

S106 developer contributions – a practical helpsheet for members of Town and Parish Councils of the Stroud District.

Last updated July 2015

1. Introduction

1.1 Housing developments of a certain size, usually 11 dwellings or more, often carry obligations for the developer to help mitigate some of the impacts of that development on the local area. Obligations can be in-kind, where the developer promises to deliver some kind of infrastructure themselves, or financial where a monetary contribution is provided for other organisations to provide these facilities or services. These obligations are specified within a legal agreement between the local planning authority and the developer, known as a 'Section 106 Agreement'.

1.2 Understanding and applying the intentions of a S106 legal agreement can sometimes be a complex subject. This helpsheet is therefore not intended to be an exhaustive explanation of everything related to S106 and developer contributions; it is simply intended to offer information on the practical requirements of Town and Parish Councils, especially when proposing community infrastructure or projects they wish to be supported with S106 funding.

1.3 For more information on the local and national planning context around S106 agreements and developer contributions, we would advise that you first look at the 'Local Developer Guide –infrastructure & Services with new development' produced by Gloucestershire County Council. This document can be found at www.gloucestershire.gov.uk/extra/local-developer-guide. Stroud District Council operate under the same legislative.

1.4 For further assistance on this matter, please contact:

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The Key thing to remember:



Projects suggested for funding under S106 developer contributions should assist in providing essential community infrastructure and should be directly related and be proportionate to off-setting the impacts arising from that specific development.

2. What can be supported by S106 funds?

2.1 For the purposes of S106, 'community infrastructure' can be defined as 'the basic physical and organisational structures and facilities needed for the effective operation of the community affected'. The S106 agreement will specify the type of infrastructure to be supported and the amount that will become available.. Financial contributions are normally agreed according to a set formula linked to the amount and types of dwellings built.

2.2 In most cases projects suggested for S106 funding managed at the district level will be physical recreational infrastructure, such as play or sporting facilities and community buildings. Community infrastructure projects that can be physically delivered or built, are often referred

to as 'capital' projects. The application of physical infrastructure is the preferred route for S106 funds.

2.3 Projects should be providing something something that has significant value and will be new, upgraded or improved. Repairs, maintenance or programmed scheduled works of a repeated nature cannot be funded by S106 as it is argued such works should already be accounted for within the owners existing budgets.

2.4 In exceptional circumstances, S106 funds can sometimes be applied towards community functions that perhaps are not something you can physically build, such as local services. These projects are often referred to as 'revenue' projects. Revenue projects must be able to prove that they are providing essential community infrastructure and be reasonable in relation to the development to which the funds arise. They should meets the full project criteria for all S106 projects and be able to demonstrate that the proposed service or facility has special merit, is needed by the community and would not otherwise be funded from other central budgets.

3. Which areas can benefit from a S106 contribution?

3.1 Infrastructure projects benefitting from S106 funds should be provided to serve the needs of the residents of that specific new development from which the funds arise. Therefore projects should be applied within a reasonable travel distance of the new dwellings. This means that projects will respect the natural and most appropriate catchment area for that particular service or need, which may not necessarily fall within Town or Parish Council administrative boundary lines.

3.2 The needs of the residents of a development or community should be considered in terms of real life practicality and not necessarily by boundaries on a map or made for administrative purposes. For example, Towns and/or Parishes may decide to work together to deliver a specific project that serves the residents of more than one parish. There are also examples where local S106 funding from a smaller area is agreed to be applied to support the improvement of a 'strategic destination' that may be outside a parish, such as a swimming pool or larger sports centre.

4. How are the contributions collected from developers?

4.1 The local planning authority collects and administers the S106 payments from the developer. Payments are due when the development reaches a certain point as defined in the legal agreement, often this is either a specified number of dwellings built or occupied – this point is often referred to as a 'trigger'.

4.2 Most developments will have one S106 agreement with the District Council, and one with the County Council. District Council agreements often cover service delivery areas for which the District Council are responsible for overseeing, including recreation, public open space and affordable housing. Agreements made between the developer and the County Council will often cover larger strategic infrastructure such as Highways, Integrated Transport, Education and Libraries.

