

Sustainable communities

VFM assessment

August 2006

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Value for money self-assessment guide

Improving performance on Section 106 agreements

For planning departments

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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 Section 106 system is an important way of securing benefits for the community through the planning process. But Audit Commission research found large differences in the scale of benefits councils get, and the ways they secure them. This guide is one of several products resulting from the research which aim to address this variation. It presents a value for money-based assessment that should help councils judge whether they are making good use of Section 106 agreements to mitigate the impact of development on local public services.

Part 1 discusses the context: how do value for money principles apply to planning obligations?

Part 2 puts forward the questions councils should ask themselves to determine:

- What is required and achievable under Section 106 in their area?
- Is the council in a strong position to deliver?

The guide is intended to be used in conjunction with other published material including the Audit Commission's other publications in this suite, particularly, the *Route Map to Improved Planning Obligations* and the forthcoming Department for Communities and Local Government (DCLG) practice guidance.¹ This guide is aimed primarily at council officers who have responsibility for the Section 106 process.

Why is the issue important now?

Councils have a range of powers and resources available to them to deliver their community strategies. Planning obligations can play a key role in this and there are good reasons for councils to now consider improving their processes:

- The government recognises that the planning system plays a central role in creating sustainable communities.
- Improvement is possible: according to our research, councils which have put in clear, efficient and reliable processes have subsequently benefited from significant additional investment in necessary infrastructure.

¹ Not yet published at the time of writing.

- The requirement to produce new local development frameworks (LDFs) provides councils with an opportunity to review and, as necessary, revise their approach to planning obligations.¹

Part 1: How do value for money principles apply to planning obligations?

There is scope to improve the value for money in many public sector systems and processes, the common aim being to use available resources in an efficient and economic way to deliver effective services or achieve desired outcomes. Since it is possible to arrange the approach to planning obligations as a routine and standardised process, you might expect that the ways to improve its value for money are self evident. In fact, the application of value for money principles to the Section 106 system is not straightforward.

There are two reasons for this. First, the planning system adds value in a range of ways. The planning process itself maintains and improves the quality of our built environment. Planning obligations play a key role in this by ensuring that the impact of new development on the local environment and infrastructure is either positive or mitigated.

Second, simple extraction of the greatest possible value is not the aim of the policy. Government policy limits what councils can achieve and councils should not see maximising developer contributions to local infrastructure and services as the ultimate objective. Instead, it is the Commission's expectation that:

- developer contributions should be appropriate and justifiable in the local planning and development context, and
- the process of obtaining them should be efficient.

Where do the 3 E's fit in?

The Audit Commission seeks to promote value for money in public services by applying the principles of economy, efficiency and effectiveness. The main activities in the planning obligations process can be classified under these components as follows:

¹ In so doing, they should ensure that any changes are consistent with recent policy developments: the revised Planning Circular 05/05; DCLG's Practice Guidance; and a new planning policy statement for housing (PPS3).

Value for money component	Application to planning obligations processes	For example...
Economy – the price paid to provide a service	<ul style="list-style-type: none"> • Making good use of existing information in planning obligations policies • Using external specialists appropriately (gathering the evidence base for policy development, mediation etc) • Minimising the cost of data collection • Recovering legal costs of preparing an agreement 	<p>Avoid reinventing the wheel – draw on other councils’ published policy information and adapt it to your local circumstances</p> <p>Sharing resources, eg, a jointly funded Section 106 officer post, with other councils can prove economic, particularly for smaller councils</p>
Efficiency – a measure of productivity – how much you get out in relation to what is put in	<ul style="list-style-type: none"> • Simplifying and speeding up the processes of negotiating, drafting and concluding legal agreements • Ensuring that good systems are in place throughout the whole process – from the pre-application stage to delivery • Achieving a balance between the level of developer contribution and the amount of effort involved in the process • Minimising the risk of appeals 	<p>Clear policy and standardised approach (eg, use of formulae and standard charges)¹ allows developer contributions to be easily estimated in advance, leaving no surprises and also limits the scope for negotiations on detailed issues.</p>

Continued overleaf

¹ For example, the contribution to education could be calculated from the estimated child yield arising from a development and the cost per school place.

Value for money component	Application to planning obligations processes	For example...
Effectiveness – a measure of the impact achieved	<ul style="list-style-type: none"> • Reaching agreements that support the LDF requirements and objectives in all the relevant service areas • Maintaining a supply of good quality developments to meet the requirements of the local development plan • Ensuring the supply of affordable housing secured through Section 106 agreements is in line with planning policies that have been established to meet local housing needs • Securing proportionate contributions from small, as well as large, sites • Ensuring developer contributions are reasonable and directed at mitigating the external impacts of the development • Gaps in local infrastructure/services arising from new development are met 	A development viability study can give you an idea whether your affordable housing policy is set at a reasonable level, balancing local housing needs and development viability issues

Part 2: What value for money questions should councils consider?

