

Introduction to: Section 106 Agreements

1. Introduction

Infrastructure from new developments may be secured in different ways including Planning conditions, Highways agreements, private agreements with utility providers. This advice note aims to give Parish Councils an overview on section 106 agreements, what they are, how they can be used and the role of Parish Councils.

2. Background

The Town and Country Planning Act 1990 allow any person with an interest in land to enter into an obligation (by agreement or otherwise) to achieve the following:

- (a) restricting the development or use of the land in any specified way;
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;
- (c) requiring the land to be used in any specified way;
- (d) requiring a sum or sums to be paid to the authority

The most common use of section 106 agreements is for securing Affordable housing, Onsite open space and its future maintenance and offsite payments to a number of different service providers.

3. Statutory tests

There are a number of criteria set by Government that must be met before any s106 request can be secured.

1. Statutory tests

Since 6 April 2010 planning obligations may only constitute a reason for granting planning permission for the development if the obligation is:

(i) Necessary to make the development acceptable in planning terms;

(i.e. in order to bring a development in line with the objectives of sustainable development as articulated through the local, regional or national planning policies)

(ii) Directly related to the development;

(i.e. there should be a functional or geographical link between the development and the item being provided as part of the developer's contribution)

(iii) Fairly and reasonably related in scale and kind to the development

(i.e. developers may reasonably be expected to pay for or contribute to the cost of all, or that part of, additional infrastructure provision which would not have been necessary but for their development)

What this means is that a greater level of evidence is needed to support each request that is made (regardless of who makes it). Ultimately it is for the decision taker to determine whether or not the tests have been satisfied. Furthermore this means that once the application has been considered (i.e. at planning committee) there is no prospect of re-opening negotiations or introducing new requests.

2. Pooling limit

The Council cannot lawfully allow any service provider to secure contributions where, since 6 April 2010, there has been 5 contributions secured for that specific piece of infrastructure. As such all service providers need to be specific about the projects they intend delivering.

3. Threshold

On 28 November 2014 the Government introduced a new national threshold whereby development of 10 Dwellings or fewer are no longer eligible for affordable housing or tariff style s106 contributions.

4. Development control policies

A number of local plan policies exist to support the request for S106 contributions.

DP/4 Infrastructure a new developments

Contributions may be necessary for some or all of the following infrastructure items:

- Education (including nursery and pre-school care);
- Health care;
- Public open space, sport and recreation facilities (including Strategic Open Space);
- Improvements for pedestrians, cyclists, equestrians, highways and public and community transport;
- Other community facilities (e.g. community centres, youth facilities, library services social care, and the provision of emergency services);
- Landscaping and biodiversity;
- Drainage / flood prevention;
- Waste management;
- Arts and cultural provision;
- Community development and youth workers;
- Other utilities and telecommunications;
- Preservation or enhancement of the historic landscape or townscape

At one stage the Council had intended adopting a supplementary planning document (SPD) setting out rates for precisely what each development needed to contribute under the above headings. This never happened therefore (with the exception of indoor meeting space) all elements under DP/4 are negotiated on a site by site basis and require stronger justification and evidence.

Indoor meeting space

The Council undertook an external audit and needs assessment undertaken in 2009, in respect of all primary community facilities in each village. The purpose of this audit was threefold;

- (i) to make a recommendation as to the indoor space requirements across the District (being 111 square metres of indoor community space per 1,000 people)
- (ii) to make a recommendation on the type of indoor space based on each settlement category and
- (iii) make a recommendation as to the level of developer contributions needed to meet both the quantity and quality space standard. These are:

Size of Dwelling	Contribution
1 bedroom	£284.08
2 bedroom	£371.00
3 bedroom	£513.04
4+ bedroom	£703.84

Whilst not formally adopted as an SPD, this policy became Council policy once approved at the Planning and New Communities portfolio holder's meeting on 5th December 2009. Types of proposals put forward by Parish Councils include:

- o New village hall/extension
- o Resurfacing car park
- o Energy efficiency measures
- o Air conditioning
- o New kitchen/toilets

SF/10 Open space in new developments

All residential developments will be required to contribute towards Outdoor Playing Space (including children's play space and formal outdoor sports facilities) and Informal Open Space to meet the additional need generated by the development in accordance with the standards in Policy SF/11.

The minimum standard for outdoor play space and informal open space is 2.8 hectares per 1,000 people:

1. Outdoor Sport – 1.6 hectares per 1,000 people
2. Children's Playspace – 0.8 hectares per 1,000 people
3. Informal Open Space – 0.4 hectares per 1,000 people

Generally speaking developments of between 10 and 50 dwellings contain onsite local areas for play which have minimal landscaping and no play equipment. As such these developments are required to mitigate their impact through offsite contributions – where a project has been identified. The level of contribution that could be expected, on a per dwelling basis is set out in the table. Larger developments will provide onsite facilities.

Size of Dwelling	Play equipment	Sports
1 bedroom	£0	£625.73
2 bedroom	£1,202.78	£817.18
3 bedroom	£1,663.27	£1,130.04
4+ bedroom	£2,281.84	£1,550.31

Types of proposals put forward by Parish Councils include:

- o New grass/artificial turf pitches
- o Teenage play facilities (shelters)
- o Children's play areas
- o Seating/lighting/changing facilities
- o Improving changing rooms/pavilion

TR/3 Mitigating Travel Impact

New developments will be required to mitigate their travel impact, including their environmental impact, such as noise, pollution and impact on amenity and health. This may mean ensuring adequate provision is made for integrated and improved transport infrastructure or appropriate mitigation measures, through direct improvements and Section 106 contributions.

Financial contributions will be sought towards improvements in transport infrastructure in the wider area affected by increased development, in particular to support public transport, cycling and walking.

Types of proposals put forward by Parish Councils include:

- o New community transport service
- o New and upgraded footpath links

5. Summary

- Any objection to a planning application should (where possible) include the Parish Councils view on necessary measures that would make it acceptable
- If the Parish Council does not make a request or highlight a problem there is no guarantee that this will be addressed by the decision taker
- It is for the decision taker to make a judgement on whether the relevant tests have been satisfied
- A strong justification is needed - even when the application is going to be determined by planning committee
- A planning inspector will not be influenced in his/her decision on the merits of the development if a section 106 request has not been made