

Sustainable communities

Route map

August 2006

 **audit**
commission



Route map to improved planning obligations

Improving performance on Section 106 agreements

For planning departments

The Audit Commission is an independent body responsible for ensuring that public money is spent economically, efficiently and effectively, to achieve high-quality local services for the public. Our remit covers around 11,000 bodies in England, which between them spend more than £180 billion of public money each year. Our work covers local government, health, housing, community safety and fire and rescue services.

As an independent watchdog, we provide important information on the quality of public services. As a driving force for improvement in those services, we provide practical recommendations and spread best practice. As an independent auditor, we ensure that public services are good value for money and that public money is properly spent.

For further information about the Audit Commission, visit our website at www.audit-commission.gov.uk



Photographs: Getty Images

Design and production by the Audit Commission Publishing Team



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,¹ 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.

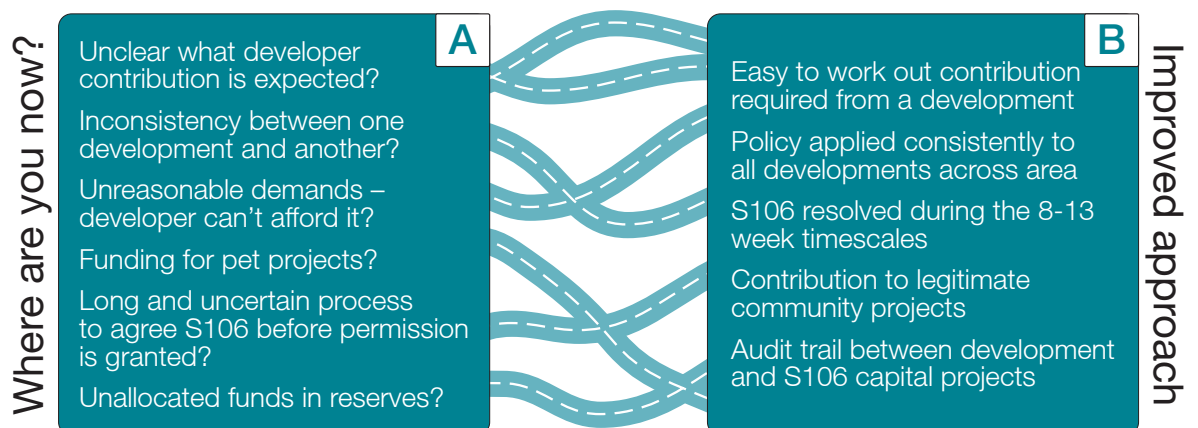
For more information see the Office of the Deputy Prime Minister's Circular 05/2005 on Planning Obligations.

¹ 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.hmso.gov.uk.

Introduction

The accompanying *Value for Money Self-assessment Guide* may have highlighted areas where the process of securing community benefits through the planning system could be improved in your council. If you recognise some of the problems in **Box A** below, you might benefit from a more systematic and efficient approach to dealing with planning obligations – an improvement journey that some councils have made already. This publication describes what councils need to focus on to achieve improved results in their journey from A to B. Following this introduction, it suggests questions to think about before starting the improvement journey and then describes the six building blocks which are key to improved performance on planning obligations.

Exhibit 1



Improving the planning obligations process follows the same general principles as introducing a new business or IT system, and similarly needs careful planning and implementation. Councils with the most effective and proven systematic approach to planning obligations have adopted detailed policies that make appropriate use of formulae and standard charges to calculate the required developer contribution. The approach is based on three principles:

- an assessment of the impact¹ from individual developments and the cost of capital projects required to mitigate that impact;

¹ See the forthcoming practice guidance to be published by the Department for Communities and Local Government.

- reasonable expectations, in terms of the level of developer contribution in the local context and other potential sources of funding; and
- confining negotiations to:
 - a) areas of detail which are not requirements of policy; or
 - b) exceptional circumstances, such as a contaminated site, which may need to be resolved by involving a third party to assess viability.

These basic principles can be applied anywhere, but the rates of contribution to different capital projects will vary according to local circumstances and the nature and scale of individual developments. Depending on their individual circumstances (for example, land values and property market), some councils will inevitably rely more on developer contributions than others in the total balance of funding, and may therefore see fit to adopt a more comprehensive approach to planning obligations as a result.

Questions to think about before starting the improvement journey

Do you have the supporting information required?

- Needs assessments (transport assessment plans, housing needs surveys, open space audit and so on).
- Development impact assessment.
- Service departments' capital expenditure projects.
- Alternative funding arrangements.
- Financial impact testing.
- The Department for Communities and Local Government's (DCLG) practice guidance, other councils' policies.

Do you have the technical capacity?

- Specialist skills (planning, service delivery, legal, finance and so on).
- Process mapping/process design skills.
- Developing detailed supplementary planning documents (SPDs)

- Monitoring and recording system.
- Dispute resolution process.

What are the improvement drivers?

- External organisations – county council, external service providers, local strategic partnership, local area agreements.
- Targets – for example, speed of planning performance.
- External pressures – for example, housing pressure/stretched local infrastructure.
- Recognition of potential contribution (missing out on potential benefits).

Is improvement feasible?

- Where are the weaknesses in the council's current approach to planning obligations?
- Could an improved system deliver greater benefits in terms of speed/efficiency and reasonable financial contributions?
- Will the expected benefits of improving the system outweigh the cost in the long term?
- Does the council have the commitment and capacity to develop and operate the system properly?

How firm are the foundations?

