

Section 106 Information Leaflet

Guidance for Town and Parish Councils

S106 Team

The S106 team at WODC monitors trigger points in the legal agreements to ensure financial contributions are paid in time. The team also processes funding requests from Town and Parish councils (see overleaf) and can provide an overview of funds secured and collected in any area. They can be contacted by emailing S106@westoxon.gov.uk.

Please note that any request to access \$106 funding held by WODC will be brought to senior management for consideration. The \$106 team does not make any funding decisions.

Be proactive!

At the application stage:

State your requirements in your consultation response, even if you object to the development.
Contributions will not be secured if you haven't requested them and listing your requirements would not weaken an objection. If the development is permitted by WODC or at appeal, you will have missed the chance to request any contributions.

At the project stage:

We encourage you to engage with the relevant WODC officer (Leisure, Community Wellbeing...) at the earliest stages of your project to ensure it fits in with WODC's strategies. The \$106 team can connect you with the right officers within those teams.

Section 106 (\$106) Agreements are legal agreements entered into by developers/landowners to mitigate the impact of their development.

Often these agreements address items such as the provision of new affordable homes, sports and play facilities, education, transport, health and community wellbeing and biodiversity net gain.

Local Authorities, Parish and Town Councils, Police, NHS and other public bodies are able to put forward requests for financial and non-financial mitigation during the planning application consultation phase.

These requests are considered as a whole when the planning application is being decided. This may mean that

not all requests may be accepted (for example due to viability issues). Moreover, \$106 agreements are focused on site-specific mitigation and any obligation on the developer must meet three legal tests (see information box below).

Financial contributions will often be paid by instalments based on trigger points such as commencement or occupation of a certain number of dwellings. This means that it can be several years between the \$106 agreement being signed and the contributions being received in full by WODC.

Can anything be requested?

All developer contributions have to meet three legal requirements (also called 'tests') as set out below. To pass the tests, there has to be evidence there is a need which is related to the development. The tests ensure that WODC cannot block development by asking for unreasonable requirements and stop developers from 'buying' a planning permission by paying for things that are not related to their development. For example:

Test	Example
I. Necessary to make the development acceptable in planning terms	We could secure a community contribution for a village hall which is already operating at full capacity and the proposed development will increase the demand further. But not if there is already enough capacity at the hall to take on the new demand.
2. Directly related to the development	We could secure additional equipment for a play area next to the proposed development but not for a play area so far away that it is unlikely to be used by the residents of the new development.
3. Fairly and reasonably related in scale and kind to the development	We could secure education contributions to meet the school needs for children from the new development. A completely new school could not be requested unless the development is of such a scale that a school is required to meet the need coming from the development.

What can/can't \$106 funds be used for?

- Funds must be used to mitigate the impacts of the development they were collected from and not on unrelated projects even if they are needed more in the town or parish. Funds must therefore be spent on what they were secured for and in line with the wording of the \$106 agreement.
- Funds have to be spent within the timeframe set out in the \$106 agreement. The deadline is typically 10 years from receipt, but this may vary between agreements. If the funds are not spent in time, the developer is able to request that the funds are returned to them.
- WODC cannot accept requests for feasibility or other preliminary studies.
- Funds should be for capital projects and unless otherwise specified in the agreement are not for ongoing running costs, maintenance or minor repair work. \$106 funds should not be used as an alternative to precepts.
- WODC will not accept requests to access \$106 funding retrospectively for projects already undertaken.

Other FAQs

This leaflet covers the queries most often received by the \$106 team; some additional common queries are:

- What are outline / reserved matters applications? This is a two-step application process where the principle of the development is considered at the outline stage with certain elements called 'reserved matters' (such as design, detailed layout...) determined at a later stage. The \$106 agreement will be negotiated at the outline stage. It is too late to submit a \$106 request when the reserved matters are being considered.
- How do we request \$106 funds when a planning application is received? Please see the flowchart on the next page. You can ask the planning case officer for help when wording your request so it is more likely to be agreed to.
- Will requests from previous schemes be taken into account? No, if a developer submits a new planning application on the same site for a different scheme, you will need to submit a new consultation response.
- What is the process for accessing \$106 funds? You will need to complete a \$106 Request Form. Please see the flowchart on the next page which sets out how your request will be processed/determined.
- Why is the amount received different from the figure in the \$106 agreement? Most agreements will include indexation to ensure inflation is included when the contribution is paid.
- Does every planning permission have a \$106 agreement? Generally, \$106 agreements are only used in relation to larger development proposals (typically 10 or more homes) because of their greater impact.
- Where can I see a copy of the signed \$106 agreement? A PDF copy of the final agreement will be uploaded onto WODC's Planning Register; you can search for this using the planning application reference.

On-site facilities

S106 obligations may relate to on-site facilities such as Play Areas, Allotments, Public Open Spaces, Village Halls... which may be offered for transfer to the Parish Council/Town Council for a nominal fee and include a financial contribution towards the ongoing maintenance and improvements of that facility.

To secure such obligations and the related maintenance contribution you will need to request them in your consultation response.

If an offer of transfer is not accepted, then the Developer will transfer the facility to a Management Company who will be responsible for the ongoing maintenance of that facility.

Further information and useful links

- West Oxfordshire District Council's Developer Contributions Guide
- Westhive empowers the community to create a thriving, inclusive and better-connected place
- West Oxfordshire District Council's Planning Register (contains copies of \$106 agreements)
- West Oxfordshire District Council's Infrastructure Funding Statements
- S106 Request Form for Town and Parish Councils to access funds

Flowchart for submitting a request to secure \$106 contributions from a development:

- I. A developer submits a planning application to WODC.
- 2. The validation team checks the application and, once validated, passes it on to the planning team.
- 3. A planning case officer is assigned to the application.

- 5. The Town or Parish Council must provide their response before the consultation deadline. It is important to state their \$106 requirements, even if they object to the development. If the development is permitted by WODC or at appeal, the chance to request the necessary contributions will have been missed.
- 4. The planning case officer consults the statutory consultees on the application, this will include the Town/Parish Council.

- 6. The planning case officer assesses the consultation response and applies the legal tests on any requests for \$106 contributions. They will negotiate the \$106 agreement considering things such as policy requirements and viability.
- 7. WODC issues a decision, which may be subject to further \$106 negotiations being concluded.
- 8. If the application is refused, the applicant may lodge an appeal. An inspector from the Planning Inspectorate will assess the appeal. They will again apply the legal tests to any \$106 contributions that had already been requested. They tend to take a much narrower view when applying the test, making it less likely that contributions will be secured.

Flowchart for submitting a request to access collected \$106 funds:

- I. A Town/Parish Council wanting to start a project for which they wish to use \$106 funds can request an overview of collected and secured \$106 funds in their area via \$106@westoxon.gov.uk
- They should then discuss their project with the relevant district council officers (leisure, community wellbeing, etc.) before submitting a request, to ensure the project fits in with WODC's strategies.
- 2. The Town/Parish Council submits a fully completed, signed S106 request form with quote(s) to the S106 team at WODC.
- 5. Once a decision is made, the \$106 team informs the Town/Parish Council. Where applicable, they then organise the transfer of the funds.
- 3. The \$106 team checks the form and consults with the relevant officers within WODC to provide a funding recommendation.
- 4. The \$106 team collates all the information and brings the request to Senior Management for a funding decision.
- 6. Within 3 months of the funds being spent, the Town/Parish Council informs WODC of this expenditure (via \$106@westoxon.gov.uk) and confirms the funds have been spent on the purposes and within the timeline as set out in the request.