RECOMMENDATION

That the Committee agree to the introduction of charges for work done by the Authority's legal staff in relation to Section 106 agreements as detailed in this report.

Richard Daly
Solicitor / Monitoring Officer

Background documents: None
24th January 2006

Charging for Section 106 Agreements

	Do you charge?	If so, how much?	Any circs where charge not made?	Comments
Dartmoor NPA	Yes	£65 per hour	No	Give initial cost estimate – usually £250-350
Exmoor NPA	No			
NYMNPA	No			
Peak District NPA	Yes	£40 per hour	Single units of affordable housing	Most DCs in Peak area charge more.
Northumberland NPA	Yes	Charge for time spent		
YDNPA	No			Whether to charge is currently under review.
NYCC	No			
SLDC	No	n/a	n/a	Believe that Barrow BC and Lancaster CC do charge.
Richmondshire DC	Yes	According to how much their solicitors charge them.		
Craven DC	Yes	£300 – 600		Also £300 for release & £300 min for variations
Lake District NPA	Yes, generally	According to amount of work involved		Charges generally range from £150 - £450