# Backgground to Affordable Housing: Section 106 agreements

## Introduction

Section 106 agreements, also known as planning obligations, are agreements between developers and local planning authorities that are negotiated as part of a condition of planning consent.

The Town and Country Planning Act 1990 enables local authorities to negotiate contributions towards a range of infrastructure and services, such as community facilities, public open space, transport improvements and/or affordable housing.

These guidelines aim to highlight the appropriate use of planning obligations and explain the council’s internal procedures to try to reduce any potential delays.

## More about planning obligations

Planning obligations can be positive (requiring a specified action to be taken before the start of a development), negative (preventing development from taking place until a specified action has been taken by the developer) or restrictive (restricting how the development may be used by the developer).

More specifically, planning obligations, including unilateral undertakings (agreements which place obligations solely on one party) may:

* be unconditional or subject to conditions
* restrict development or use of the land
* require operations or activities to be carried in, on, under or over the land
* require the land to be used in any specified way
* impose any restrictions or requirement for an indefinite or specified period (enabling, for instance, an obligation to end when a planning permission expires)
* require payment to be made either in a single sum or periodically, for either a specific amount or based on a specific formula.

Planning obligations are tied to the land. They may be enforced against anyone who originally enters into the agreement and any successor in title, unless the agreement specifies otherwise. Under the Local Land Charges Act 1975, these obligations must be registered in the Local Land Charges Register.

## Appropriate use of planning obligations

The policies relating to planning obligations are set out in the North Devon Local Plan (adopted July 2006) and the Devon Structure Plan 2001-2016 (adopted October 2004), which together make up the Development Plan.

The Development Plan also makes clear where obligations are likely to be requested in connection with a particular type of development, or in relation to specific sites. The Planning and Development Service may also produce supplementary guidance on specific planning obligations incorporated into development briefs.

Current Government guidance in relation to planning obligations is set out in the Communities and Local Government Planning Circular 05/2005 (July 2005) called ‘Planning Obligations’.

Circular 05/2005 states that planning obligations must be:

* relevant to planning
* necessary to make the proposed development acceptable in planning terms
* directly related to the proposed development
* fairly and reasonably related in scale and kind to the proposed development
* reasonable in all other respects.

The use of planning obligations is governed by the fundamental principle that planning permission may not be bought or sold. It is therefore not legitimate for unacceptable development to be permitted because of benefits offered by a developer. Similarly, planning obligations should never be used purely as a means of securing a share in the development profits for the local community.

In addition, there are several other key principles guiding the appropriate use of planning obligations:

* Planning obligations should only be used where they are necessary to the development and are fairly and reasonably related in scale and acceptable in planning terms
* The council should not use its development control powers to require benefits from property owners which are unrelated to the development under consideration
* The council should not seek to control matters which are not proper planning considerations and should not normally use planning obligations to impose restrictions on tenure, price or ownership
* Where developers are expected to enter into planning obligations on a regular basis in relation to similar types of development, the council should set out its policy in its Local Plan
* Local Plan policies should not, however, specify standard conditions or planning obligations to be imposed on certain kinds of planning permission because they must be based upon the individual circumstances of each application
* Local Plan policies should give a clear indication on the types of development for which agreements of these kinds may be appropriate
* Government guidance is that planning conditions should be used in preference to planning obligations.

## Pre-application discussions

In line with government guidance, the council’s Planning and Development Service encourages pre-application discussions for all applications. The purpose of this is to guide applicants and developers through the process and to ensure that they are aware of their information requirements.

Developers are encouraged to discuss their proposals informally with both the Planning and Development Service and other service agencies (for example, Devon County Council as local education authority and local highway authority) prior to submitting an application. This will ensure that any infrastructure or service requirements, as part of a planning obligation, are identified at the earliest opportunity. This is particularly important with complex or major applications, as it will help provide a better mutual understanding of objectives and the constraints that exist, until the planning obligation has been completed.

Developers will be advised by the Planning and Development Service of the likely costs and requirements of any planning agreements, to enable those considerations to be taken into account in negotiations between developers and landowners. Developers and their professional agents are therefore expected to have read policy requirements set out in the Development Plan, together with supplementary planning guidance on developer contributions, which are available from the council’s website.

If the Planning and Development Service requires a planning permission to be the subject of a planning obligation, the applicant or agent will be informed as soon as possible. The service will also identify a named officer who will be responsible for the management of individual planning obligations and ensure guidelines are followed.