- Corporate and political commitment.
- Leadership in the planning department.
- Commitment and cooperation from service departments and partner agencies, such as the county council or primary care trust.
- Systematic approach.
- Team approach.
- Project management skills.

Do you have the resources?

- Someone to manage the improvement project and the resulting business process, such as a dedicated Section 106 officer.
- Nominated link officers in service delivery departments and external organisations.
- External consultants or third parties to refer problem cases/disputes arising.
- Consultation and dealing with responses.
- Ongoing review – impact on planning performance, appeals.
- Troubleshooting.

Implementation plan?

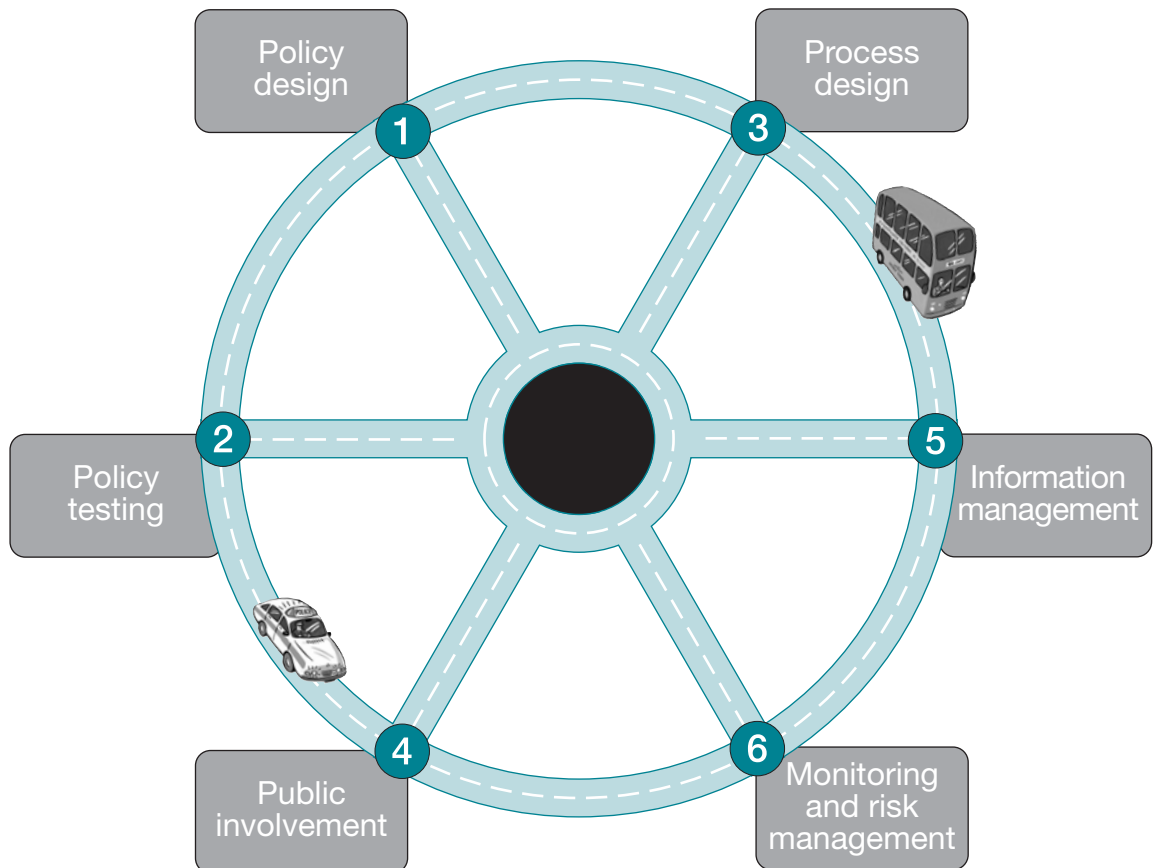
- Is step change or incremental approach appropriate?
- Are transitional arrangements required?
- Consultation and dealing with responses.

Six building blocks to improved performance

Evidence from councils operating an effective approach to planning obligations suggests there are six key building blocks required to improve the process:

1. Design a clear policy (set out in supplementary planning documents).
2. Test the likely impact of the policy package on development viability.
3. Design a systematic process with planning obligations considered early in the process.
4. Be clear about when and how communities should be involved.
5. Improve transparency by publicising the policy and outcomes of the process.
6. Monitor the outcomes and manage the risks.

Exhibit 2



Introducing a new or revised system may involve a substantial one-off investment of effort. However, the resources required to operate the system and periodically review policy and procedures should be small in comparison with the value added, so the longer-term benefits should outweigh the short-term costs.

1. Design a clear policy

Achieving the benefits of speed and efficiency depends on having well-designed and justified, detailed policy describing the developer contributions that will be expected through planning obligations. Councils' policies on planning obligations commonly take the form of high-level policies in development plan documents and detailed policies in supplementary planning documents. Policies must be sufficiently well thought through and sufficiently robust to withstand the scrutiny of the plan process and challenge from developers. In formulating policy, councils must consider:

- how new development in general affects the demand for different types of community infrastructure; and
- which of these impacts is most important to mitigate in the local context.

