

**SCRUTINY COMMITTEE**  
**17 October 2022**

**S106 Majors**

**Cabinet Member(s)**            **Cllr Richard Chesterton, Cabinet Member for Planning and Economic Regeneration.**  
**Responsible Officer**        **Angharad Williams, Development Management Manager**

**Reason for the Report:** To advise Members on the process for formulating S106 agreements in applications for major developments together with the amounts of money involved and the deployment of the money gathered.

**RECOMMENDATION: That the report is noted.**

**Relationship to Corporate Plan:** The gathering of S106 monies contributes towards the support and enrichment of our communities, businesses and environment; to corporate priorities for housing delivery (Priority 1 & 8), caring for the environment (Priority 7 & 9), supporting a thriving economy (Priority 3 & 11) and local communities (Priority 1, 2, 3, 5, 6, 9, 11 & 12).

**Financial Implications:** S106 agreements will normally include clauses stating when the funds will be paid (by reference to some trigger in the development phase) and for what purpose they will be used, often project or location specific. There is also provision for the return of contributions if they remain unspent or uncommitted after an agreed period of time, typically 10 or 15 years depending on the nature of the contribution. All monies collected on applications submitted since April 2015 must be spent on the specific project that they were allocated to at the time the planning application is approved; which should be set out clearly in the S106 agreement. The financial contributions cannot be spent on any other project and will only become available for spending once a development has commenced on site. If the site is never developed the monies won't become available and equally if development of the site is delayed, some monies may not become available for some time. Payments are tracked to ensure funds are used before they have to be returned.

No financial implications arise directly as a result of this report.

**Legal Implications:** Planning obligations, also known as S106 agreements and procedures must comply with the following legislation and Government guidance:

1. The Town and Country Planning Act 1990 (as amended);
2. Community Infrastructure Levy regulations 2010 ('CIL Regulations');
3. National Policy Framework 2021; and
4. Ministry of Housing, Communities and Local Government Planning Practice Guidance.

**Risk Assessment:** A lack of transparency and understanding of the processes that need to be followed in order to comply with the aforementioned legislation and

guidance presents a potential risk to projects, with opportunities lost and return of monies gathered.

**Equality Impact Assessment:** No equality issues arise directly from this report upon people / groups with protected characteristics.

**Impact on Climate Change:** The Local Plan makes provision for sustainable development within the district up to 2033, as well as providing policies for the protection and enhancement of the natural and built environments. Developer contributions are a mechanism by which the impacts of a development can be mitigated in order to make it acceptable in planning terms.

No climate change issues arise directly from this report.

## **1. INTRODUCTION**

- 1.1. Mid Devon District Council like other Local Planning Authorities, collects financial contributions from new development through legal agreements signed under Section 106 of the Town and Country planning Act 1990 (as amended), sometimes also referred to as planning obligations.
- 1.2. Scrutiny Committee has requested a report on the process for formulating S106 agreements in major developments together with the amounts of money involved and the deployment of this money.

## **2. BACKGROUND**

- 2.1. Mid Devon District Council collects financial contributions from new development through legal agreements signed under Section 106 of the Town and Country Planning Act 1990 (as amended), sometimes also referred to as planning obligations.
- 2.2. The need for planning obligations are considered on a case by case basis and may only constitute a reason for granting planning permission if they meet the following statutory tests from the Community Infrastructure Levy (CIL) Regulations 122, namely that they are:
  - i) Necessary to make the development acceptable in planning terms;
  - ii) Directly related to the development; &
  - iii) Fairly and reasonable related in scale and kind.
- 2.3. Planning obligations must be fully justified (usually by reference to development plan policy requirements) including the mechanism by which they have been calculated, and evidenced to justify their collection.
- 2.4. Between April 2015 and October 2019, CIL Regulation 123 has placed a national restriction on the traditional approach of 'pooling' Section 106 contributions from numerous developments. Pooling, that allowed up to five separate planning obligations to gather monies for each infrastructure project, such as public open space, schools or roads, was removed by the Government. This was in an attempt to make development more 'permissible',

knowing that financial obligations could be pooled, subject to the CIL 122 Regulation tests.

- 2.5 Local planning authorities are expected to use all of the funding they receive through planning obligations in accordance with the terms of the individual planning obligation, with the emphasis being to mitigate the impact of the development in order to make it acceptable in planning terms. This can result in the delivery of benefits for local communities, businesses and the environment including support for the provision of local infrastructure.
- 2.6 Agreements should normally include clauses stating when and how the funds will be used and allow for their return, after an agreed period of time, where they are not spent. Equally, if monies are not spent in accordance with the terms of the S106 agreement, developers can request that their contribution is returned to them.
- 2.7 Following the introduction of CIL Regulation 201, the Government has 'scaled back' the use of planning obligations, with CIL being viewed as a replacement to the use of S106 planning agreements in some circumstances. However, the Government White Paper 'Planning for the Future' dated August 2020, indicates an intention to consolidate the existing separate systems of S106 agreements and CIL payments into a new infrastructure levy. Should this new legislation be introduced, Members will be accordingly advised.

