REPORT TO:	Overview
DATE:	6th May 2025
SUBJECT:	Section 106 obligations update
PURPOSE:	To provide update on the purpose and process relating to s.106 obligations
KEY DECISION:	*N/A*
PORTFOLIO HOLDER:	Councillor Tom Ashton
REPORT OF:	Phil Norman – Assistant Director Planning & Strategic Infrastructure
REPORT AUTHOR:	Andy Booth – Development Manager Lead
WARD(S) AFFECTED:	All
EXEMPT REPORT?	*No*

SUMMARY

This report provides an overview of the purpose and use of planning obligations together with commentary on the approach adopted by this authority in securing those obligations and in monitoring their requirements.

Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal and can only be required/considered when relevant legal tests are satisfied. They run with the land, are legally binding and enforceable.

The approach undertaken at East Lindsey District Council not only adheres to the legal expectations for obligations but also seeks to adopt best practice approaches.

The report is brought to Overview Committee for information.

RECOMMENDATIONS

To note the process and requirements for use of s.106 obligations as carried out by the planning department relating to relevant development proposals.

REASONS FOR RECOMMENDATIONS

The report is provided for information purposes

OTHER OPTIONS CONSIDERED

None available.

1. **BACKGROUND**

1.1 Planning obligations can be secured in connection with planning proposals, appeals, enforcement appeals and Secretary of State 'called in' planning applications. They comprise both agreements and unilateral undertakings (section 106 of the Town and Country Planning Act 1990 "the Act" as amended).

1.2 This authority seeks to secure such obligations in accordance with good practice advice provided by Government for the preparation of planning obligations and Government policy on the use of planning obligations as contained in the National Planning Policy Framework and the Planning Practice Guidance (PPG)**.**

2. REPORT

2.1 **Legislation**

What are planning obligations?

2.2 Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal. This can be via a planning agreement entered into under section 106 of the Town and Country Planning Act 1990 by a person with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land without the local planning authority.

2.3 Planning obligations run with the land, are legally binding and enforceable. A unilateral undertaking cannot bind the local planning authority because they are not party to it.

2.4 Planning obligations are also commonly referred to as 'section 106', 's106', as well as 'developer contributions' when considered alongside highways contributions and the Community Infrastructure Levy.

2.5 More specifically, planning obligations are a mechanism which can be used to make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development.

2.6 Common uses of planning obligations are to secure affordable housing, and to specify the type and timing of this housing; and to secure financial contributions to provide infrastructure or affordable housing. However these are not the only uses for a s106 obligation. A s106 obligation can:

1. restrict the development or use of the land in any specified way
2. require specified operations or activities to be carried out in, on, under or over the land

3. require the land to be used in any specified way; or
4. require a sum or sums to be paid to the authority on a specified date or dates or periodically.

2.7 A planning obligation can also be subject to conditions, it can specify restrictions definitely or indefinitely, and in terms of payments the timing of these can be specified in the obligation.

2.8 If the s106 is not complied with, it is enforceable against the person that entered into the obligation and any subsequent owner. The s106 can be enforced by injunction.

2.9 In case of a breach of the obligation the authority can also consider the taking of direct action and recover expenses.

2.10 A planning obligation is a formal document, a deed, which states that it is an obligation for planning purposes, identifies the relevant land, the person entering the obligation and their interest and the relevant local authority that would enforce the obligation. The obligation can be a unitary obligation or multi-party agreement.

2.11 The obligation becomes a land charge.

2.12 **When can planning obligations be sought by the local planning authority**

2.13 Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. 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.

2.14 These tests are set out as statutory tests in regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended by the 2011 and 2019 Regulations). In other words, regulation 122 makes it unlawful for any planning obligation to be taken into account as a reason to grant a planning permission if it does not meet the 3 tests.

2.15 The National Planning Policy Framework further sets out at paragraph 58, 3 policy tests which mirror the tests in the Regulations.

2.16 It is relevant to note that these tests apply whether or not there is a Community Infrastructure Levy(CIL) charging schedule for the area.