Reflecting this, councils will have a combined approach to planning obligations that covers:

i) Immediate impacts

Measures that are unique to the individual development site such as flood protection, which may not be described in detailed policy.

ii) Mainstream services

The main focus of detailed policy is likely to be directed towards increasing the capacity of mainstream services to meet the demands of a growing population in a locality, which are a direct result of development. In many cases the contributions from a number of developments will contribute towards capital projects that address their cumulative impact on a range of different services.

iii) Local improvement projects

Planning obligations may be used to secure contributions to projects that address very local needs or concerns caused by the new development. Such projects may vary in size from a town centre improvement project to local parish projects such as local environmental improvements. The appropriate rate of contribution from developments to such projects is more difficult to determine, but the same principles of defining a contribution apply, in order that the community may be properly involved and consulted on improvement projects, and the rate of contribution is applied consistently to all developments. Dealing with local improvement projects often consumes a disproportionate amount of officer-time compared with the financial value of the projects.

In order to be confident about reaching agreement (and therefore granting planning permission) within the government's target timescales, all aspects of the planning obligations process need to be covered by detailed policy. There are two advantages to this approach:

- The policy is very explicit thereby reducing uncertainty for applicants and others.
- There is less chance of unexpected issues arising during the development control process, which could derail the smooth passage of a planning application.

A comprehensive planning obligations system would have detailed policy in each of the areas where contributions are routinely sought (**Box A**).

Box A

Examples of community benefits secured through planning obligations

- Affordable housing
- Mix of uses
- Affordable business space
- Archaeology and conservation
- Flood defence
- Education
- Highways, transport and travel schemes
- Open space
- Recreation
- Libraries
- Community centres
- Healthcare
- Recycling
- Fire and rescue
- Crime and disorder prevention
- Town centre improvements
- Employment and training
- Local environmental improvements (positive planning)

As additional service areas are added to local policy requirements, the potential financial burden on development increases. An example would be the recent trend towards seeking contributions to healthcare facilities through planning obligations (**Box B**). If financial viability of development is a limiting factor in achieving community benefits and affordable housing, competing policy priorities have to be resolved in planning policies if external subsidy is not available.

Box B

Supporting healthcare facilities through planning obligations

The London Borough of Tower Hamlets has a policy to use developer contributions towards healthcare facilities that are necessitated by new development, based on the HUDU model – a computer spreadsheet developed by the NHS London Healthy Urban Development Unit. The model estimates the cost of the health facilities required, based on the likely occupants of new housing schemes. This has helped secure £2.6 million healthcare facilities from the redevelopment of the London Arena site. The model can be applied in other parts of the country, tailored to reflect local conditions. A generic version of the model is available at www.healthyurbandevelopment.nhs.uk.

2. Testing the policy: what is a reasonable developer contribution?

Once the necessary impact mitigation measures have been determined, it is a separate issue to ascertain what a reasonable developer contribution would be (in other words, to do a one-off test of whether the total policy package of planning obligations and affordable housing is likely to be sustainable). In order to ensure that the expected level of developer contributions is reasonable in the local circumstances, the following factors should be taken into account:¹

- the financial impact of planning policy on development;
- spare capacity in local services and infrastructure; and
- availability of other funding sources.

¹ Other factors may also be relevant.

For the system to operate smoothly, a council needs to set its policy requirements for developer contributions at a level where they can be imposed routinely, with only a very small proportion of applications being negotiated on an individual case basis as a departure from normal policy requirements. A well-organised planning authority can estimate the required developer contribution easily in advance, and some publish indicative estimates and examples of the required contribution for different developments. In reaching a view on what would be a reasonable contribution from developers, councils can apply three different approaches which are commonly used to take into account the difference between the cost of mitigation measures and the developer's ability to meet those costs:

1. **Set a level for contributions which applies to, and is affordable by, the majority of developments.**

A policy such as this is likely to be more achievable in areas where the value uplift through development is highest and where development sites are uncomplicated (for example, greenfield development in high-value areas).

2. **Adopt area-based or zoned policies to reduce the expected developer contribution in areas where development is wanted but viability is marginal.**

This is likely to be more appropriate in a mixed development area with greenfield and brownfield regeneration sites.

3. **Conduct development viability appraisals routinely on a case-by-case basis.**

If developers cannot routinely be expected to meet the full cost of facilities secured through planning obligations (including affordable housing), such an approach will ensure that developer contributions are reasonable and predictable (provided that the process is clearly defined and consistently applied).^I

This is the approach promoted by the Greater London Authority (GLA), using the 3 Dragons development control toolkit.^{II} This approach is adopted because of the combination of high-density brownfield development and high affordable housing policy requirements in London (**Box C**).

^I Planning authorities are unlikely to have skills for this when the policy is first introduced, so support from outside specialists is useful.

^{II} See Mayor of London, Housing Supplementary Planning Guidance (November 2005) www.london.gov.uk/mayor/strategies/sds/spg_housing.jsp

Box C

Affordable housing delivered through the planning system in London

The Mayor of London has responsibility for strategic planning in London, achieved through the Spatial Development Strategy (the London Plan). The 32 London boroughs and the City Corporation are the local planning authorities for their areas. The boroughs' local plans must, in general, conform with the London Plan, and they are required to consult the Mayor of London on strategic planning applications, such as large-scale developments. The Mayor does not enter into planning agreements directly but works through the London boroughs to achieve the objectives of the London Plan and can direct the local planning authority to refuse planning permission for strategic planning applications which do not adhere to it. At the time of writing, the government is proposing that in some cases the mayor should be able to determine applications directly.

