

Mid Devon District Council
S106 Governance Framework

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1.0 Background: S106 planning obligations and Community Infrastructure Levy (CIL)

There are different mechanisms in which a Local Authority can require a developer to contribute towards infrastructure. This is to mitigate the impact of development and make it acceptable in planning terms.

Planning obligations can be sought in accordance with Section 106 of the Town and Country Planning Act 1990. These planning obligations are a legal agreement between the applicant and the local planning authority.

Local Authorities can also secure funding towards infrastructure through a Community Infrastructure Levy (CIL). The CIL is a flat rate and non-negotiable charge which can be levied on new development in their area and it is a mechanism to use to help deliver the infrastructure needed to support development in their area. The CIL can only apply in areas where a local authority has consulted on, and approved, a charging schedule which sets out its levy rates and has published the schedule on its website. Mid Devon District Council is not currently a CIL charging authority. The District Council in 2017 submitted documentation to the planning inspectorate, alongside its Local Plan, with the intention of becoming a CIL authority. However when the government subsequently removed pooling restrictions on s106 contributions, the Council at its 6th January 2021 meeting decided to withdraw the CIL draft charging schedule from its examination and CIL was no longer progressed.

2.0 Introduction: S106 Governance Framework

This document will form the framework relating to the governance of planning obligations, also known as developer contributions or section 106 (S106) agreements which can be used to fund new infrastructure, wholly or in part. These financial contributions must be used to offset the implications of an individual development. S106 agreements specify a particular use for the sums received.

Clear governance, prioritisation and effective project management are required to ensure that any existing or future S106 funds, are used most effectively to deliver infrastructure across the district and to successfully mitigate the impacts of development. This approach will assist in securing a high quality environment and sustainable economic growth in Mid Devon. This framework sets out the governance arrangements.

3.0 Identifying infrastructure needs in Mid Devon

The Mid Devon Local Plan Review 2013 - 2033 provides important evidence regarding the infrastructure required to support development in the district. Infrastructure is essential to support additional (as well as existing) housing provision and economic growth, to mitigate the current and anticipated effects of climate change, and to create thriving and sustainable communities.

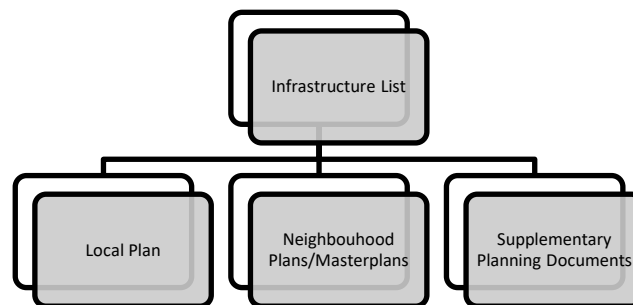
3.1 The (Mid Devon) Infrastructure List

The Infrastructure List (“the list”) identifies those infrastructure schemes deemed necessary to support development proposed within the Local Plan. It is a live document, able to be updated at any time.

Not all schemes on the list will require funding through development, as they may be deliverable through other sources including Government or private funding. The inclusion of a project on the list does not guarantee that it will receive funding now or in the future; funding through development is not capable of funding all infrastructure. Contributions can, however, be used as a mechanism to lever in additional funding.

The purpose of the Infrastructure List is therefore, in the first instance, to record infrastructure schemes to support new development. The Council’s Infrastructure List will also be a key document for determining S106 agreements and for setting a program of infrastructure delivery using S106 contributions.

Diagram 1: Key documents informing the Infrastructure List



3.2 The Infrastructure Funding Statement

The 2019 amendments to the CIL regulations, introduced mandatory reporting of S106 receipts and expenditure within a new ‘Infrastructure Funding Statement’ (IFS). Regulation 121A relates to annual infrastructure funding statements and requires authorities to publish an annual infrastructure funding statement each year no later than 31st December. The statement must comprise:

- the infrastructure list (referred to above); and
- a report about planning obligations, in relation to the reported year (“section 106 report”).

