

## The Use of Section 106 in Teignbridge – February 2016

### Introduction

1. With the introduction of Community Infrastructure Levy ('CIL'), the use of Planning Obligations for infrastructure provision as permitted by Section 106 of the Town and Country Planning Act 1990 is significantly scaled back. This note sets out the Council's approach to the use of S106 following the implementation of the CIL Charging Schedule by Teignbridge District Council.

### Purpose of S106

2. The statutory purposes of Section 106(1) TCPA 1990 Planning Obligations are as follows;
  - Restrict the development or use of the land.
  - Require specified operations or activities to be carried out in relation to the land.
  - Require the land to be used in any specified way.
  - Require payment of a sum or sums of money.
3. The limitations covering the use of S106 are set out in the CIL regulations 2010 (as amended) sections 122 and 123 and are summarised as follows.  
A S106 planning obligation must be:
  - necessary to make the development acceptable in planning terms;
  - directly related to the development;
  - fairly and reasonably related in scale and kind to the development;
  - not be used for infrastructure which is in the published list of proposed uses for Community Infrastructure Levy (the Regulation 123 List); and
  - limited to 5 separate obligations funding a particular project or type of infrastructure (since April 2010).
4. Some planning requirements may be delivered via Section 278 Agreements, Grampian conditions<sup>1</sup> or other planning conditions to ensure developments are acceptable in planning terms.
5. Infrastructure is defined by the Planning Act 2008 [as amended by the Localism Act 2011] and "includes—
  - (a) roads and other transport facilities,
  - (b) flood defences,
  - (c) schools and other educational facilities,
  - (d) medical facilities,

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<sup>1</sup> A planning condition attached to a decision notice that prevents the start of a development until off-site works have been completed on land not controlled by the applicant.

- (e) sporting and recreational facilities,
- (f) open spaces”

### **General approach to use of S106 for infrastructure**

6. The use of planning obligations and conditions is determined on a case-by-case basis. In general the Council’s Development Management team will consult the statutory development plan (eg the Local Plan) and with infrastructure providers and stakeholders covering a range of topics including drainage, highways, air quality, biodiversity, etc. This will determine where specific planning obligations or conditions will be required to make the development acceptable in planning terms.
7. Some obligations will be based on standardised approaches, calculations or other fixed charges based on population, number of dwellings, or area of development. Among the relevant policies and approaches in informing planning obligations are:
  - [Joint approach to HRA](#) – provides a means for development within the zone impacting the protected areas of Dawlish Warren and the Exe Estuary to mitigate their impacts through financial contributions in lieu of direct mitigation. Following adoption of CIL, any funding collected for infrastructure purposes will be subject to pooling restrictions and may not be spent on items identified in the Regulation 123 list. Therefore, funding raised through Section 106 obligations will be used to fund revenue costs or other items which are not within the definition of “infrastructure”. Examples include staff, monitoring and byelaw reviews.
  - Teignbridge Open Space Standards as set out in the [Green Space Strategy](#) - Provision of on-site green space within specific development proposals (which meet the tests of Regulation 122(2)) will be required or funded through conditions or S106 as appropriate, guided by policies in the Local Plan 2013-2033. In accordance with the Regulation 123 List, other playing pitches, allotments and parks will not be s106 funded.
8. The table in Annex A takes account of the Regulation 123 List, separately published, and the implications of that list for the use of Planning Obligations under Section 106, particularly for infrastructure. The use of S106 to deliver infrastructure will be limited to requirements which meet the legal tests, excluding those infrastructure types or projects which are within the Regulation 123 List. Many of these will be ‘on-site’ requirements, reflecting the generally more strategic use of CIL set out in the Regulation 123 List. Note that the Regulation 123 list is a statutory document and any conflict with this guidance should be decided in favour of the Regulation 123 list.
9. No funding will be sought through Section 106 agreements towards items identified in the Teignbridge Regulation 123 list, in accordance with the CIL Regulations.
10. Local Plan policies (particularly for large and strategic sites) require a Masterplan (development framework plan) which will provide clarity on infrastructure needs and land uses, their locations, phasing and trigger points, and where possible the responsible body for delivery and funding, ownership and maintenance of

infrastructure. These are prepared in consultation with key stakeholders and will ensure clarity in respect of funding assumptions and mechanisms prior to entering into a S106 agreement. The masterplans will provide a framework for consideration of any payment-in-kind of CIL via land and buildings. Guidance on masterplans is available here; <http://www.teignbridge.gov.uk/developmentframework>.