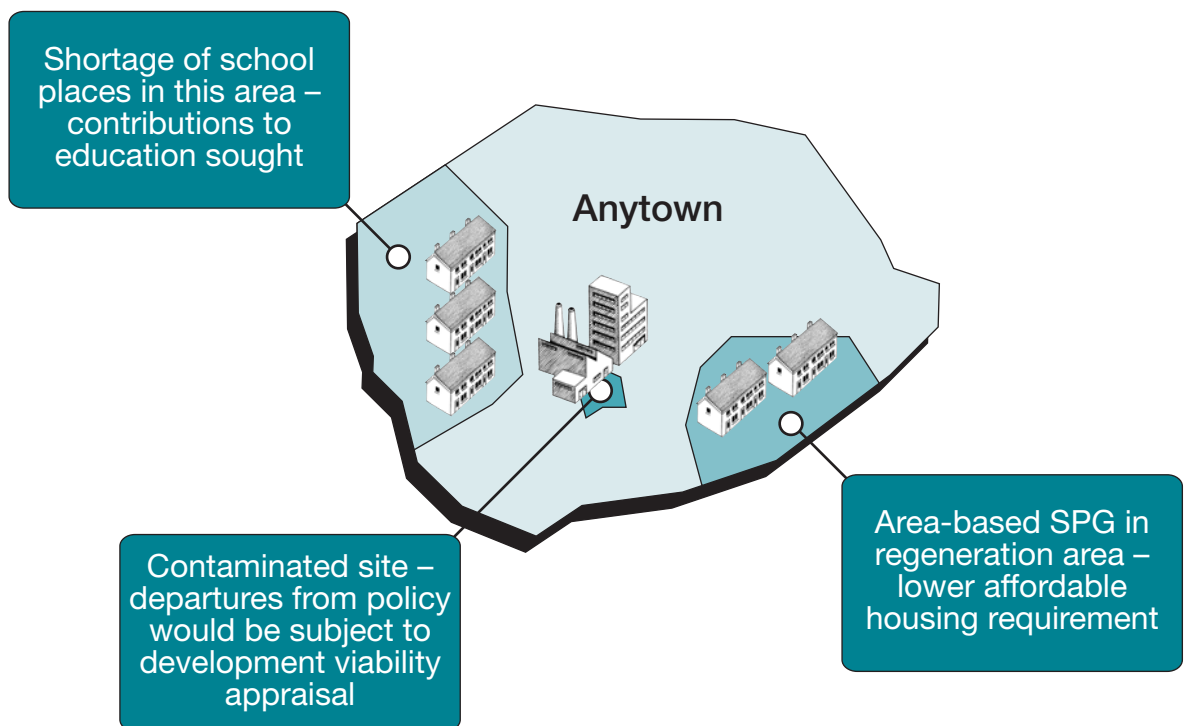
The GLA has published extensive, detailed supplementary planning guidance (SPG) on housing provision and affordable housing, which is one of the main priorities of the London Plan. This SPG describes how planning applications that are referred to the Mayor will be considered in relation to the strategic target for affordable housing, specified in terms of the proportion, tenure mix and bedroom size. The Mayor expects applications referred to him to be accompanied by a comprehensive economic viability assessment, which demonstrates that the level of Housing Corporation grant for the development is necessary in order to achieve the policy outcome. If the availability of the grant is not known, a cascade agreement should be used.

The impact on London boroughs is to encourage a more consistent approach to policy and procedures across the capital, and to promote the more widespread use of financial viability appraisals in housing developments. The standard approach recommended by the GLA is the 3 Dragons development control toolkit. Boroughs can use other recognised methods to assess the impact of affordable housing and other planning policies on development viability if they wish.

The most appropriate policy will depend on the ability of the council to operate the system and apply obligations consistently. The best system will play to local strengths. **Exhibit 3** shows how these approaches can be combined in a single local authority area.

Exhibit 3

Illustration of how the policy requirements for the level of developer contributions may vary across a local authority area – but can easily be estimated in advance of a planning application



In this example, the planning policy requires contributions to school places from residential development on a sliding scale, depending on the size and type of property. Although this policy applies throughout the town the required contribution may vary, for example, because:

- contributions would only be sought towards school places in the area to the west of the town where there is a proven shortage; and
- a lower contribution may be sought on the contaminated site, subject to an independent appraisal of development viability.

In the regeneration area at the east of the town, the council wishes to encourage development. The area already has a high proportion of affordable housing, so the policy requirement is lower than in other parts of the town.

Policy testing

Many councils have engaged external specialists to conduct independent development viability appraisals on individual sites. If such appraisals confirm that the level of obligations is resulting in the development being unviable, the council may consider departing from (in other words, reducing) its normal policy requirements if insufficient funding is available to provide necessary infrastructure. It is also becoming increasingly common for local authorities to engage external specialists at the policy development stage, to test the overall financial impact of their obligations policies on development more generally. This is most common in the area of affordable housing because affordable housing needs greatly exceed the ability of the market to supply in most areas, and needs-based affordable housing policies can stifle development if demands on developers are too high.

The cost impact of affordable housing depends on the amount and type of affordable housing secured, and the way it is financed. In most cases the policy is designed to provide free or discounted land, but it is becoming increasingly common to expect housing to be delivered without public subsidy. While this gives greater certainty of funding, it inevitably secures fewer units.

The principle of viability testing is to estimate the residual land values taking into account the impact of the planning and affordable housing policy (**Box D**). When setting policy, councils may wish to consider the effect of:

- different development densities (in other words, different types of development);
- different localities; and
- with or without subsidy (for example, social housing grant).

Box D

The role of viability testing

Mid Sussex District Council works with other councils in the West Sussex Planning and Affordable Housing Group. This group sponsored a county-wide development viability study to test the impact of their planning and affordable housing policies on development. The study advised on what would be a sustainable affordable housing policy requirement in different parts of the county, given different grant funding rates. It provides a logical basis for policy setting, and for negotiations with developers on specific sites.