2.17 As further indication of the need for robustness of justification in seeking a planning obligation, best practice guidance in respect of appeals advises that:

'The following evidence is likely to be needed to enable the Inspector to assess whether any financial contribution provided through a planning obligation (or the local planning authority's requirement for one) meets the tests:

- *the relevant development plan policy or policies, and the relevant sections of any supplementary planning document or supplementary planning guidance*

- *quantified evidence of the additional demands on facilities or infrastructure which are likely to arise from the proposed development*
- *details of existing facilities or infrastructure, and up-to-date, quantified evidence of the extent to which they are able or unable to meet those additional demands*
- *the methodology for calculating any financial contribution necessary to improve existing facilities or infrastructure, or provide new facilities or infrastructure, to meet the additional demands*
- *and details of the facilities or infrastructure on which any financial contribution will be spent.*

2.18 The East Lindsey policy position

2.19 The East Lindsey Local Plan (adopted 2018) includes a specific policy basis for the consideration of requirements for planning obligations. In particular, the supporting text for Strategic Policy SP28 advises that major developments of 10 or more dwellings and other major schemes will be required to contribute towards the provision of infrastructure for which they create a need. The text further suggests that could include the following, although it is not an exhaustive list:

- Roads and other transport facilities,
- flood defences,
- schools and other educational facilities,
- medical facilities,
- sporting and recreational facilities, and/or
- open spaces

The policy itself states:

Strategic Policy 28 (SP28) – Infrastructure and S106 Obligations

1. Infrastructure schemes will be supported provided they are essential in the national interest; contribute to sustainable development, and respect the distinctive character of the district.

2. Infrastructure schemes should be accompanied by an impact assessment that shows how the proposal impacts on the landscape or local setting of the area, including individual and cumulative effects. It should identify what steps have been taken to minimize its effects and the alternative options that have been considered.

3. The Council will support the delivery of infrastructure where it contributes to sustaining local communities.

4. Developer contributions on major schemes (10 or more dwellings or major other development) will be sought towards the delivery of infrastructure where it is shown to be necessary for the development to proceed.

5. The Council will only support proposals for development where it has been shown that adequate capacity is available, or can be provided by the utility providers to meet the additional loads associated with serving the development.

2.20 How planning obligations are determined

S106 agreements are not standardised. There is need to ensure a bespoke response to the consequences of the proposed development. To achieve that, the approach of your officers is to work with the developer to reach an agreement which is tailor-made specifically for each case. This can be time consuming and may require negotiation. The draft details or Heads of Terms of an obligation will often be agreed prior at an early stage of the planning application process and then confirmed in more detail later. The formal decision on a planning application will not usually be released until the S106 agreement is signed or a Unilateral Undertaking been confirmed as acceptable.

2.21 Who negotiates a Section 106 agreement?

The need and requirements for a s.106 obligation should usually be discussed in the initial stages by the developer/ landowner and the Planning Officer assigned to that particular development. Those discussions may take place before the application is formally submitted leading to a defined list of 'Heads of Terms', which are then legally drawn up by solicitors representing the different parties. Legal fees will be charged if applicable.

2.22 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, are set by policy within the Local Plan but on submission of an application, consultation responses may indicate other matters for potential inclusion in a planning obligation. Any requests need to be accompanied by evidence to justify the request 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. A formula has been developed (and is reviewed periodically)to work out how much the contribution should be and have to set out clearly where that money would be spent.

2.23 As clarification, education and NHS contributions can only fund physical infrastructure requirements consequential to the proposed development, 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 request cannot be considered further (see the three legal tests above).

2.24 Community Infrastructure Levy (CIL)

The process for preparing and adopting the Local Plan was an arduous and lengthy one with input at many stages from a wide variety of stakeholders and ultimately examination by an Inspector appointed by the Planning Inspectorate (PINS)

2.25 As part of that process, consideration was given to the adoption of a Community Infrastructure Levy.

2.26 The Community Infrastructure Levy (the 'levy') is a charge which can be levied by local authorities on new development in their area. It is an important tool for local authorities to use to help them deliver the infrastructure needed to support development in their area.

2.27 However, the levy only applies in areas where a local authority has been through due process, consulted on, and approved, a charging schedule which sets out its levy rates and has published the schedule on its website.

2.28 Most new, relevant development which creates net additional floor space of 100 square metres or more, or creates a new dwelling, is potentially liable for the levy.

2.29 However, East Lindsey District Council decided to not adopt CIL. The relevant report was considered by the Councils Executive Board in September 2013 (https://democracy.e-lindsey.gov.uk/documents/g4857/Public%20reports%20pack%2010th-Sep-2013%2010.00%20Executive%20Board.pdf?T=10).

2.30 The report outlined the background to CIL, the potential benefits and also difficulties that it potentially posed for East Lindsey.

2.31 The minute to the report advises:

A report was presented that considered the Community Infrastructure Levy (CIL). Members noted that the levy was a potential planning charge that originally came into being in April 2010 and now amended through the Community Infrastructure Levy (Amendment) Regulations 2011.