In order to begin the journey to improved planning obligations, councils should first use this self-assessment to ascertain:

- What is required and achievable under Section 106 in their area?
- Is the council in a strong position to deliver?

What is required and achievable under Section 106?

How much councils achieve through the planning obligations process is determined by two key factors: the infrastructure needs generated by the development and the value of land. There may therefore be good reasons, such as significant existing capacity in local services, for the value of developer contributions to be relatively small. Notwithstanding this, our research has shown that some councils are missing opportunities to achieve more for their communities because they are not using planning obligations as effectively as they could.

The following table will help councils gauge whether their current practice is broadly appropriate to their local conditions, in terms of infrastructure needs and land values. It also challenges any assumptions that are underpinning current practice.

Low infrastructure and community needs arising from proposed development

What is the local development value compared to construction costs?	What is achievable through Section 106?	Then ask yourself...
<p>Low</p> <p>(eg, areas of very low house prices, contaminated sites etc)</p>	<p>Practically very little:</p> <p>Low land values combined with little local need mean that the scope to secure planning obligations is limited.</p>	<ul style="list-style-type: none"> • Are you sure there are no other unmet needs arising from development? • Is development viability really a problem? • Do you have reliable data on local values and typical construction costs to verify this?
<p>High</p>	<p>Some opportunities:</p> <p>There may be scope to secure Section 106 contributions but little need, due, for example, to existing spare capacity in local services.</p>	<ul style="list-style-type: none"> • Are you sure there are no unmet needs arising from development? • Do you have an up-to-date housing needs survey?

High infrastructure and community needs arising from proposed development

What is the local development value compared to construction costs?	What is achievable through Section 106?	Then ask yourself...
Low	<p>Some opportunities:</p> <p>There is limited potential for developer contributions because of development viability issues – external funding will be required to deliver necessary infrastructure/services if development is to proceed.</p>	<ul style="list-style-type: none"> • Is development viability really a problem? • Do you have reliable data on local values and typical construction costs to verify this? • Have you built up good relationships with public funding bodies such as the Housing Corporation to ensure funding commitment? <p>This is potentially the most complex development environment so these factors will be key.</p>
High	<p>Significant community benefits are possible:</p> <p>In these win-win areas, there exists the highest potential for developer contributions to play a key role in funding community benefits. Development is sufficiently profitable to contribute to the costs of the infrastructure necessary to support it.</p>	<ul style="list-style-type: none"> • Can we streamline our processes and introduce standard charging and formulae to make the process more efficient? <p>This is likely to be the most straightforward development environment and should lend itself to streamlining processes.</p>

Of course, in practice some councils may have average land values and moderate infrastructure needs. However, this is unlikely to be the case across the whole of their area and there may be pockets of lower or higher need and values. Approaches to planning obligations may therefore need to be fine-tuned to reflect these differing local circumstances.

Is the council in a strong position to deliver?

Once you have a clear local picture of the scope to secure, and the need for, Section 106 contributions, you may then wish to consider if there is potential to improve your performance. You may find the more detailed questions below useful in building a consensus view of the areas where improvements could be made. The questions address four headings:

- awareness of current situation;
- opportunity for improvement;
- efficiency of processes; and
- barriers to improvement.

This structure could be used as the basis of discussions among groups of staff, members and key stakeholders (for example, adjoining councils, counties and so on) and at away-days to assess the capacity of the council to deliver an efficient and effective Section 106 process.

Awareness of current situation		
VFM question 1: Do you know what is currently secured through planning agreements?	Yes	No
Do you have a reliable estimate of the community and infrastructure needs arising from new development across your area?	<input type="checkbox"/>	<input type="checkbox"/>
Does the level of developer contribution and other benefits compare favourably with other councils in similar circumstances?	<input type="checkbox"/>	<input type="checkbox"/>
Does the delivery of affordable housing compare favourably with other councils, taking into account the number of units, size, tenure mix, external subsidy, plan policies and local need?	<input type="checkbox"/>	<input type="checkbox"/>
Does your policy on planning obligations have a clear fit with the community strategy?	<input type="checkbox"/>	<input type="checkbox"/>
Are appropriate contributions secured towards the revenue costs of new infrastructure? (This would be short-term funding if new facilities are intended for the use of the general public)	<input type="checkbox"/>	<input type="checkbox"/>
Overall yes or no?	<input type="checkbox"/>	<input type="checkbox"/>