The Council’s IFS must be published by 31st December each year as it should set out those infrastructure items that the Council intends to fund in the following financial year(s). These documents are considered by the Planning, Environment and Sustainability Policy Development Group prior to consideration by Cabinet for a final decision by early December.

4.0 Planning obligations (Section 106 agreements)

S106 agreements must be used to deliver benefits to local communities that can offset the negative impacts caused as a result of a specific development. Regulation 122 of the CIL regulations defines the limitation on the use of planning obligations:

‘A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

- **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’

Planning obligations can be used by the Council to secure contributions towards off-site infrastructure provision where on-site provision has not been possible as part of the development. Infrastructure types secured through contributions include (but not exclusively);

- Affordable Housing
- Air Quality Mitigation
- Climate Change
- Community Facilities
- Ecology
- Education
- Flood Risk Mitigation
- Healthcare (Primary care)
- Highways and Transport
- Monitoring Fees
- Public Open Space
- Public Realm

4.1 Use of planning obligations

In accordance with the statutory tests governing the use of planning obligations, S106 agreements will be used to address site specific issues, where those matters cannot be addressed through planning conditions, as well as contributing towards other infrastructure delivery. This will be done on a site by site basis and in line with the adopted Local Plan, any relevant supplementary planning documents (SPDs), Neighbourhood Plans and the Infrastructure List in effect at the time of decision-making.

For the avoidance of doubt, the following will apply:

Selection of Heads of Terms; must meet the legal tests	<ul style="list-style-type: none"> • 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
Selection of Heads of Terms; must be evidenced by policy support	<ul style="list-style-type: none"> • Local Plan • Neighbourhood Plans/Masterplans • Supplementary Planning Documents • Infrastructure List

4.2 Identification of S106 projects within the planning application stage

Planning Officers, in conjunction with the Planning Obligations Monitoring Officer, will agree any planning obligations at the earliest opportunity within the planning application stage.

Where a project has not already been identified through the Local Plan, Neighbourhood Plans or Masterplans and where an obligation needs to be assigned to a recognised project, the Planning Obligations Monitoring Officer will consult with relevant internal department(s), ward members and town or parish councils, as appropriate to the type of obligation, to agree a project or to nominate a project, allowing for a 28 day consultation period. In the event that there are conflicting priorities for projects to be included within a S106 agreement the matter will be referred to the S106 Governance Board for a decision.

It is acceptable to include broad definitions such as 'new or improved public open space' and 'measures necessary to improve air quality within an Air Quality Management Area' as long as the locations/areas are identified and are appropriate to the application site. Where a broader definition is agreed, the specifics of projects will be considered subsequently as part of the s106 funding application process and will be governed by the Protocol for the approval of spend as laid out within this governance framework (see section 5.3).

The Mid Devon '**Meeting Housing Needs Supplementary Planning Document – adopted November 2023**' sets out the framework for on-site and off-site affordable housing requirements. Affordable housing in new developments where possible will be accommodated on site; however there are instances where a financial contribution is appropriate. Off-site Affordable Housing contributions are secured to address the district housing need and as such will be assigned as district wide.

Often in the case of Public Open Space, it is considered more appropriate to include a more broad definition as referred to above, at the S106 agreement planning application stage. The Planning Obligations Officer will engage with parish and town councils, at the earliest opportunity, to ensure they are aware of when funds become available for spending in their area, and to provide assistance throughout the process. Town and parish councils, along with local community groups, will be able to apply for Public Open Space S106 funds as detailed in section 5 below.

4.3 Collection and reporting of S106 contributions

The Planning Obligations Monitoring Officer is responsible for monitoring developments and ensuring compliance with planning obligations. Financial reconciliation of any monies collected is carried out on a quarterly basis and used to generate financial reports showing S106 contributions that are available to spend broken down by infrastructure type, catchment and project. These reports are available to all and are published on the Council's website; [Section 106 Funding - MIDDEVON.GOV.UK](https://www.middevon.gov.uk/section-106-funding)

As referred to above, the Council is required to publish annual reports (for the previous financial year) detailing received and anticipated receipts and expenditure. This must be reported through an annual Infrastructure Funding Statement (IFS), and an annual report relating to Section 106

obligations.