4.3 The local planning authority will keep records of related discussions and financial transactions for audit purposes. The local parish is also required to keep similar records and will be required to provide updates on project delivery and performance for monitoring purposes.

4.4 The S106 officer will liaise with the Clerk to the relevant Town or Parish Council to ensure that S106 funds are properly applied locally in accordance with the legal requirements.

Effective partnership working with Town and Parish Councils is a very important part of the S106 process.

4.5 Projects are agreed in partnership with SDC and the relevant Town/Parish Council. Projects can be delivered by any respected organisation or contractor that has the relevant qualifications, experience and legal requirements (e.g., constitution, insurance etc). The organisation proposing the project should ensure that the persons delivering the project have these necessary accreditations.

4.6 When an organisation (usually the Town/Parish Council or District Council) have the relevant project details and they wish to formally apply for S106 funds, they should apply to SDC (as the accountable body) using the Project Proposal Form. This form is available from the Planning Strategy Pages on SDC's Website or upon request from SDC's S106 officer (details above).

4.7 Once the form is received, it is discussed with relevant qualified Officers, usually from our Public Space Service and Sports and Cultural Services. We will then be in a position to respond to the applicant with some constructive advice, or we will forward to senior managers for their final approvals. Once management support is received, we will contact you to tell you the positive news, and to discuss the administrative arrangements for future payment of the project.

5. What are the essential requirements of a S106 project?

5.1 All project proposals for S106 funding will be subject to a 'test of reasonableness'. This means that local communities have the opportunity to consider a wide range of project ideas as long as they are appropriate in relation to satisfying the objectives as intended in the S106 agreement.

5.2 The S106 officer at the local planning authority will act as your main contact point and will be able to advise if a project proposal is reasonable and fits with the intentions of the agreement. The S106 officer works closely with other officers across the Council, especially those in the Public Space Service, Sports Development and Planning to discuss and agree the merits of project proposals. Informal project discussions between the Town/Parish representatives and the S106 officer are welcomed at all stages of the process.

5.3 Project proposals should be as 'sustainable' as possible in that

- i) Projects will be able to offer community benefits long after S106 developer funding has been applied. Facilities should be of a lasting nature with its own maintenance programme to provide for its enduring quality
- ii) The project considers the needs of future residents as well as the present. Its concept and design should respect future social, environmental and economic considerations.
- iii) The concept of 'Best Value' is applied, where decisions are based on the overall quality and 'value for money' and not just by cost factors alone. Consideration given to local procurement of services and goods is welcomed, as well as environmental considerations such as enhancing biodiversity, limiting activities that have associated pollutants and reducing carbon emissions.

5.4 Project proposals should be based on evidence of community need and have the democratic support of the community. Evidence of need can include the results of surveys or consultation conducted with the community, such as that undertaken for the production of a Town or Parish Plan.

5.5 Town or Parish Councils are expected to formally discuss different project options and agree project proposals before a formal recommendation or application is made to the local planning authority to support a particular project. This decision making process should be formally recorded as it may be later required for audit or evidence purposes.

5.6 Community needs should have been well considered by assessing existing needs (already identified as an issue before the development) together with the anticipated extra demands that may arise from the specified new development (by considering the numbers and types of new residents).

6. Does the new Community Infrastructure Levy (CIL) have an effect yet?

6.1 New Planning Legislation requires local planning authorities to develop a new way of charging for community infrastructure, whereby developers will be asked to make a set contribution according to an agreed 'formula based' charging schedule developed by the local planning authority.

6.2 It is important to note that Stroud District Council is not currently operating under a CIL charging schedule framework yet, therefore the usual S106 procedures apply. We are however obliged to ensure that our approach to the application of S106 operated in the 'spirit of CIL'.

6.3 In practical terms, this simply means that projects supported by S106 agreements should be well considered against the S106 criteria already outlined and be deliverable, and we must be able to show that there is a good project to which any money can be applied before it is requested from the developer.

6.4 Projects should be able to demonstrate that they are they are needed by the community and that they will have tangible community benefits in relation to the type of contribution secured (e.g., details on people expected to use a new recreational facility). It must be clear that the project helps to mitigate the impact of that development, i.e., that the new residents will need and use the proposed new facility.