11. The use of the Community Infrastructure Levy will be managed by the Council via its capital programme. Spending priorities will take account the Infrastructure Delivery Plan, emerging infrastructure needs in the area, the level of Community Infrastructure Levy, other potential infrastructure funds available and the Council and its partners' corporate priorities. To support this process the County and District have agreed to coordinate their capital programmes on transport, education and other relevant matters. The Regulation 123 list sets out projects and types of infrastructure that Teignbridge Council will seek to wholly or partly fund using CIL income

### **European Protected Areas**

12. A number of specific infrastructure items relating to the protection of European designated wildlife sites, including areas that support their special interest features and their supporting habitats will receive the highest funding prioritisation, the funding for which will be 'top-sliced' from CIL funds. Teignbridge District Council has reiterated in its Local Plan, Infrastructure Delivery Plan and Regulation 123 list its commitment to the protection and delivery of necessary mitigation measures for European Protected wildlife sites and species will ensure the Council's legal obligations under the Habitats Regulations are satisfied.

### **Implementation and Monitoring**

13. The Council will monitor and enforce the implementation of the CIL and publish an annual report on CIL spending.

**Annex A: Examples of infrastructure items which Section 106 may fund, subject to the appropriate legal tests.**

Please note this list is not exhaustive and other S106 contributions may be required, as determined on a case by case basis, and subject to the statutory tests. Note that the Reg 123 list is a statutory document and conflict with this guidance should be decided in favour of the Regulation 123 list.

Infrastructure: S106 agreement or planning condition
Community facilities - eg, multi-purpose community centre
Health facilities
New or enhanced equipped play facilities, playing areas and local indoor sport & leisure, except those included in the Regulation 123 List
Playing pitches, allotments or parks specifically required through a built development allocation within an emerging or adopted local plan
Open space, including playing fields allotments or parks required to replace existing provision which is or will be lost as a result of development
Public realm
Foul sewerage and drainage improvements
Sustainable Urban Drainage Systems
Habitat protection, creation or enhancement provisions that deliver a net biodiversity gain and/or compensate for the loss of habitat arising from development
Renewable energy systems specific to the site's Carbon Reduction Plan
Cycle and foot paths required in connection with a specific development proposal and which meets the tests within Regulation 122(2) of the CIL Regulation 2010 (as amended)
Highways infrastructure required in connection with a specific development proposal and which meets the tests within Regulation 122(2) of the CIL Regulation 2010 (as amended), excluding specific infrastructure included in the Regulation 123 list

**Annex B: Examples of items which may be funded by Section 106, because they are not capable of being funded by CIL and/or do not fall within the definition of Infrastructure**

<b>Non – infrastructure: S106 agreement or planning condition</b>
Non-infrastructure items required to mitigate the impact of development on a European wildlife site including staffing, publicity and species and habitat enhancements, for example, proposals to protect the Exe Estuary and Dawlish Warren in accordance with the relevant Joint Approach
Non-infrastructure items required to provide habitat protection, creation or enhancement provisions that deliver a net biodiversity gain and/or compensate for the loss of habitat arising from development
Affordable housing
Air Quality Monitoring
Adherence to land use plans including, where applicable, commercial (A or B uses) space
Phasing and timing of land uses and/or development on mixed use sites
Site wide master-plans, land use agreements related to site-specific policy requirements
Serviced custom build plots
Pitches for Gypsies and Travellers
Construction management requirements
Carbon Reduction Plans
Travel planning including measures to support and encourage modal shift
Noise and other environmental amenity and heritage asset impact attenuation
Archaeological investigations and notifications prior to and during construction
Landscaping, hedgerow replacement/maintenance, tree root protection, etc
Lighting and materials details
Development of employment sites