

Part U:

Section 106 Planning Obligations

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This part of the Development Requirements SPD provides further detailed guidance on the interpretation of the following Core Strategy policies, as appropriate:

- CS.27 Developer Contributions

This section of the SPD provides information and advice on the use of Planning Obligations, known as Section 106 Agreements; two tools the Council can use to ensure that development is acceptable in planning terms. It should be read in conjunction with other parts of the SPD, in particular:

- Part O: Parking and Travel
- Part Q: District Heating
- Part I: Open Space
- Part S: General and Local Housing Needs

It will be used by Stratford-on-Avon District Council to help reach decisions on whether to approve or refuse planning applications. Making sure that applications comply with the guidance contained within the SPD will make it easier for the Council to grant planning permission. The Council's Planning Policies are set out in the Core Strategy available at www.stratford.gov.uk/corestrategy.

Key words or terms which appear throughout the document are included in the Glossary.

U1. Relationship between S106 and CIL

The introduction of the Community Infrastructure Levy (CIL) has restricted the use of S106 planning obligations. The Council cannot 'double charge' developers for infrastructure. The Council is also no longer able to 'pool' more than five separate planning obligations for a particular project.

The provision of affordable housing currently lies outside of the remit of CIL and will continue to be secured mainly through S106 Agreements as well as some exception sites. S106 Agreements and planning conditions will also continue to be used for local infrastructure requirements on development sites, such as site specific highway improvements, provision of local public open space, connection to utility services (as required by legislation), habitat protection, access footpaths and roads, and archaeological remains. The principle is that all eligible developments must pay towards CIL, as well as any site specific requirement to be secured through S106 Agreements.

Large-scale major developments usually also necessitate the provision of their own development specific infrastructure, which are dealt with more suitably through a Section106 agreement, in addition to the CIL charge. It is advisable for a large scale development to come forward in its entirety at outline application stage, in order for the scheme to be considered as a whole. Outline applications will need to identify phases of development, so that each one can be considered as a separate development and enable CIL to be paid against each phase.

U2. Negotiating S106 Planning Obligations

The District Council will negotiate financial or other contributions for site related infrastructure improvements to assist in the mitigation of any adverse impacts, so that development may be made acceptable in planning terms. Highway works are usually dealt with as Section 278 Agreements (under the Highways Act 1980). Developers will also have to comply with any conditions applied to planning permission.

Role of the District Council

As the Local Planning Authority, Stratford-on-Avon District Council has a fundamental legal role and responsibility in implementing the developer contributions process. In particular, the process needs to ensure that a balance is maintained between development-related and competing community infrastructure needs of the District. It is the Council's role to lead Planning Obligation (S.106) negotiations, to notify developers of their CIL liabilities, and to ensure that funds provided by developers are spent as planned, in conjunction with the agreed requirements of other authorities and implementation agencies, including other Council service departments.

Pre-application Advice

Applicants are strongly encouraged to seek [early pre-application advice](#) (charges apply) with planning officers to agree planning obligations and understand their CIL liabilities prior to submitting planning applications. This approach:

- Ensures that developers are aware of the scale of likely contributions required for a proposed development at the earliest opportunity;

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- Assists in determining project viability;
- Provides greater clarity and certainty to the process; and
- Minimises the timescales involved in determining affected planning applications.

Securing S106 planning Obligations

S106 legal agreements may be:

- Positive, requiring the developer to do something specific;
- Negative, restricting the developer from doing something; and
- Related to specific financial payments based on a formula and often referred to as a commuted sum.

S106 Planning obligations can be secured through:

- In-kind and financial contributions (e.g. the provision of land, facilities, or funds that enable the delivery of development related infrastructure and community needs);
- One-off payments, phased payments, and commuted payments (e.g. funds provided to be invested to enable land and facilities to be maintained to agreed specifications over a period of time);
- Pooled contributions (e.g. towards the cost of a large-scale project, such as improvements to the road network, to be delivered at a later date), subject to the restrictions on pooling imposed by the CIL Regulations.

Timing of implementation is an important factor, especially in the following circumstances:

- If a planning obligation specifies a timescale within which the developer is required to undertake certain actions;
- If the planning permission refers to the phasing of development, the planning obligation may be linked to this phasing arrangement;
- If the planning obligation provides for a commuted sum to be paid to the Local Planning Authority the money must be spent within a specified period;
- If money raised through a planning obligation is not spent within the agreed period, the developer could be reimbursed with the outstanding amount, together with any interest accrued.