It was noted that the Community Infrastructure Levy provided a route for Local Authorities to raise funds for new infrastructure within their District through the placing of a charge on new developments. In addition, it was highlighted that, currently, the implementation of CIL was not compulsory.

Members were advised that the introduction of the CIL would require significant input at this point in time through project identification, costs and resource requirements. The economic viability of development in East Lindsey is constrained and it was considered that the placing of a levy on development would provide a disincentive on economic growth. It was stated that a similar view was being taken by other rural districts across the country.

It was highlighted that there was still a role for specific planning obligations (Section 106s Agreements) to enable a local planning authority to be confident that consequences of development could be mitigated.

During discussion reference was made to the importance of ensuring that S106 Agreements came to fruition, it was acknowledged that this had sometimes proved difficult in the past. Members noted that compliance work was currently being undertaken on this. It was agreed that it would be advantageous if all Portfolio areas worked together to ensure that the Council achieved the best results from S106s.

The Chief Executive advised that whilst S106s did not apply to all development, that they must be reasonable in their demands and the final decision on them was through the Planning process, however, Portfolio Holders could usefully be consulted during the process.

Following which, it was

RESOLVED

That, for the purposes of this plan period in association with the Core Strategy currently being produced, the CIL be not implemented.

2.32 Had CIL been adopted, it is important to note that it's purpose is not one intended to make individual planning applications acceptable in planning terms.

2.33 Site-specific impact mitigation may still be necessary for a development to be granted planning permission. Although it is possible that some of those needs may be provided for through a levy others may not, particularly if they are very local in their impact.

2.34 Consequently there would still have been a legitimate role for development specific planning obligations, even where the levy is charged, to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated.

2.35 Monitoring and payment

2.36 Individual S106 obligations usually become enforceable when development commences on site and/or when a particular stage of development is reached. Obligations may contain a number of individual financial requirements and each of these requirements will only become deliverable when a relevant trigger point is reached in the timeline of the development. 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 may relate to completion and occupation.

2.37 The trigger points for financial payments associated with any individual development are negotiated with the developer through the course of a planning application. Individual trigger points will take account of relevant factors such as the number of properties being built or financial viability considerations.

2.38 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, a contribution may be payable prior to occupation of 50 percent of the dwellings.

2.39 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 and/or the date that the development starts operating.

2.40 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).

2.41 The type and details of the indexation is stipulated within each S106 obligations. All indices are updated and evidenced at the time of invoicing.

2.42 Not all obligations will relate to contributions payable to the District Council. Some will relate to contributions payable to other bodies such as Lincolnshire County Council or to contributions eventually payable to third parties (for example 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. Consequently, 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.

2.43 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 monitoring of S106 agreements is costly and requires significant resource, and we have therefore taken the decision to introduce reasonable monitoring fees. The time spent monitoring section 106 agreements was calculated, and a three tier cascade system to reflect the differing amounts of time spent monitoring agreements for different sized developments has been introduced.

2.44 Monitoring fees are payable at the same time as any legal costs or on execution of the S106 legal agreement. Given the marked variation in the number of agreements signed each year, it is proposed to review the monitoring fees approximately 12 months after implementation (see **Section 106 obligations and Infrastructure Funding Statement - East Lindsey District Council** for more fee info).

2.45 Modification and discharge of section 106 obligations

2.46 Modification and discharge of s.106 obligations is governed by section 106A, which allows for variations: by agreement at any time between the authority and the persons against whom the obligations are enforceable. Once an application is made, section 106A(6) then governs what decisions the authority may take. An appeal mechanism is contained in section 106B - the procedure for which is governed by the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992.

2.47 Where modifications to planning permissions are made under section 73 of the Town and Country Planning Act 1990, the result is a new standalone planning permission which must be tied to the 'original' section 106 agreement by way of a supplemental agreement. Otherwise, unless the original agreement is drafted so as to capture future variations/amendments to the scheme (this is a standard format for obligations currently sought by this authority), the applicant would be able to implement its section 73 consent free from any section 106 obligations.

2.48 Community Funds and benefits

2.49 Over the past 15 years or so, it has become commonplace for many renewable energy projects to offer community benefits to communities associated with a development – often in the form of financial payments.

2.50 Such benefits are however, normally provided voluntarily by the developer and outside of the planning and licensing process for such major projects. It is important to recognise that they are not mitigation measures to manage adverse project impacts, nor are they enhancement measures for increasing positive project impacts. Consequently they are not material planning considerations in the project decision-making process.

