

Annex 1: Guidance to promote local engagement

What are Section 106 Agreements?

Section 106 agreements are mechanisms for making sure that the necessary financial or other contributions are secured to mitigate the impact of a development on the local area. (Section 106 refers to the relevant section of the Town and Country Planning Act 1990).

This is the method that is currently used by the Council. There are other methods used by other Councils and you may have heard of the Community Infrastructure Levy (CIL) which relies on fixed levels of contribution. However, the planning system is currently in a state of flux so the methods of seeking developer contributions may change over time. Regardless there will always be a role for the local community to feed into the process and the purpose of this guidance is to make this possible in the most effective way.

Section 106 agreements are negotiated between the Council and the developer, and sometimes include the County if for example highway or education matters are involved. The Government's National Policy Planning Framework (NPPF) currently sets out how such agreements should be delivered. The agreements need to meet three tests.

- the project is necessary to make the development acceptable in planning terms
- it is directly related to the development; and
- it is fairly and reasonably related in scale and kind to the development

The Council negotiates Section 106 Agreements directly with the developer. Contributions relating to affordable housing provision, health care, education, libraries and other County run services, including highway matters, are negotiated directly with the providers. Council owned open amenity and play space is subject to specific adopted policy to calculate the necessary contributions. However it is also important that Town and Parish Councils, and other community groups, also feed into this process.

How can my community become involved?

It is possible to contribute to this process by making specific comments and recommendations on every relevant planning application. However this has a number of disadvantages.

- S106 agreements often relate to large scale housing developments. Such applications are likely to be complex and sometimes controversial. There is limited time for consultation which may not allow for proper consideration of community need which could benefit from S106 contributions.
- There is a perception that comments on large scale planning applications which relate to potential community benefits are a 'developer's bribe', and that

by seeking S106 contributions the Parish or Town Council is supporting the development. This perception is unhelpful. This is the opportunity for the community to benefit as a whole if the planning application is found to meet national and local planning policy and subsequently approved.

- In order for the Council to seek S106 contributions on behalf of Parish and Town Councils, and other community groups, the need must be evidenced. This is absolutely vital. The Council cannot seek S106 contributions for the local community unless the need is proven. The time constraints are such that community based groups would struggle to meet this requirement given the limited consultation time for individual planning applications.

The advantages of a creating a plan

The solution to these disadvantages is the production of a document or plan. The Parish or Town Council, or potentially a community group, can draw together a document or plan which lists the needs of their community.

- A plan can be prepared in advance of the submission of any large scale planning applications. This will allow for a fully considered response to any potential new development.
- A plan will set out the needs of the community as a whole and having been prepared in advance of any submissions will avoid accusations of 'developer bribes'.
- The plan will be suitably evidenced and have the support of the local community. This will mean that the Council can use the plan as robust evidence of need in its negotiations with developers over S106 agreements.

The plan can take many different forms and can be at any scale – whatever is most appropriate for your community. There have already been a range of initiatives that some communities may have undertaken which could form the basis for such a document. There are also a number of initiatives being undertaken by communities in other districts. One such initiative is the Parish Infrastructure Spend Plan.

A Parish Infrastructure Spend Plan is plan produced by Parish and Town Councils which identifies and prioritises the necessary infrastructure works in a specified area. This specific type of plan is aimed at those Parish and Town Councils whose Borough Councils have adopted CIL. However similar principles can apply.

Hints on how to draft a plan

Identify those assets that are already in the ownership or control of the Parish or Town Council, or other community group

This will help to focus the plan. The temptation will be to create a 'wish list'. Whilst this may be a useful exercise for the community and one that may be worth pursuing as a starting point for your plan, the plan must be based on need relating to potential

development and not merely aspiration. It is important not to artificially raise the expectations of the community as not all projects will meet the criteria of S106 requirements.

This may be best illustrated in the following examples:

- S106 contributions can be sought for a sports club that is already operating at full capacity and the relevant development will further increase demand. S106 contributions cannot be sought if the sports club has spare capacity even allowing for the increased demand due to the relevant development.
- S106 contributions can be sought to improve an existing play area which is located near to the relevant development as the play area will be used by the residents of the relevant development. S106 contributions cannot be sought if the existing play area is some distance from the relevant development and therefore the new residents would be unlikely to use it.
- S106 contributions can be sought to mitigate the impact of any new traffic generation if the existing traffic congestion exists to ensure the situation is no worse. S106 contributions cannot be used to mitigate existing traffic congestion if this is not increased by the new development.

Review any existing initiatives that may have already been undertaken in your area

Your Parish, Town Council or other community group may have already undertaken survey work which could contribute to your plan. A village design statement, community action plan or neighbourhood plan for example. Whilst this information may be dated it may still provide a useful starting point for your plan.

Identify wider projects that could be eligible for S106 funding

You may wish to do this as a community wide exercise. It is appreciated that Parish and Town Councillors are likely to be aware of the needs of their community and this may provide a good starting point. However remember for the plan to be robust it must represent the views of the local community. It may be useful to contact the existing community groups in your area which is likely to give a broader approach, but always remember the three golden rules of S106 contributions – is the project necessary to make the development acceptable in planning terms, is the project directly related to the development, and is the project fairly and reasonably related in scale and kind to the development. Also remember that the projects must be capital projects and cannot be used as general subsidies for staff payments or running costs regardless of the excellent work that may be being done by any particular group or organisation.

Prioritise the identified projects

You may find it useful to rank the identified projects. This may be in terms of short, medium or long term need. This may be in terms of scale or proximity to any

potential site within your area. It will also be useful to estimate the likely costs of any project. This does not need to be an exercise to be undertaken by experts but there is guidance available which can estimate costs. For example, Sport England provides costing examples on its website.

The plan must have the support of your community

In order for the plan to be effective it must reflect the views of your community. This is a simple phrase with huge implications, but it is essential in the production of any plan. However each Parish or Town Council, or other community group, is likely to already have mechanisms in place to seek the views of residents, and you might wish to organise a series of public consultations or have a presence at existing community functions. It will also be necessary to ensure that the formation of the plan is open and transparent. This will ensure credibility and reassure your community that the manner in which the plan has been drawn up has been fully inclusive. It might be useful to include summary details of this process within the plan, as an introduction or annex possibly.

The plan must be flexible and regularly updated

The plan needs to be a flexible document to reflect the changes in need in your community. You may wish to view the document as working document which can be easily updated in order to respond quickly to change.

What should a plan include?

- The area it covers and the location of any identified projects
- A list of projects and summary details
- A justification for each project including evidence of public support
- The indicative cost of each project
- The envisaged timescale for the delivery of each project

There are examples of similar documents that have been prepared by other Parish and Town Councils and these can be accessed through a general internet search. You may find viewing other examples helpful but be minded that every community is different and some may relate to CIL rather than S106 contributions.