Opportunity for improvement		
VFM question 2: Is there scope to do more?	Yes	No
Are there shortages or deficiencies in the local infrastructure that must be addressed to support new development?	<input type="checkbox"/>	<input type="checkbox"/>
Can you adjust the range of service areas that is currently supported through developer contributions to better respond to local needs?	<input type="checkbox"/>	<input type="checkbox"/>
Is there scope to achieve more through planning obligations, without exceeding government policy described in Planning Circular 05/2005?	<input type="checkbox"/>	<input type="checkbox"/>
Could you do more pooling of contributions from small developments to address their cumulative impact on local services/infrastructure?	<input type="checkbox"/>	<input type="checkbox"/>
Overall yes or no?	<input type="checkbox"/>	<input type="checkbox"/>

Efficiency of processes		
VFM question 3: Could you arrange your Section 106 processes more efficiently?	Yes	No
Would improvements to negotiating Section 106 agreements contribute to enhanced performance against the government’s planning delivery targets?	<input type="checkbox"/>	<input type="checkbox"/>
Do the administration costs of Section 106 processes represent a high or growing proportion of the value of community benefits obtained?	<input type="checkbox"/>	<input type="checkbox"/>
Are there any bottlenecks or delays in the process?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have difficulties in identifying:	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • What level of contributions are outstanding? 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • How much the council has collected against existing agreements but not yet spent? 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • How much the council and its partners spent over the last 12 months and whether this is in accordance with the original agreements? 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • Pooled developer contributions in reserves and whether they have been allocated to projects? 	<input type="checkbox"/>	<input type="checkbox"/>
Overall yes or no?	<input type="checkbox"/>	<input type="checkbox"/>

Barriers to improvement		
VFM question 4: How significant are your barriers to improvement?	Yes	No
Do you have supporting information such as needs assessments in place?	<input type="checkbox"/>	<input type="checkbox"/>
Does the corporate centre ¹ understand the role that planning obligations can play in supporting the community strategy?	<input type="checkbox"/>	<input type="checkbox"/>
Are they committed to supporting the improvement of the Section 106 process?	<input type="checkbox"/>	<input type="checkbox"/>
Will the potential rewards justify the improvement effort?	<input type="checkbox"/>	<input type="checkbox"/>
Would external bodies and other stakeholders support improvement efforts?	<input type="checkbox"/>	<input type="checkbox"/>
Number of no answers = number of barriers	<input type="checkbox"/>	<input type="checkbox"/>

¹ The corporate centre refers to the parts of the council (and potentially partners) outside the planning department that are concerned with the delivery of community strategy objectives for example, leading members, chief officers, partner organisations such as primary care trusts, etc.

Now bring your answers together: you know you are doing all you can to achieve an effective approach to planning obligations if you've answered Yes, No, No, Very Few. In reality, most councils will need to make at least some adjustments to their approach. Now go to 'Next steps'.

Barriers to improvement		
1	Do you know what is currently secured through planning agreements?	Yes <input type="checkbox"/> No? <input type="checkbox"/>
2	Is there scope to do more?	Yes <input type="checkbox"/> No? <input type="checkbox"/>
3	Could you arrange your Section 106 processes more efficiently?	Yes <input type="checkbox"/> No? <input type="checkbox"/>
4	How significant are your barriers to improvement?	Number of barriers: <input type="text"/>

Next steps

The purpose of the self assessment is to give an indication of how much improvement is required, and which areas are most in need of attention. The process of answering these questions might have revealed:

- gaps in knowledge of current performance and practice;
- areas where performance could be improved; or
- barriers that are preventing improvement.

The next steps are for councils to:

- ensure that any improvement effort is proportionate – there will be little point in investing significant sums in new processes and policies if the scope to secure contributions is limited;

- decide whether a comprehensive improvement programme is required or minor tweaking of current systems and processes. For some councils improving their planning obligations process may require a substantial effort – for example, appointing a dedicated Section 106 project officer, whose role is to substantially change the council's planning obligations process. But in others there may be just one or two details requiring attention;
- consult the accompanying *Route Map to Improved Planning Obligations*, which is intended as a guide to such an improvement programme based on the experience of other councils; and
- ensure that they learn from what works elsewhere. All councils are likely to benefit from: networking and learning what works from other councils in similar circumstances; benchmarking performance with such councils; and introducing increased standardisation in their policies and processes.

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