5.0 Expenditure process for S106 contributions

It is important that contributions secured are spent in accordance with the related legal agreement, monitored effectively and subject to appropriate governance arrangements. The following section sets out the protocol to manage S106 funds.

5.1 Funding application process

For reasons of transparency, accountability and maintaining suitable evidence to be provided in times of audit, the Council operates a S106 funding application process for both internal and external applicants, where funds are held that are suitable for expenditure by a qualifying party.

Applicants are invited to submit details on how their proposed project meets the criteria specified in the S106 agreement(s). There is also a requirement for the applicant to evidence how they meet the following criteria:

- Land ownership or explicit permission of the landowner agreeing to the use of the land for the purpose of the project in perpetuity or as an absolute minimum for the lifetime of the project (where appropriate, e.g. Public Open Space);
- Compliance with procurement regulations;
- Need and justification for the project;
- Policy support and/or regulatory objectives;
- Project support from:
 - Town or parish council (where appropriate, e.g. Public open Space)
 - Local district council member(s)
 - Other local organisations (where appropriate)
- Public polls or survey results (where appropriate);
- Meeting ongoing maintenance costs (where appropriate);
- For third party payments, will need to enter into a legal funding agreement for either;
 - Spend greater than £12,000; or
 - For third party applicants requiring upfront payment of funds

Details of all funding applications and supporting documents will be stored on the Council's database in accordance with the Council's retention schedule:

- 8 years for successful applications
- 1 year for unsuccessful applications

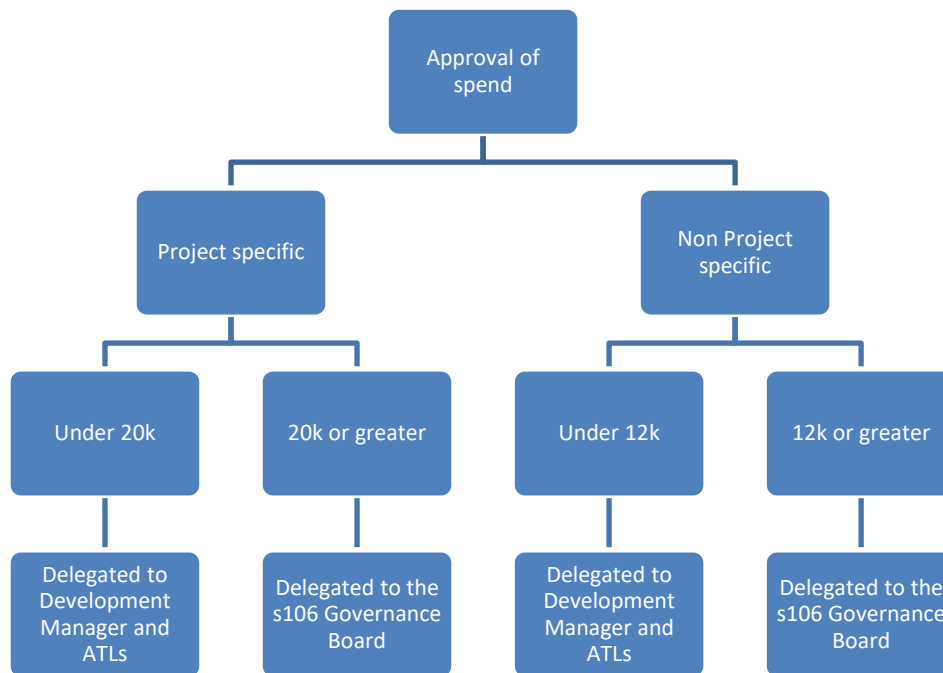
5.2 Validation

Once an application has been received, the Council's Planning Obligations Monitoring Officer will assess the application to ensure it meets the criteria for spend, that the appropriate funding is available for the nominated project and that the form and supporting documents meet the criteria

for validation. Once validated, any suitable applications will be passed for approval of spend.