6.5 Projects should ideally be well planned for (or in the process of project planning). Project delivery groups (often Town and Parish Councils) should be able to provide evidence of project work done so far, such as formal designs, quotations, contracts etc. It should be clear that the project risks have been minimised and it will be professionally delivered.

6.6 This helpsheet is accompanied by a page of short questions which may help you to assess if a project has the required level of detail to apply for support from developer contributions. This page is titled 'The SMART Project Test for S106 Contributions' and it suggests that a good project can question the application of the acronym 'SMART', which stands for 'Specific, Measurable, Achievable, Realistic and Timely/Targeted'.

6.7 If a local community cannot show evidence that they have a well considered 'SMART' project, it is possible that planning developers and their agents could argue that the request for funding is not appropriate or legally compliant with CIL legislation. If something is not needed or little more than a loose idea, the point could be made that in reality there is nothing to spend a requested contribution on.

7. What can we do now to maximise our chance of community investment through developer contributions?

7.1 SDC have a considerable amount of preparation and consultation work to take place first before it can begin to operate under a CIL charging schedule. Town and Parish Councils will be involved in this consultation work and will be contacted in due course. Until this time, Town and Parish Councils are strongly advised to continue to gather information on community infrastructure needs relative to their areas. Even when we are at a stage when we are fully operating under a CIL charging schedule, it is likely that there will still be development money available for localised projects that are outside the cope of the CIL charging schedule but help provide for evidenced community needs.

7.2 We would encourage local communities to think about both the present and future social and community needs of residents. Housing and planning needs are often covered within Neighbourhood Plans and Design Statements, but many of these documents do not consider social or recreational needs for different ages. Such facilities may include the provision and availability of community halls, community shops, health and sporting facilities and local areas of play.



IMPORTANT: Please help us to help you. We need to hear about your present and future **community projects, needs and aspirations**

7.3 SDC's Regeneration Service collect information from Town and Parish Councils on projects that they would like to see delivered. We call this the Community Project List. It simply covers the key aspects of a project and allows us to identify areas for future investment. As such, Officers in our Planning Service often refer to it when in discussions with developers, and it can provide the information needed to initiate discussions that can later secure financial contributions.

7.4 In the past, there was a misconception that anyone suggesting community projects for support from S106 funding was indirectly supporting specific planning application. That this is absolutely not the case and is indeed a risky approach. Not suggesting community projects suggests that there aren't any projects that could be supported, and even if a planning application is rejected by the Local Planning Authority, it can go out to appeal. If a developer wins an appeal, and no community projects were previously identified, then money that could have otherwise be gained from a request S106 would be lost. This situation is extremely rare, but it is our duty to point out that this is possible and that we encourage Towns/Parishes to be realistic about declaring community needs so that any potential investment or support can be realised.

7.5 The successful delivery of S106 project work depends on effective communications, especially between the local planning authorities (SDC) and local Town and Parish Councils. The S106 officer at SDC welcomes any enquires from Towns & Parishes needing advice and assistance.

S106 Process – Stroud District

Town/Parish Council consult local community (eg, through Parish Plan) on current / future social, environmental and economic needs.

Project ideas for new or improved infrastructure are suggested to relevant authorities. Includes proposals for new and improved social and recreation provision sent to SDC.

Local Planning Authority (SDC) receives a planning application for a new residential development. Proposal justifies request for S106 contribution.

Planning Officers consult the Community Project List for evidence of facilities needed by that community and consults Parish/Town Council if more detail is required. Discussions take place with developer to agree a contribution.

SDC agrees that project suggestions are reasonable in relation to new development. Contribution agreed with developer, legal requirements defined in agreement including 'trigger points' for payment. All involved parties receive copy of S106 legal agreement.

Planning application implemented/Development commences on site.

Town/Parish Council submits the Project Proposal Form giving specific project details (designs, quotation, contracts etc) to Stroud District Council, for formal agreement by senior management and to be recorded on S106 system.

SDC monitor the progress of the development. Once the 'trigger point' is reached (e.g., 'on first occupation') the developer is invoiced for the agreed contribution. SDC holds the funds on account until project is delivered as outlined in the Project Proposal Form.

Project is delivered and the community benefit from the new facility. Parish/Town Council monitor and report back on its success. SDC keep records for audit purposes.