

REPORT OF **Planning Manager**
To: **Community & Resources**
Subject: **S106 Process**
Date: **24 January 2022**

Reference:

PURPOSE OF REPORT: To provide an overview of the Section 106 process and funding allocation.

1. INTRODUCTION

Local Authorities can secure planning obligations from certain developments with these obligations secured through Section 106 agreements which legally bind the local authority and landowners to deliver these obligations.

Obligations can be in the form of on-site provision or can be in the form of a financial commuted sum.

This report will consider:

- Planning Background
- How are Section 106 agreements agreed
- Monitoring of Section 106 agreements
- Distribution of funds and application process for unallocated funds

2. REPORT

1. Planning Background

Planning obligations, also known as Section 106 agreements (based on that section of The Town & Country Planning Act 1990) are agreements made between local authorities and developers and attached to a planning permission to make development acceptable which would otherwise be unacceptable in planning terms (having regard to Local Plan policy). A Planning obligation will aim to balance the pressure created by the new development with improvements to ensure that where possible the development makes a positive contribution to the local area and community.

The Community Infrastructure Levy Regulations 2010, sets out strict legal guidance as to what constitutes a lawful obligation. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:

- Necessary to make the development acceptable in planning terms
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development

These tests are set out as statutory tests in regulation 122 (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework.



Planning obligations, in the form of section 106 agreements, should only be used where it is not possible to address unacceptable impacts through a planning condition.

Local Planning Authorities (LPA's) must include within their Local Plans general policies relating to the principles and use of planning obligations. Therefore, only planning obligations relating to policies detailed in the Local Plan can be secured where the associated policy permits this on any given site.

Planning Obligations can be in the form of direct provision on site or in some circumstance be in the form of a financial commuted sum paid either to the Local Authority or Devon County Council depending on the nature of the contribution. The most common obligations include:-

- Affordable Housing
- Education (DCC)
- Highways (DCC)
- Public Open Space
- Recreation Provision
- Built Facilities Provision

Previously, Local Authorities were unable to 'pool' obligation to fund infrastructure. However, the 2019 amendments to the regulations removed the previous restriction on pooling more than 5 planning obligations towards a single piece of infrastructure. This means that, subject to meeting the 3 tests set out in CIL regulation 122, Authorities can use funds from section 106 planning obligations to pay for the same piece of infrastructure regardless of how many planning obligations have already contributed towards an item of infrastructure.

2. How are Section 106 agreements agreed?

Discussion concerning planning obligations take place as early as possible in the planning process and ideally an applicant will seek pre-application advice especially where the site is considered major development. Through the planning application process, applicants are required to submit a document entitled 'Heads of Terms' which sets out the planning obligations they are proposing to provide and how these accord with current planning policy.

In most cases applicants will have had pre-application discussions with both TDC and DCC Officers to establish the planning obligations required to be provided. As part of the planning process, Ward Members are consulted on the proposed Heads of Terms by the Planning Case Officer as part of the consideration of the application and prior to the determination of an application.

It should be noted that S106 Agreements can only form part of a 'Full' planning permission, or 'Outline' permission. Applications for 'Reserved Matters' will not be subject to a S106 process, as this would have previously been agreed within the associated Outline permission. As such, there may be instances where Members note a planning application being considered for a major development, however, if this is a Reserved Matters application, then there would be no consideration of a S106 agreement as this would have been previously agreed and signed as part of an Outline application (which may have been completed some years ago).

The wording within a Section 106 agreement will determine when and how the contributions are required to be delivered. The Section 106 agreement will contain a number of triggers and clauses that will specify at what point in a development an obligation has to occur and where any contribution can be spent. The triggers are agreed through negotiation with the developer and can range from 'prior to the commencement of the development to the occupation of a percentage of the units within the approved scheme'. On larger



developments the sum owed can be split between two or more trigger points. The negotiating officers will ensure the risk of non-compliance is minimised by not agreeing to obligations being delivered too far into the development,

3. Monitoring Section 106 agreements

Section 106 agreements are registered as a local land charge upon completion and then monitored by TDC officers. This is done by liaising with planning and building control officers to monitor the build out status of developments as well as liaising with developers directly and where necessary site visits are undertaken. When financial trigger points are reached, Torridge DC will invoice developers for the sums that are required to be paid to the District Council if these have not already been received. For obligations due to Devon County Council such as Education and Highways, DCC will monitor these directly.