5.3 Protocol for the approval of spend

Following the submission and validation of funding applications, the following protocol for the approval of spend will apply:



For clarity, the following definitions apply:

Project specific: Applications which clearly align with specifically allocated funds

For requests where the funding is allocated to a specific project within the S106 agreement(s).

Non Project specific: Applications which align with more broadly defined funds

For S106 agreements with a broad definition of provision, for example 'new or improved public open space', 'measures necessary to improve air quality within an Air Quality Management Area'.

As set out in 5.5, below, delegated decisions made in a preceding quarter will be reported to the S106 Governance Board for monitoring, awareness and transparency.

5.4 Protocol for the processing of spend

For all approved schemes over the value of £12,000, the applicant will be required to enter into a binding funding agreement with the District Council.

Any upfront payments will be subject to the applicant entering into an agreement with the District Council to ensure that the funding released is spent in accordance with the approved application, within a specified timescale and that any underspend is repaid to the District Council immediately. In all other cases the applicant will need to submit evidence of the completed project, invoices against the project and proof of payment. Funds will then be paid directly into the applicant's bank account within 10 working days (or as soon as practicably after).

5.5 Monitoring spend

Once funding applications are approved and funds have been processed, the Planning Obligations Monitoring Officer will monitor progress to ensure the project is delivered in accordance with the details and timescales approved via the funding application process. Progress updates will be provided to the S106 Governance Board on a quarterly basis.

Any spend will be recorded and accounted for through the financial reconciliation process and reported through the quarterly funding reports and annual IFS.

6.0 Obligations on the District Council

Most S106 agreements contain obligations on the Council as well as on the interested parties. This is with the exception of unilateral undertakings – legal agreements where the obligation(s) is on one party only (i.e. the developer or land owner). The obligations on the Council are often quite straightforward and will usually be;

- To spend any contributions in accordance with the terms of the S106 agreement
- To repay any contributions to the relevant party to the S106 agreement which haven't been spent (or contractually committed to be spent) within a timescale stipulated within the S106 agreement (most commonly this is 10 (ten) years).

7.0 The S106 Governance Board

The S106 Governance Board will consist of a fixed panel of members and officers with guest members and/or officers to attend as appropriate to their ward or department. The makeup of the S106 Governance Board is as follows:

Fixed Panel

- Director of Place and Economy (**Chair**) (who may delegate a deputy to chair in his/her absence)
- Planning Obligations Monitoring Officer (**Clerk**)
- Senior officer from Planning (Development Management Manager or Area Team Leader)
- Cabinet Member for Planning and Economic Regeneration
- Cabinet Member for Environment and Climate Change
- Cabinet Member for Quality of Living, Equalities and Public Health

As required

- Relevant ward member(s)
- Senior officer from department relevant to spend

7.1 Terms of Reference (ToR)

Terms of reference for the S106 Governance Board is appended to this framework document. These terms of reference sets out the purpose and expectations of the Board, along with setting out the decision making and administrative processes. It also sets out information such as composition of the Board and regularity of meetings.

Mid Devon District Council
S106 Governance Board
Terms of Reference

S106 Governance Board Terms of Reference (ToR)

The ToR document for the S106 Governance Board:

- Sets out the purpose of the S106 Governance Board
- Sets out the expectations of the S106 Governance Board
- Sets out the decision making process
- Sets out the administration process
- Sets out the regularity of meetings

1.0 The group shall be formally known as;
The (Mid Devon District Council) S106 Governance Board

2.0 The role of the group:

- To consider and make decisions on project allocations and funding applications that meet the board's threshold for consideration and/or where there are conflicting requests for contributions
- Ensuring the District Council meets its obligations
 - a. Spending the money in accordance with the terms of the S106 Agreement
 - b. Spending the money within the stipulated timescale
- To consider regular s106 monitoring reports