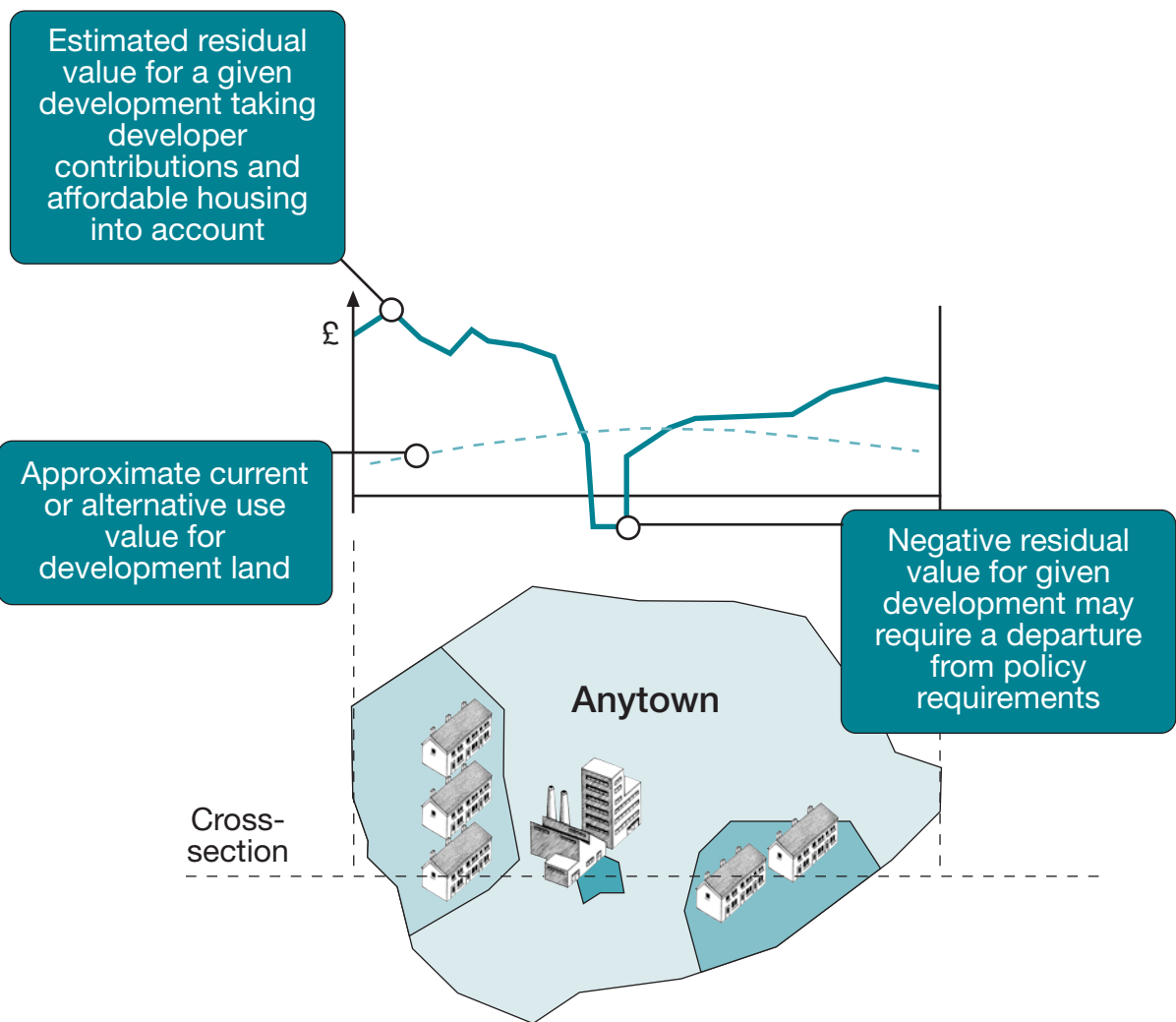
If the policy requirements are too high, developers will challenge the policy more frequently and more individual site appraisals will be required to resolve the situation.

Exhibit 4 illustrates how policy testing works in practice with reference to the hypothetical case presented in **Exhibit 3**.

The ability to secure developer contributions depends on the extent to which the residual value of development land exceeds its current or alternative use value. In this hypothetical example, the level of obligations defined by the planning policy is generally affordable in theory, with the exception of the contaminated site. In practice it is a question of judgement as to whether the level of obligations tends to deter developments from coming forward.

Exhibit 4

Testing the financial impact of planning policies across the area



What questions should a viability study answer?

The principle of site viability appraisal can be used to estimate the overall impact of planning policies on development. A typical study would be based on a sample of development sites throughout the area. Although individual sites may vary from the overall pattern, the study gives an indication of whether the planning policies, including affordable housing, are appropriate in the local context.

The study would determine the following:

- Is there likely to be sufficient positive land value to cover the cost of infrastructure and services secured through planning obligations in normal circumstances?
- What is the impact of alternative sources of funding?

If a developer claims that the planning policy is unaffordable in a particular case, a development site viability appraisal can be used to test the claim, usually carried out by a third party. This would consider the following issues:

- Is the completed development value well-founded on comparable evidence?
- Are development costs justified?
- Do professional fees, contingencies, developer's profit margin and borrowing costs reflect standard conventions?
- Is gap funding likely to be available in this case?

