

Sustainable communities

Corporate checklist

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# Corporate awareness checklist

Improving performance on Section 106 agreements

For chief executives, leaders and councillors

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### What?

This guide helps councils to assess how cost-effectively they are using planning obligations via a series of questions. Its purpose is to encourage councils to look at the value for money (VFM) of the process, rather than the outputs and outcomes.

### Who?

Aimed at planning departments which would like help in  
a) applying VFM concepts to their Section 106 processes and  
b) assessing their current performance.  
Of interest to heads of planning and other senior staff.



### What?

This route map describes the steps that councils need to adopt to improve their approach to Section 106, and to address some common weaknesses.

### Who?

Aimed at planning departments looking to improve their approach to Section 106.  
Of interest to heads of planning and other senior staff.



### What?

This short checklist is aimed at raising awareness of the role and potential contribution of the Section 106 process among chief executives, leaders and other senior councillors and officers. The questions should be used to increase awareness and prompt thinking about how to better integrate Section 106 agreements into processes for delivering corporate objectives.

### Who?

Aimed at chief executives, leaders and other senior councillors and officers involved in delivering the community strategy, and scrutiny panels.

## What are planning obligations?

As part of the planning process, a local planning authority and a developer may enter into a legal agreement to provide infrastructure and services on or off the development site where this is not possible through planning conditions. This agreement, known also as a Section 106 agreement,<sup>1</sup> is a delivery mechanism for the matters that are necessary to make a development acceptable in planning terms. Planning agreements have become increasingly important to the provision of public services including highways, recreational facilities, education, health and affordable housing.

The terms planning obligations, planning agreements and Section 106 agreements are often used interchangeably, as they are in this paper. But technically, a planning agreement or Section 106 agreement refers to the legal document which results from the planning obligations process.

It should be noted that planning obligations should only be sought if they meet the Secretary of State's policy tests – a planning obligation must be:

- (i) relevant to planning;
- (ii) necessary to make the proposed development acceptable in planning terms;
- (iii) directly related to the proposed development;
- (iv) fairly and reasonably related in scale and kind to the proposed development;  
and
- (v) reasonable in all other respects.

For more information see the Office of the Deputy Prime Minister's Circular 05/2005 on Planning Obligations.

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<sup>1</sup> The legislative basis for planning obligations is Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the Planning and Compensation Act 1991. This can be viewed at [www.legislation.hms.gov.uk](http://www.legislation.hms.gov.uk).

Audit Commission research has identified that councils which have an effective approach to the use of planning obligations have good backing from the corporate centre. This checklist is aimed at raising awareness of the role and potential contribution of planning obligations among chief executives, leaders and other senior councillors and officers. The questions should be used to prompt thinking about how to better integrate Section 106 policies and practice into corporate processes/objectives.

The corporate context of a council that is working effectively to optimise community benefits through the planning process would have the following attributes:

### **1. Council as a whole should be clear and explicit about what it wants to achieve for the area and the role of the planning process in delivering this, for example:**

- Clear longer-term vision and explicit statement of corporate objectives for improving the local quality of life (usually set out in the corporate plan, community strategy and so on).
- Council vision and priorities actively communicated to and understood by all stakeholders (internal and external).
- Clear understanding of planning's role in delivering corporate ambitions.

### **2. Good understanding of local needs for infrastructure through effective engagement with communities and other departments/agencies**

- Extensive community engagement and consultation to identify needs.
- Effective engagement with external and internal agencies and other services (for example, education, leisure, housing, primary care trusts) to ensure good current understanding of specific local needs for different types of infrastructure.
- Effective cross-service working with other services (promoted as a corporate requirement) to ensure that corporate priorities are met. Examples would include a development team approach to major applications and involvement of housing officers in securing affordable housing through planning decisions.

### 3. Clear, up-to-date policy framework

- Corporate commitment (including adequate resources) to keep development plan up to date.
- Appropriate supplementary planning guidance (now documents) on Section 106 requirements, procedures and processes, ideally including model agreements, clauses and site thresholds.

### 4. Sound processes and systems of performance management

- Effective reporting mechanisms to ensure that delivery is on track and the need for corrective action identified (for example, progress reporting on Section 106 agreements in the pipeline, completed and delivered).
- Adequate arrangements for project management, monitoring and tracking (particularly large-scale projects and key sites) to ensure that the proceeds from planning obligations are properly collected and spending is monitored to ensure compliance with original agreements.
- Contributions through planning obligations subject to the same stringent requirements as other spend.
- Effective arrangements in place for clawback (where contributions need to be returned to the applicant if circumstances change or agreed timescales are exceeded).
- Clear statement of aims for planning service with explicit linkages to corporate objectives and priorities, so that teams and individuals involved are able to direct their efforts to maximum effect.

### 5. Corporate and service capacity

- Council ensures adequate corporate capacity and structure to effectively manage and direct work of the council to meet its objectives (often a key weakness).
- Council ensures adequate resources allocated to planning (and housing, legal and so on) services to create necessary capacity to secure community benefits in line with corporate priorities. (Are resources being targeted at priority services in the face of competing demands and need for budgetary restraint?)
- Council provides support to services under pressure to allow them to identify community infrastructure improvements and contribute to identifying needs in a timely way.

## Checklist

In order to establish how much improvement work is needed to integrate planning obligations with council activity, the following checklist gives some suggested questions. Its purpose is to raise awareness among the corporate centre about the role of planning obligations. The questions could potentially be used to structure discussion with a range of different groups as follows:

- chief executives and management teams;
- cabinet;
- scrutiny panels;
- key external stakeholders such as primary care trusts.

The answers will give you an indication of where change is needed, at the corporate centre or within the planning department, and what you need to focus on. The other products in this suite, the *Value for Money Self-assessment Guide* and *Route Map to Improved Planning Obligations*, can help by giving you some of the tools you need to start making these changes.

### Don't forget

Section 106 is a planning tool for addressing the impact of new development, and the way in which planning obligations are used is constrained by national policy guidance. Planning obligations should only be sought if they meet the Secretary of State's policy tests, which means that funds raised through planning obligations cannot be used to support opportunistic funding bids. The use of funds raised through planning obligations is fixed when the planning agreement is signed, at the time planning permission is granted. This may be long before the developer's contribution is paid, so using planning obligations successfully means thinking ahead to adopt policies that will deliver benefits in support of the community strategy over a long time frame.

		Your comments
<b>Awareness</b>	Is there an understanding of how planning obligations fit in with overall council activity?	
<b>Objectives</b>	Are you clear what you are seeking to achieve through your use of planning obligations?	
<b>Strategy</b>	Do you have a strategic approach to assessing and meeting infrastructure needs? What is the role of planning obligations in this?	
<b>Constraints</b>	Are you clear how your local circumstances – in particular, land values – affect the scope for raising contributions through planning obligations?	
<b>Policy</b>	Do you have a detailed policy on planning obligations? Are other departments (especially legal) and agencies aware of, engaged with, and understand the policy?	

		Your comments
<b>Policy coordination</b>	Does your policy on planning obligations support your community strategy/corporate objectives?	
<b>Implementation</b>	Do your community strategy/corporate objectives give a clear steer to planners formulating planning obligations policy priorities?	
<b>Processes</b>	Could the use of planning obligations be better integrated with the corporate processes and strategy of the council?	
<b>Delivery</b>	How well is your council using planning obligations to contribute to local infrastructure/service requirements created by new developments?	
<b>Quality</b>	How well is your council using planning obligations to ensure that developments are of a high quality?	





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