2.51 Such funding arrangements have to date been varied in their nature and scale and are provided on an ad hoc basis. Nonetheless they seem to have become established protocol for the renewables industry, with national Government guidance having recently been updated to encourage a more consistent approach. However, to reiterate comment made earlier in this report, such funds sit firmly outside of the planning system.

CONCLUSION

3.1 Although they can be complex in their make up and sometimes time consuming in their preparation, planning obligations are the best available tool to mitigate the impacts of a development proposal where use of planning conditions is inappropriate.

3.2 They are a planning tool that is often misunderstood by stakeholders and members of the public in terms of their expectations and ambitions. However, the approach taken by East Lindsey District Council is responsive to Government advice and seeks to ensure compliance with the statutory limitations for the use of planning obligations, reducing risk of challenge in seeking to mitigate legitimate impacts of development.

EXPECTED BENEFITS TO THE PARTNERSHIP

The learning outcomes can be shared across the Partnership to ensure similar benefits.

IMPLICATIONS
SOUTH AND EAST LINCOLNSHIRE COUNCILS PARTNERSHIP

None

CORPORATE PRIORITIES

The following sub-regional priorities are supported by appropriate use of planning obligations:

- Growth and Prosperity
- Healthy Lives
- Safe and resilient communities
- Environment

STAFFING

None

WORKFORCE CAPACITY IMPLICATIONS

None

CONSTITUTIONAL AND LEGAL IMPLICATIONS

None

DATA PROTECTION

None

FINANCIAL

None

RISK MANAGEMENT

None

STAKEHOLDER / CONSULTATION / TIMESCALES

No consultation undertaken

REPUTATION

Utilising best practice will enhance reputation

CONTRACTS

None

CRIME AND DISORDER

None

EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING

None

HEALTH AND WELL BEING

Outcomes form appropriate Obligations can aid physical and mental health

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Good planning outcomes can support positive climate change and environmental outcomes

MISSIONS **This paper contributes to the following Missions outlined in the Government's Levelling Up White paper.**	
Living Standards	By 2030, pay, employment and productivity will have risen in every area of the UK, with each containing a globally competitive city, with the gap between the top performing and other areas closing.
Research and Development	By 2030, domestic public investment in Research & Development outside the Greater South East will increase by at least 40% and at least one third over the Spending Review period, with that additional government funding seeking to leverage at least twice as much private sector investment over the long term to stimulate innovation and productivity growth.
Transport Infrastructure	By 2030, local public transport connectivity across the country will be significantly closer to the standards of London, with improved services, simpler fares and integrated ticketing.
Digital Connectivity	By 2030, the UK will have nationwide gigabit-capable broadband and 4G coverage, with 5G coverage for the majority of the population.
Education	By 2030, the number of primary school children achieving the expected standard in reading, writing and maths will have significantly increased. In England, this will mean 90% of children will achieve the expected standard, and the percentage of children meeting the expected standard in the worst performing areas will have increased by over a third.
Skills	By 2030, the number of people successfully completing high-quality skills training will have significantly increased in every area of the UK. In England, this will lead to 200,000 more people successfully completing high-quality skills training annually, driven by 80,000 more people completing courses in the lowest skilled areas.
Health	By 2030, the gap in Healthy Life Expectancy (HLE) between local areas where it is highest and lowest will have narrowed, and by 2035 HLE will rise by 5 years.
Wellbeing	By 2030, well-being will have improved in every area of the UK, with the gap between top performing and other areas closing.
Pride in Place	By 2030, pride in place, such as people's satisfaction with their town centre and engagement in local culture and community, will have risen in every area of the UK, with the gap between the top performing and other areas closing.
Housing	By 2030, renters will have a secure path to ownership with the number of first-time buyers increasing in all areas; and the government's ambition is for the number of non-decent rented homes to have fallen by 50%, with the biggest improvements in the lowest performing areas.
Crime	By 2030, homicide, serious violence, and neighbourhood crime will have fallen, focused on the worst-affected areas.
Local Leadership	By 2030, every part of England that wants one will have a devolution deal with powers at or approaching the highest level of devolution and a simplified, long-term funding settlement.

ACRONYMS

PPG – Planning Practice Guidance
NPPF – National Planning Policy Framework
CIL – Community Infrastructure Levy

APPENDICES
None

BACKGROUND PAPERS
As referenced in the report

CHRONOLOGICAL HISTORY OF THIS REPORT
None

REPORT APPROVAL	
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