3. Design a systematic process

In order to agree contributions consistently, within the government's target timescales for planning applications, a well-organised system is essential. This requires:

- a clear set of policies and supporting data;
- a system to record and monitor contributions;
- supporting procedures to coordinate activity across different departments and organisations in the development control process; and
- systems to monitor and control expenditure on infrastructure projects.

Those councils which treat planning obligations as a process and have a well-designed system (**Exhibit 5**) reap benefits in terms of efficiency and resulting planning obligations, which support the objectives of their local development framework.

A well-designed planning obligations process has the following attributes:

- The drafting process is often a small part of the overall process – a systematic approach lends itself to the use of model clauses in agreements,¹ which speed up the drafting process.
- Nominated link officers in service delivery departments or other agencies to work out the contributions that are required on individual applications. These officers are also responsible for coordinating the planning process with the capital projects that are supported by developer contributions.
- A nominated individual who manages the process and acts as the single point of contact between the council and the applicant.
- Set timescales for all parties involved in the planning agreement to complete their work.
- Adequate capacity to deal with the volume of applications. For example, some councils have switched to using external solicitors where there is insufficient in-house capacity. This has had a significant effect in reducing the time taken to produce planning agreements.
- Efficient processes, such as absence of double handling or non-value-added tasks.
- Reasonable timetable for the applicant to complete their work on the planning agreement.

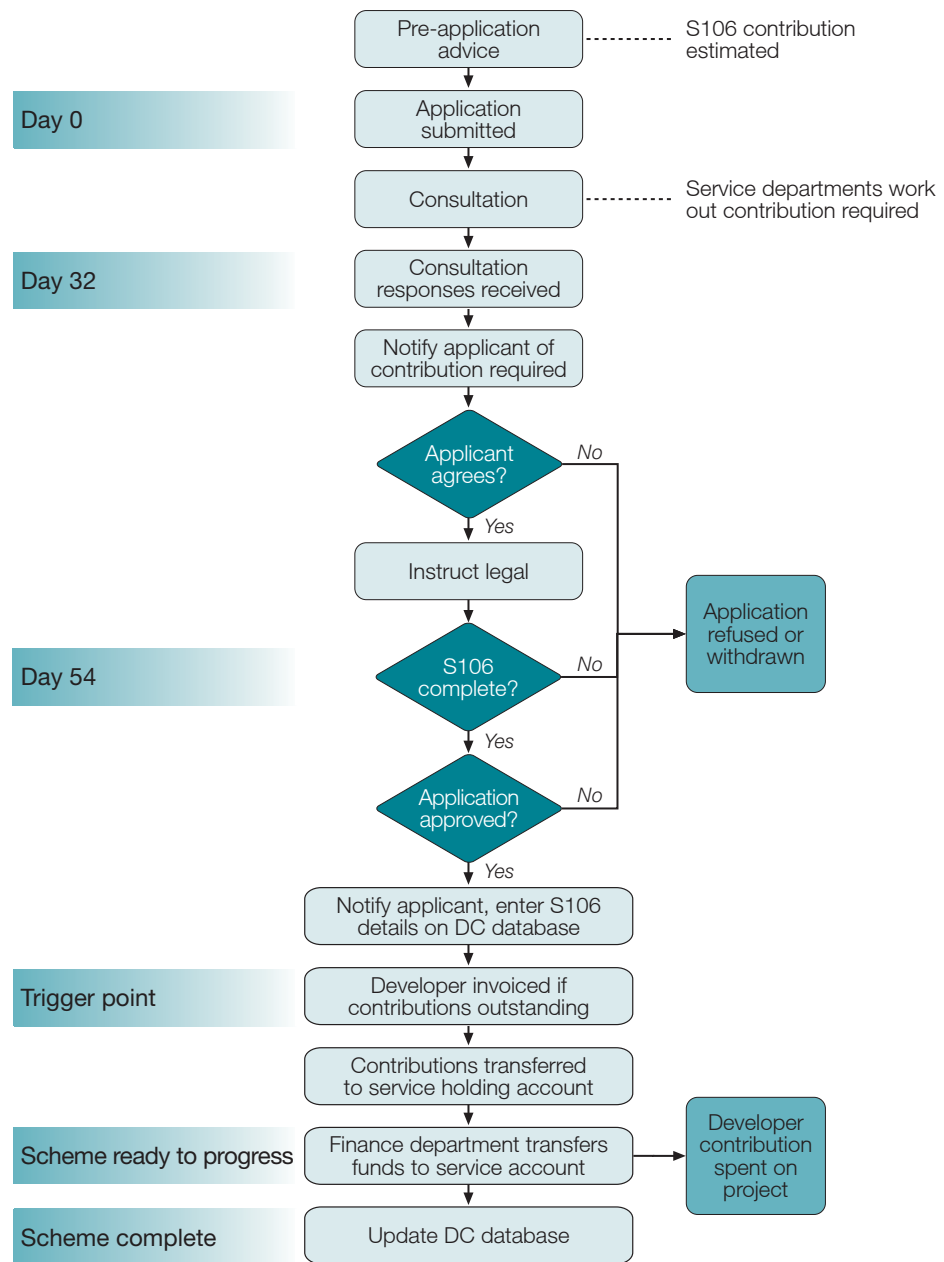
If the council has a clear and robust policy, it should be confident that the expected developer contribution is affordable by the development and there should therefore be less need to negotiate on the main elements of the planning agreement. Thus, an efficient process on its own will not produce results unless it is underpinned by a clear policy.

¹ See, for example, the Law Society's model agreements at www.communities.gov.uk.