3.0 Matters beyond the scope of this Board:

- Approval of Heads of Terms
- Viability assessments
- Deeds of Variation and/or other amendments to legal agreements

4.0 Composition of the S106 Governance Board

The S106 Governance Board will consist of a fixed panel of members and officers with guest members and/or officers to attend as appropriate to their ward or department. The makeup of the S106 Governance Board is as follows:

Fixed Panel

- Director of Place and Economy (Chair) (who may delegate a deputy to chair in his/her absence)
- Planning Obligations Monitoring Officer (Clerk) (Non-voting)
- Senior Officer from Planning (Development Management Manager or Area Team Leader)
- Cabinet Member for Planning and Economic Regeneration
- Cabinet Member for Environment and Climate Change
- Cabinet Member for Quality of Living, Equalities and Public Health

As required

- Relevant ward member(s)
- Senior officer from department relevant to spend

The Planning Obligations Monitoring Officer encourages all board members and substitute members to obtain necessary skills to contribute to the work of the board. In the absence of a cabinet member of the board and where there will otherwise be less than 2 cabinet members present, they would find a suitable substitute that MUST be another cabinet portfolio holder and to brief them on the meeting which they are due to attend.

5.0 Decision making

The decision making process is voting, by fixed panel board members, with a majority determining decisions and the Chair having the casting vote.

When a decision needs to be made, where convening a meeting would be impracticable within the required timescales, taking account of the 5 clear days for publishing an agenda, and any consultation periods, the Planning Obligations Monitoring Officer will inform the S106 Board in writing of the matter about which decision is to be made and obtain the agreement of the S106 Board (keeping a written record of when agreement/approvals are confirmed, and how).

6.0 Quorum

The quorum for a meeting of the Governance Board shall be 2 cabinet members and one senior officer from the fixed panel.

7.0 Administration

The administration function will be provided by the clerk to the S106 Governance Board and this will include;

- Calendar bookings
- Circulating agenda and reports
- Consultation processes
- Minutes
- Managing enquiries

8.0 Time, Place and Notice of Meeting

Hourly meetings will take place in person on a quarterly basis ideally after financial reconciliation of accounts has taken place.

In order to allow for effective and timely decision making on funding applications, meetings can be called by the Planning Obligations Monitoring Officer, with the agreement of the Director of Place and Economy, on an as needed basis

An agenda item for the first meeting should be to agree a meeting start time to be followed throughout the year.

The agenda and supporting documents will be sent out at least five clear working days before a meeting from the Planning Obligations Monitoring Officer to the cabinet members and officers on the board.

9.0 Standing Agenda Items

- Minutes of the previous meeting
- S106 Monitoring report
 - a. Quarterly funding updates
 - b. Review of any “at-risk” funding
- Infrastructure delivery:
 - a. Project Updates
 - b. Review of the Infrastructure List (annually)
- Consideration of any funding requests

10.0 Approval and review or ToR

ToR to be reviewed/updated annually.

10.0 Definition of terms

CIL tests	Specifically Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended)
Deed of Variation	A legal document that varies or modifies an existing S106 Agreement
Financial reconciliation	The process of validating S106 records against receipts held on the Council’s finance systems
Heads of Terms	The agreed obligations by infrastructure type to be included within a S106 Agreement
Infrastructure List	Document identifying infrastructure projects that can be partly or wholly funded by S106 Contributions
Project allocations	The project meeting the criteria set out in the CIL tests to which a financial contribution is legally assigned to
S106 Agreement	A legally binding agreement between a local authority and a landowner/developer under Section 106 (S106) of the Town and Country Planning Act 1990 (as amended) containing obligations, used to support the provision of services and infrastructure, which are necessary to make the development acceptable in planning terms
Viability assessments	Site-specific reports seeking a reduction in S106 contributions so as to make the development financially viable