Section 106 agreements will often detail a claw back clause which allows the developer to claim back any money for capital projects which has not been spent within a set time period. This can range from two years to ten years although it is more usually around five years. Even where this is not explicit within the document, it is generally expected that if a developer were to request repayment of a Section 106 financial contribution that had not been spent within 5 years, it would be difficult for a Local Authority to refuse such a request on the grounds of reasonableness. Therefore, it is beneficial for all concerned to monitor Section 106's closely including the spending of any receipts.

4. Distribution of funds and application process for unallocated funds

Generally financial contributions received by the Council for Capital projects are directed to proposals overseen by the Local Authority and which have already been identified as requiring funding and have delivery plans in place. Such projects include upgrading existing larger parks and recreational facilities and the regeneration of specific areas. The use of funding on such projects by the District Council is in most cases tightly limited by the restrictions within the legal agreement including being spent within the area related to the proposed development in order to meet the strict tests of Regulation 122.

Where funding is received and a specific project have not been identified, Ward Members along with Parish and Town Councils in certain circumstances are encouraged to become involved in identifying projects for the use of financial contributions where there is scope within the Section 106 to allow this.

Once a project is identified, 'not for profit' organisations including Town and Parish councils are encouraged to bid for these un-allocated resources. To apply for funding, a 'Section 106 Funding Application Form' is required to be submitted to the District Council for assessment. This Application will seek details of the site and project that the relevant organisation wish to put the contribution towards, with its aims and principles and an explanation of why this is the preferred scheme. There is a requirement within the application process to involve the Ward Member. Whilst the decision for allocation of S106 funds is ordinarily taken by Officers, the TDC S106 Fund Guidance states that it may be necessary on occasions for Community & Resource Committee to be part of the decision-making process.

It has to be ensured that any project complies with the stipulations placed in the legal agreement. If the proposed scheme does not comply with the stipulations in the legal agreement, it will not be possible to support the scheme as this would breach the Section 106 agreement in place.

Where the District Council is in receipt of maintenance contributions for specific areas of land, the District Council is happy to work with Parish Councils and Town Councils to explore transferring land and/or maintenance contributions where appropriate. Some developers



choose to retain recreation/play areas however and in this circumstance the Local Authority does not receive a maintenance contribution.

Where external organisations including Parish and Town Councils are successful in securing funds from the District Council, a funding agreement will need to be entered into by both parties.

Further information regarding Section 106 grant funding including the Application Form, Application Guidance and details for Capital Funding TDC currently hold can be found through the attached link:

<http://www.torridge.gov.uk/article/16276/Section-106-Grant-Funding>

A copy of the spreadsheet providing details for the Capital Funding TDC currently hold can also be found at Appendix A.

3. IMPLICATIONS

Legal Implications

The process takes into consideration relevant legislation (namely the Town & Country Planning Act 1990, The Community Infrastructure Levy Regulations 2010 & the National Planning Policy Framework).

Financial Implications

No known financial implications arising at the time of writing this report.

Human Resources Implications

No known resource implications arising from this report.

Sustainability/Biodiversity Implications

No known sustainability/biodiversity implications

Equality/Diversity

No known equality/diversity implications

Risk Management

Not applicable

Compliance with Policies and Strategies

The stated process accords with the adopted North Devon & Torridge Local Plan, TDC S106 Grant funding guidance notes and accords with the communities, health and housing theme of the Strategic Plan 2020-2023.

Data Protection (GDPR) Implications

No known GDPR implications.

Climate Change

No known climate change implications.



Lead Member Views

Date of Consultation – 12th January 2022.

Councillor Watson – “S106 Agreements are an important part of the planning process that allows planning obligations to be secured. It is therefore important that the process of S106 Agreements from negotiations to allocation of funds is robust and I am pleased to see the process that is undertaken.”

SUPPORTING INFORMATION

Consultations: Date of Consultation – 13th January 2022
 Officers Consulted - Steve Hearse, Staci Dorey, David Heyes,
 Sean Kearney

Contact Officer: Shaun Harrington Planning Manager