The investment in policy development, new procedures and supporting systems is justified by the improvement in speed and outcomes obtained by the process. In most cases, with an efficient process in place, planning agreements can be concluded within the government's timescales of 8 weeks for a minor application and 13 weeks for a major application.¹ Indeed, some councils can process agreements in much shorter timescales. However, it is inevitable that some sites will need to be negotiated on an individual case basis, for example, particularly large sites, or sites where there are complex issues and multiple landowners. This can add significantly to the timescales involved in reaching a planning agreement. But the principle of a systematic approach is equally applicable to large sites and the same supporting IT and business systems should be used. On large applications, some authorities have found it useful to adopt a development team approach, where the service department contacts are present at meetings with the developer. This ensures that the council has the relevant people with the knowledge and authority to make decisions at the meeting.

¹ For example, West Berkshire, Southampton.

Exhibit 5 Example of a Section 106 planning obligations system



Note: applicant is advised of the relevant planning committee date at the start of the process and small adjustments are made to the timings accordingly.

Source: simplified version of system used in West Berkshire Unitary Authority.

Organisational issues

It must be recognised that single tier authorities have an advantage over two-tier areas because more of the service delivery functions are within the council's control. The relationship between the planning authority and external organisations can be complicated, and close coordination is required at both the policy and the operational levels (**Box E**).

Box E

Organisational issues in two-tier areas, illustrated by transport policy

The organisational structure in two-tier areas can present difficulties, for example, when dealing with highways and transport issues. Nationally, the Highways Agency is responsible for implementing the government's policies on motorways and trunk roads, which it achieves by participating in the preparation of local development plans and responding to individual planning applications referred to it by local planning authorities. In two-tier areas, the situation is further complicated because the county council is the local transport authority, with responsibilities for highways and local public transport. The district council, as the local planning authority, will refer planning applications to the county where there are highways and transport implications.

There are practical consequences for the Section 106 process, and concerns raised by councils include:

- difficulty in coordinating the development control process, with different approaches taken by county and district, or by highways, engineering and other services;
- developer contributions being used away from the immediate vicinity of the development or outside the district council boundary; and
- long-term funding for maintenance of new roads created by planning agreements which are subsequently adopted by the highways authority.

In some two-tier areas the system operates relatively seamlessly, where the county council has taken the initiative and there is a good level of cooperation between district and county. Reaching agreement on how conflicting priorities can be resolved is important to ensure that applicants receive a consistent approach from both district and county. Contributions from small developments can be pooled to contribute towards the cost of identified local highways and public transport projects, where these are necessary and related to the development.

4. Be clear about when and how the community should be involved

A council's statement of community involvement sets out the minimum requirements for community involvement in preparation of planning documents (including SPDs) and in determination of planning applications.¹ Securing input from communities on issues regarding infrastructure needs and prioritisation means that the resulting policy reflects local concerns and perspectives. This may reduce the chance that issues are raised in connection with individual planning agreements, which has the potential to derail the process.

The methods that have most often been used by our fieldwork sites to involve communities and other stakeholders are as follows:

- Consultation with interested parties on new or revised planning obligations policy – this typically would include local developers, service providers, community groups and statutory consultees.
- Pre-application consultation, typically on large schemes – this approach is consistent with a systematic approach to planning obligations because it allows people to become meaningfully involved in development proposals at the pre-application stage while there is an opportunity to shape the development proposals or approach to impact mitigation. One difficulty with this approach is that pre-application discussions are confidential, so it is up to the applicant whether to publicise a forthcoming development proposal, for example by holding an exhibition.
- Developing local improvement plans in consultation with the local community. These plans can help to address the cumulative impact of many small schemes. Local area improvement plans that seek contributions from developers at a given rate have the advantage that they are fair, in terms of equal treatment of different applicants.

As a result of involving local people either through pre-application consultation or via local improvement plans, the developer may voluntarily adjust its proposals or enter into a planning agreement with the local authority to provide facilities or environmental improvements.

¹ Planning authorities are now required to prepare a statement of community involvement which sets out how they will involve communities in the preparation and revision of local development documents and when considering planning applications.

5. Improve transparency by publicising the policy and outcomes of the process

Planning obligations can sometimes generate bad press, partly because their purpose and the process by which they are reached may not be well understood. A lack of openness and transparency on behalf of councils in terms of policy and process can contribute to them being seen as shady deals. The way around this is for councils to publicise their policies and approach to planning obligations better (**Box F**).

Box F

Providing clarity and transparency on planning obligations

The Royal Borough of Windsor and Maidenhead has a comprehensive and transparent policy approach, which addresses the cumulative impact of numerous small developments using pooled contributions. The supplementary planning guidance is in two parts: the first part explains the rationale for the system, and the second part goes into the details of the individual projects that development will be expected to contribute towards in different areas.

If planning obligations are handled in a systematic way, the results can be presented in a standardised form, and easily prepared for reports or even published on the internet. Information that is likely to be of interest to, and valuable for, applicants and local people includes:

- number and broad content of planning agreements;
- projects supported by planning obligations in different service areas;
- value of facilities secured through planning obligations;¹ and
- amount of money outstanding or committed to projects.

¹ Routine monitoring of the financial contribution does not give a precise estimate of the true value of facilities provided, particularly where benefits are provided in kind. For example, affordable housing achievement is normally expressed as the number of units secured through planning agreements, but this takes no account of the size and type of unit, or the amount of external subsidy. A separate evaluation exercise would give a more realistic picture of the results of the policy.

