

# SECTION 106 AGREEMENTS FACTS AND QUESTIONS

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## **S.106 AGREEMENT FACTS AND QUESTIONS**

A simple guide to Section 106 agreements

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### 1. Q. What is a Section 106 agreement?

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**A.** Section 106 agreements are also known as Planning Obligations, they are legal agreements. If you are submitting a planning application, you may need to enter into a legal agreement with the Council under Section 106 of the Town & Country Planning Act 1990 (amended by Section 12 of the Planning and Compensation Act 1991). Section 106 in those Acts are entitled, 'Agreements Regulating Development or Use of Land'. This is a legally binding agreement between the Council, the developer and any other parties with an interest in the site to be developed.

### 2. Q. What is the purpose of a Section 106 agreement?

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**A.** It is to regulate the future development of the land and make development acceptable; for example if open space is lost, highway improvements are needed or to help shape new development (for example, to make sure a certain number of houses are affordable homes). The objective is to mitigate the effects caused by a development (for example, the need for more school places or contributions towards infrastructure at a local doctor's practise).

### 3. Q. Are there any legal tests connected to a Section 106 agreement?

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**A.** There are legal tests which a Section 106 must pass, these are;

1. Necessary to make the development acceptable in planning terms
2. Directly related to the development; and
3. Fairly and reasonably related in scale and kind to the development

### 4. Q. Do they involve financial payments?

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**A.** Many of these agreements include the payment of financial contributions. The planning obligations may also be non-financial, such as the provision of affordable housing or the creation of environmental monitoring schemes.

### 5. Q. How are planning obligations determined?

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**A.** S106 agreements are not standardised. The Council will work with the developer to reach an agreement which is tailor-made for each case. This is usually done over a period of time and by negotiation. Often the draft details are agreed prior to the decision being made and then firmed up in detail afterwards. The decision on a planning application will not be released until the S106 agreement is signed.

### 6. Q. Who negotiates a Section 106 agreement?

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**A.** The need for an agreement should be discussed in the initial stages by the developer/ landowner and the Planning Officer assigned to that particular development. These discussions should take place before the application is submitted. The result is a list of S106 requirements called 'Heads of Terms', which are then legally drawn up by solicitors representing the different parties.

#### 7. Q. What can a S106 agreement include?

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**A.** The planning obligations must directly benefit and be relevant to the area in which the new development is situated. If the development is aimed at families, the additional children will need schools and play facilities. If the area is prone to flooding, flood mitigation procedures may be required. Negotiate is regularly carried out for affordable housing, community, play and leisure facilities and public art. Lincolnshire County Council is responsible for highways, transport access demands, education, libraries and fire services. The NHS is responsible for contributions toward health provision.

#### 8. Q. How do you know what to include in a S106 agreement?

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**A.** Often at pre application stage developers will ask if there are any obligations to be considered. Matters such as affordable housing, open space and sport facilities are set by policy in the Local Plan. Developers will be advised to contact Lincolnshire County Council and the NHS to discuss with them the possibility of any contributions arising from their proposed development.

On submission of an application, consultation takes place and it is at this time that consultees present and justify a case for matters to be included in a S106 agreement. These claims have to be accompanied by evidence to support need. For example, the NHS will examine the health provision in an area, and work out if a housing site would increase need through population growth to such an extent that more health provision would be required. They use a set formula to work out how much the contribution will be. They also have to set out where that money is going to be spent. Education and NHS contributions can only fund physical infrastructure not the cost of employing more teachers or doctors.

If no evidence of need is provided then the Council cannot include that matter in a S106 agreement.

#### 9. Q. Who collects the S106 payments?

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**A.** The Council in the majority of cases collects S106 payments due, it monitors the agreements and distributes the monies to those set out in any agreements as the recipients.

#### 10. Q. How are payments made?

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**A.** Contributions may either be in kind or as a financial contribution. In the case of financial contributions, payments can be made in the form of a lump sum or as instalments over a period of time, related to defined dates, events and triggers.

#### 11. Q. What can the payments be used for?

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**A.** S106 payments relate directly to the development with which they are associated, and can only be spent as specified in the S106 agreement agreed by all relevant parties.

#### 12. Q. Can the payments be spent elsewhere in the district?

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**A.** Payments cannot be spent on alternative works unless the developer agrees. This however is very rare because the original agreement was to mitigate against the effects of the development and removing parts of it or altering it could mean the mitigation will not happen.

Section 106 agreements should not be used to resolve existing problems elsewhere unless specified in the S106 agreement. The important principle is that the S106 contribution must meet the needs of the development proposed, and not be spent on making good a pre-existing deficiency. For example, a S106 contribution may be agreed to fund a new playground if a playground is made necessary by the development. The money can only be used to refurbish an existing playground nearby if it's agreed with the developer and specified in the S106 agreement.

#### 13. Q. How is the money allocated?

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**A.** We allocate money to the various delivery teams in the Council, specialising in the various possible spending areas such as play and leisure or affordable housing. They then deliver the requirement. Monies are also allocated to Lincolnshire County Council and the NHS if the S106 agreement specifies that a payment is to be made to them and when they state they require the monies for the works set out in the S106 agreement.