### **3. FORMULATING S106 AGREEMENTS & LEVEL OF CONTRIBUTION**

- 3.1. As set out above, Paragraph 204 of the NPPF and Regulation 122 of the Community Infrastructure Levy 2010 (as amended) set tests in respect of planning obligations. Obligations should only be sought where they are:
  - 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.
- 3.2 Typical contributions may include public transport, cycle and footway enhancements, off-site highways works, community facilities contributions (such as a community hall), Gypsy and Traveller pitch facilities, affordable housing, Custom and Self Build plots and/or public open space.
- 3.3 Contributions are gathered through two primary mechanisms:
  - a) Mid Devon District Council; or
  - b) Third Party. Third party bodies may include Devon County Council (as, for example, the Highway Authority or the Education Authority) or others such as the NHS.
- 3.4 The level of contribution is established through two principle calculators:
  - i) Mid Devon District Council Planning Policy and Guidance calculator:

Example case: Public Open Space.

Policy S5 of the Adopted Mid Devon Local Plan sets out the standards for the provision for high quality public open space. It establishes that major developments will provide open space onsite or through off site financial contributions. On site provision is always preferential but should off site contributions be deemed necessary, Policy S5 is supported by the Mid Devon Open Space and Play Area Strategy 2014-2033 which sets out the methodology to calculate developer contributions with an amount (m<sup>2</sup> per person) and cost (£ per person). The costs (set out in the table below) are calculated using local information that has also been benchmarked against other Local Authorities providing similar facilities:

Typology	Standard (m <sup>2</sup> ) per person	Cost of provision	
		Cost / m <sup>2</sup>	Contribution per person
Allotments	2.5	£30.00	£75.00
Children's Play Areas	0.6	£170.00	£102.00
Teenage Facilities	0.2	£170.00	£34.00
Parks and Recreation grounds	15.0	£72.00	£1080.00
Amenity/Natural green space	10.0	£15.00	£150.00
<b>Total</b>	<b>28.3</b>		<b>£1,441</b>

Table 16 Costs for providing open space  
Mid Devon Open Space and Play Area Strategy

The table shows that, to meet the Mid Devon standard for open space, it costs £1,441 per person. The table also establishes the level of developer contribution that is required per open space typology.

It is by such planning policy and guidance that Mid Devon District Council calculates contributions in major development.

ii) Third party calculator.

Example case: Education.

Policy S1 of the Adopted Mid Devon Local Plan sets out the strategic priority for the delivery of a strong and competitive economy including access to education. Devon County Council (DCC) is the statutory provider of education across Mid Devon District Council. As such, DCC collect contributions towards education (secondary, primary, early years and / or Special Educational Needs). DCC review every residential planning application with 4 or more 'family type dwellings' (more than 1 bedroom) to establish the educational need arising as a result of the development and the direct impact it would have on the school(s) in the catchment of the proposed development. If, for example, the number of primary school pupils likely to be generated by the proposed development can be accommodated within the catchment school(s) of the development, a primary school contribution

will not be gathered towards additional education infrastructure. If however, the local secondary school is forecast to have capacity for 91% of all the pupils likely to be generated by the proposed development, DCC would seek a contribution towards additional secondary education infrastructure, based on the remaining 9% of total number of pupils generated. At the time of writing this report, it would be based on a Department for Education rate of £23,540 per pupil and would relate directly to providing secondary education facilities for those living in the development.

- 3.5 Each statutory consultee is advised following the submission and validation of a planning application. They accordingly submit a consultee response setting out the required S106 contribution or otherwise. This is reported within the Planning Officer report with notification of the need for a S106 agreement and associated legal costs. Following approval of a planning application the case officer for the relevant planning application submits details to MDDC Legal Services to undertake the process for drafting the S106 legal agreement in association with any third party. The decision is then only released once the S106 has been agreed, signed and sealed.

#### **4.0 CONCLUSION**

- 4.1 This report seeks to advise Members on the process for formulating S106 agreements in major developments together with the amounts of money and its deployment. Members are invited to note the content of this report.

**Contact for more Information:**

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**File Reference:** None

**Circulation of the Report:** Cllr Richard Chesterton, Cabinet and Leadership Team.