This can provide better information for people involved in a wide range of activities such as:

- planning the capital projects that are financed by developer contributions;
- managing the process – for example, monitoring performance trends such as the number of agreements outstanding; and
- scrutinising the process – for example, consistency of developer contributions to community facilities.

6. Monitor the outcomes and manage the risks

As well as the usual project risks that are associated with any improvement activity, some risks are inherent to the planning obligations process. The most obvious risk area is the delay between the reaching of a planning agreement and the incurring of expenditure, which can give rise to the following issues:

- councillors and local people are not aware when agreed projects will be delivered;
- poor value for money if service departments cannot predict when funding for projects will be available;
- agreed projects do not materialise;
- contributions may need to be returned to the developer if they are not used for the agreed purposes within the agreed timescale; and
- inconsistent application of policy over time, for example because priorities change.

But these risks can be managed as illustrated by the following actions.

Table 1
Typical risks and risk management actions

Risk	Reason(s)	Risk management
<p>Councillors and local people are not aware when agreed projects will be delivered</p> <p>Poor value for money if service departments cannot predict when funding for projects will be available</p>	<p>Information not recorded or difficult to access</p>	<p>Use management information from planning obligations monitoring system to estimate status of funding for projects and expected progress</p>
<p>Agreed projects do not materialise</p> <p>Contributions may need to be returned to the developer if they are not used for the agreed purposes within the agreed timescale</p>	<p>Bid for external part-funding not successful</p> <p>Development proceeds more slowly than anticipated</p>	<p>Use fallback clauses to agree how contributions will be used on alternative but related projects, depending on how development proceeds. For example, if using pooled contributions, the scale of the impact mitigation measures needs to reflect the amount of development that takes place over time, which may vary from initial estimates</p>
<p>Inconsistent application of policy over time</p>	<p>Policy changed as a result of challenge from developer</p> <p>Policy changed as a result of changing priorities</p> <p>Nominated contact officers in service delivery departments and external organisations do not operate their part of the system consistently</p>	<p>A robust methodology as described in this publication and DCLG practice guide presents best possible case for developer contribution being judged as reasonable</p> <p>Base policies on thorough evaluation of development impact</p> <p>Ensure there is sufficient level of commitment to the process before including a new policy area</p> <p>Contingency – act on behalf of the client department or suspend planning policy while staffing difficulty is resolved</p>

A vital part of an organised approach to planning obligations is monitoring of contributions and expenditure. Without a proper monitoring system, contributions can build up over time and organisations can literally forget what they are for. If there is no proper monitoring system, it is impractical to obtain small contributions and the cumulative impact of small developments cannot be addressed. This can represent a substantial missed opportunity to councils, and is not the fairest system for all developers. However, some councils have recognised this and put in place monitoring systems (**Box G**).

Box G

The role of effective monitoring

Newcastle City Council has developed a management information system that extracts information from the development control IT system to provide reports on the status and progress of outstanding planning agreements. Although Newcastle does not rely on developer contributions to the same extent as some other councils, this does not diminish the importance of the monitoring function. Indeed, monitoring and delivery of existing obligations is a good place to start a programme of improvement for the planning obligations process.

Other resources

National policy and guidance

ODPM Circular 05/05 Planning Obligations.

www.communities.gov.uk/pub/320/

[Circular0505PlanningObligationsPDF149Kb_id1144320.pdf](#)

DCLG Planning Obligations Practice Guidance. Still to be approved by Ministers but if approved will be available to download from DCLG website.

www.communities.gov.uk

Law Society Model Section 106 Agreement (also to be approved, but will be available to download from DCLG website).

Impact/contribution models

Sport England

www.sportengland.org/text/kitbag_circ05_05.htm

Healthy Urban Development Unit

www.healthyurbandevelopment.nhs.uk/pages/s106_health_model/planning_contribution_tool.htm

Other research publications and guidance

Sharing the Benefits: A Good Practice Guide to How Planning Obligations Can Provide Community Benefits, Association for London Government, 2004.

Crook, Currie, Jackson, Monk, Rowley, Smith and Whitehead, *Planning Gain and Affordable Housing*, Joseph Rowntree Foundation, 2002.

Monk, Crook, Lister, Rowley, Short and Whitehead, *Land and Finance for Affordable Housing: The Complementary Roles of Social Housing Grant and the Provision of Affordable Housing Through the Planning System*, Joseph Rowntree Foundation, 2005.

Valuing Planning Obligations in England, DCLG, 2006.

Colchester case study on monitoring Section 106 agreements, Planning Advisory Service.

www.pas.gov.uk/pas/core/page.do?pagelid=10389

Best practice note on planning conditions, Planning Officers Society.

www.planningofficers.org.uk/article.cp/articleid/42

3 Dragons development control toolkit

www.london.gov.uk/gla/publications/housingtoolkit/toolkitorderform.pdf

This report is available on our website at www.audit-commission.gov.uk. Our website contains a searchable version of this report, as well as a text-only version that can easily be copied into other software for wider accessibility.

If you require a copy of this report in large print, in braille, on tape, or in a language other than English, please call **0845 0522613**.

To order additional copies of this report or other Audit Commission publications please contact **Audit Commission Publications, PO Box 99, Wetherby, LS23 7SA Tel 0800 502030**.

Audit Commission
1st Floor, Millbank Tower,
Millbank, London SW1P 4HQ
Tel: 020 7828 1212 Fax: 020 7976 6187
Textphone (minicom): 020 7630 0421
www.audit-commission.gov.uk