

## **Section 106 FAQs**

- **What is a Section 106 agreement?**

Section 106 (S106) Agreements are legal agreements between Local Authorities and developers; these are linked to planning permissions and can also be known as planning obligations.

Section 106 agreements are drafted when it is considered that a development will have significant impacts on the local area that cannot be moderated by means of conditions attached to a planning decision. For example, a new residential development can place extra pressure on the social, physical and/or economic infrastructure which already exists in a certain area.

A Planning obligation will aim to balance the pressure created by the new development with improvements to the surrounding area ensuring that, where possible, the development would make a positive contribution to the local area and community.

- **What will be covered within the Section 106 agreement?**

When a planning application is submitted to the Council, we will assess the application as to whether the development would cause a significant impact to the area and community and thus if a S106 agreement is needed.

It should also be noted that, historically, financial obligations secured under the terms of S106 were reasonably rare. This has changed with the introduction of affordable housing requirements. Evidence to legitimise education and healthcare contributions has also been increasingly forthcoming in recent years. Modern S106 agreements deal mainly with three types of financial contributions: **affordable housing, education, and healthcare**.

Additionally, there are also some major application sites that require other types of financial contributions. These include, but are not limited to:

- Power stations
- Contributions to cover environmental issues
- Major housing developments
- Contributions to secure infrastructure such as roads and community centres, provision of bus services, etc.

- **How are planning obligations determined?**

S106 agreements are not standardised. The Council will work with the developer to reach an agreement which is tailor-made specifically for each case. This is usually done over a period of time and by negotiation. Often the draft details are agreed prior to the decision being made and then confirmed in detail afterwards. The decision on a planning application will not be released until the S106 agreement is signed.

- **Who negotiates a Section 106 agreement?**

The need for an agreement should be discussed in the initial stages by the developer/landowner and the Planning Officer assigned to that particular development. These

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discussions should take place before the application is submitted. The result is a list of S106 requirements called 'Heads of Terms', which are then legally drawn up by solicitors representing the different parties. Legal fees will be charged if applicable.

- **What should be included within the S106 agreement?**

Often at the pre-application stage developers will ask if there are any obligations to be considered. Matters such as affordable housing, open space, etc are set by policy within the Local Plan.

On submission of an application, consultation take place and at this time the consultees then present and justify a case for matters to be included in the S106 agreement. These claims have to be accompanied by evidence to support the need for such contributions. For example, the NHS will examine the health provision in the area and work out if the housing site would increase need through population growth to such an extent that more health provision would be required. They use a set formula to work out how much the contribution will be and must set out clearly where that money would be spent.

Education and NHS contributions can only fund physical infrastructure, not the cost of employing more people, for example, teachers or doctors. If no evidence of the need of a contribution is provided, then the Council cannot include that matter in a S106 agreement.

- **How are the Section 106s Monitoring Fees Calculated?**

As a result of the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019, Councils are now expressly allowed to charge monitoring fees in relation to Section 106 agreements, providing they are proportionate and reasonable, and reflect the actual cost of monitoring. The time spent monitoring section 106 agreements has been calculated, and we have introduced a three-tier cascade system to reflect the differing amounts of time spent monitoring agreements for different sized developments.

Monitoring fees are payable at the same time as any legal costs or on execution of the S106 legal agreement. (See [Section 106 obligations and Infrastructure Funding Statement - East Lindsey District Council](#) for more fee information).

- **When are the S106 agreements enforceable?**

The individual S106 agreements currently registered with the Council only become enforceable when development commences on site and/or when a particular stage of development is reached. In addition, each agreement may contain several individual financial requirements and each of these requirements will only become deliverable when a relevant trigger point is reached. Typically, trigger points revolve around stages of development. Some obligations are required when development commences. Others apply at various stages during construction and still others relate to completions and occupations.

- **How are the Triggers Points Determined?**

The trigger points for financial payments associated with any individual development are negotiated with the developer at the time the application is submitted and subsequently

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determined. Individual trigger points will take account of various issues such as the number of properties being built, and the financial viability of a payment being made at a particular point in the development. The local planning authority has to be content that the trigger point is not so late in the development that there is a possibility of the contribution not being paid.

For residential developments, trigger points usually relate to commencement of development; and/or the number of dwellings completed; and/or the number of dwellings occupied. For example, the most common is payable prior to occupation of 50% of the dwellings.

For non-residential developments the trigger points will usually relate to the commencement of the development, and/or a specified period after the commencement of development (for example, 18 months following commencement of development), and/or the date that the development starts operating.

- **What is indexation?**

Indexation provides protection against inflation for Section 106 obligations and ensures that the Council and Outside Bodies are protected against the cost of delivering infrastructure rising from the time the agreement is signed. In most cases the indexation would run from the month prior to the signing of the agreement up until the date that the obligation is payable (due).

The type and details of the indexation is stipulated within each s106 agreement. All indices are updated and evidenced at the time of invoicing.

- **How and to whom are payments made?**

Not all obligations will relate to contributions payable to the District Council. Some will relate to contributions payable to the Lincolnshire County Council, whilst others will relate to contributions eventually payable to third parties, for example parish councils or healthcare providers.

Section 106 of the Town and Country Planning Act 1990 (as amended) requires that any financial contributions be paid to the local planning authority. So, under S106, all financial contributions must be paid either to the District Council or to the County Council. These authorities are then responsible for ensuring that any third-party money is spent appropriately.

- **What can the payments be used for?**

Section 106 payments relate directly to the development with which they are associated and can only be spent as specified in the S106 agreement agreed by all parties. Undertakings are signed by all relevant Outside Bodies (e.g. LCC / NHS) to ensure these specifications are followed and timelines are kept. Regular monitoring is provided through the Section 106 Monitoring Officer Role.

Responsible Officers within the District Council ensure the contributions (for ELDC) are spent in accordance with the section 106 agreement terms. Please note the monies cannot be

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spent on anything else in generic terms, regardless of the need of such funding.

- **How is the money allocated?**

We allocate money to the various delivery teams within the Council, specialising in the associated area, such as communities or affordable housing. They then deliver the requirement through a robust auditable procedure.

Monies are also allocated to Lincolnshire County Council (education / highways) and the NHS (healthcare) if the S106 agreement specifies that a payment is to be made to them. Undertakings are signed to ensure they are aware of the conditions of the s106, and the timeframes associated.

Transfer to Parish Councils can occur either when it is set out specifically within the Section 106 agreement or where the District Council deems it is the best use of funds received. For example, if we do not own any open space within a set village requirement but the Parish Council does, the funds received for an open space contribution can be transferred and an undertaking completed.