Agreeing S106 Planning Obligations

The procedure for agreeing S106 planning obligations can be summarised as follows:

1. As part of the Pre-Application process, if entered into, the case officer will identify for the developer the likely Planning Obligations Heads of Terms within the Pre- Application Report.

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2. After the planning application is validated and the draft 'Heads of Terms' are identified, the Council's Legal Services Team are instructed to prepare a draft S106 Agreement if the Local Planning Authority is minded to approve the application. At this stage the Legal Services Team will require an undertaking for legal fees and proof of ownership title before the initial draft of the S106 Agreement can be produced.
3. On production of the initial draft S106 Agreement this will be circulated to the developer, normally via their acting solicitor for comment and review. Once the developer and the Council have agreed terms, the final S106 Agreement will be signed and sealed, and planning permission will then be granted. Details of the S106 Agreement will be registered on the Council's Land Charges Register.
4. The S106 Agreement and its relevant triggers are monitored through to satisfactory discharge by the Council.

Find out more:

Further information regarding the Council's pre-application advice service can be found on the Council's website at:

<https://www.stratford.gov.uk/planning-regeneration/pre-application-advice.cfm>

U3. Aspects of S106 Planning Obligations

Consideration should also be given to the following: **Legal Information**

Developers will need to produce satisfactory proof of title for their particular site and all persons with an interest in the development site including, owners, mortgagees, tenants and option holders must be party to the agreement. The developer will also be expected to pay the Council's legal costs and will need to provide a solicitor's undertaking that the costs will be paid.

Local Land Charges

S106 planning obligations have to be registered as local land charges. Applicants will therefore need to produce the title to the site and third parties, such as mortgagees, may have to be party to agreements.

Inflation

All developer contributions payments will be index linked to a relevant index, which at present comprises the BCIS Price Adjustment Formulae Indices for all highways related obligations and the Retail Price Index for all other obligations.

Late Interest Payments

In the event of a delay in making any payment required under a S106 Agreement, interest shall be payable at a rate above the base lending rate set at that point and will be applied for the period from the date that the relevant payment falls due to the date of actual payment.

Triggers for S106 Planning Obligations

S106 planning obligations are normally triggered on commencement of development, i.e. the date on which works to begin the development start, as defined by the carrying out of a material operation (section 56 of the 1990 Town and Country Planning Act). This may be earlier or later, e.g. first occupation, or for significant major development it may be phased through the development process.

Varying a S106 Planning Obligation

Applicants can seek to vary a S106 planning obligation. This can only be done through a formal 'deed of variation'.

U4. S106 Viability Assessments

In the event of anticipated viability issues, the developer is advised to contact the Council's Planning Agreements Officer at an early stage to discuss ways of addressing the requirements for S106 planning obligations and to see if any exemptions can be made.

The Council will test the viability by seeking other enhancements by various means of cash-flow improvements, for example, deferring contribution payments. If, following an investigation of the alternative options, there is still a viability concern then the Council will expect the submission of a viability appraisal. The viability appraisal is an 'open book' assessment which should include information covering at least the following issues:

- Existing use values;
- Proposed use values (sales and rental);
- Demolition and construction costs;
- Finance and marketing costs;
- Assumed yield;
- Abnormal site costs;
- Development phasing/timetable.

If the Council alters the planning obligation sought on viability grounds, a clause will be built into the S106 Agreement which requires a review of the viability situation unless the development is completed within a defined timeframe. Information about Affordable Housing Clauses may be found on the SDC website '[Developing Affordable Homes](#)' and information on Off-Site Affordable Housing may be found in Part S : General and Local Housing Needs.

U5. Publication of Information

It is important that the negotiation of S106 planning obligations and subsequent expenditure of any contributions received from developers in a transparent and accountable way. The Council will maintain an ongoing overview of progress with the implementation of site specific and community infrastructure projects.

Because S106 Planning Obligations form part of the planning permission, which is a public document, the S106 information will be placed on the public Planning Register together with the planning decision notice. This information will usually be made available on the Council's website.

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In respect of information relating to the viability assessments of S106 Planning Obligations, if a viability assessment is submitted in relation to a valid planning application, then the Council will treat the submission as a public document, as set out in Paragraph 57 of the NPPF and in line with General Data Protection Requirements 2018. If it is submitted as part of the pre-application process the Council endeavours to keep all pre- application enquiries confidential. However, the Council cannot guarantee this and the applicant is advised to provide a clear justification when the application is submitted why they consider the information is confidential.

Find out more:

Planning practice guidance

<https://www.gov.uk/guidance/viability>