

# Section 106 in the Vale of Glamorgan

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# Introduction

- What is Section 106?
- Types of Planning Obligations
- Planning Policy Context
- How is a Section 106 Agreement negotiated?
- Development Viability
- Section 106 Protocol for Implementation
- Section 106 in 2016/17
- Community Infrastructure Levy

# What is Section 106?

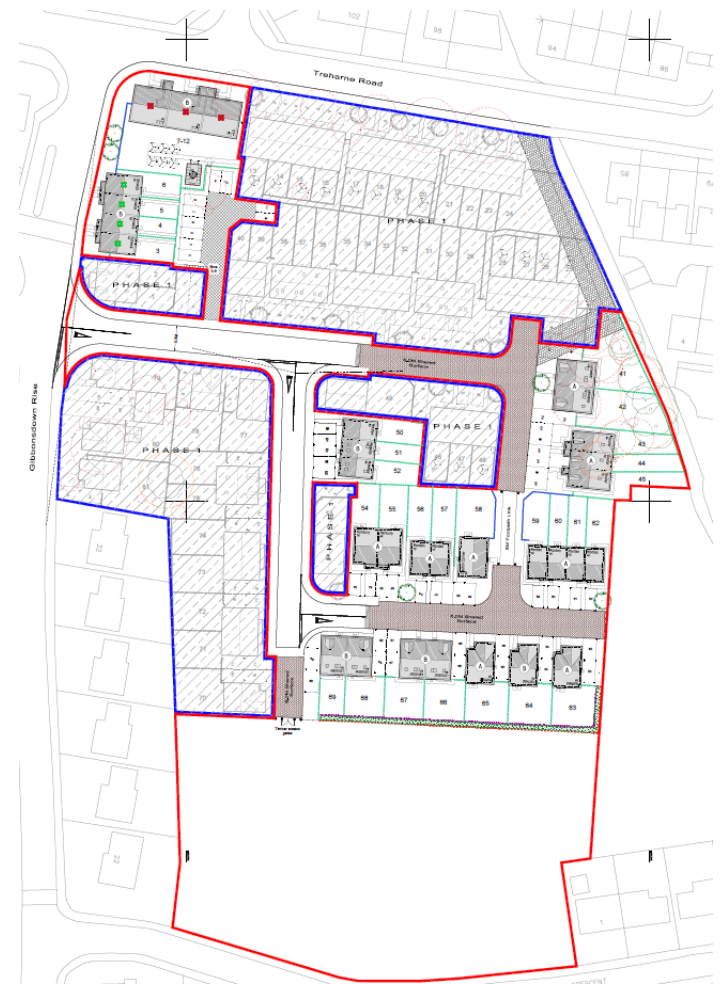
- New development can have an impact on existing community infrastructure.
- Section 106 agreements are legally binding agreements entered into between a local authority, a landowner and a developer to secure planning obligations.
- Planning obligations require developers to provide **works, services or financial contributions** to enhance the quality of their development, and to help mitigate the impacts that arise as a consequence it.
- The Vale of Glamorgan has amongst the highest house prices in Wales, which generates significant land values from which section 106 contributions can be sought by the Council.



# What is Section 106?

The Council may enter into a planning obligation with a developer to:

- Restrict development or use of land;
- Require operations or activities to be carried out in, on, under or over land;
- Require land to be used in a specified way; or
- Require payments to be made to the authority either in a single sum or periodically.



# Limitations to Section 106

- A planning obligation may only legally constitute a reason for granting planning permission if it is:
  - (a) necessary to make the development acceptable in planning terms;
  - (b) directly related to the development; and
  - (c) fairly and reasonably related in scale and kind to the development.
    - Regulation 122, Community Infrastructure Levy Regulations (2010) (as amended)
- S106 Agreements usually stipulate that the Contribution has to be spent within **5 years**, following receipt (10years for affordable housing).
- S106 financial contributions can only be used to mitigate the impacts of a new development; to create provision for future occupiers of the new development. Therefore, s106 contributions can only be spent in the area where the development has occurred. The only exception to this would be affordable housing (a number of contributions pooled together to support a strategic scheme), and for educational facilities, where the catchment area for a school may be borough wide.



# Types of Planning Obligations

- Affordable housing
- Education
- Community facilities
- Sustainable transport
- Off-site highway works
- Public open space
- Public art
- Training and development



# Types of Planning Obligations

Planning contributions can be secured as follows:

- 1. In Kind Contributions** - The developer carries out required works directly on site, such as the provision of children's play area and affordable housing.
- 2. On Site / Off Site Financial Contributions** - The developer contributes financially towards the provision of measures that would mitigate the detrimental impacts of development such as improved public transport, pedestrian access and traffic calming measures.
- 3. Maintenance Contributions** - The developer contributes financially towards the physical upkeep of facilities that they have funded or provided such as open spaces.
- 4. Pooled Contributions** - The Council may seek to pool contributions (restricted if five or more separate planning obligations already exist for a specific single infrastructure project) in order to address the wider impacts across developments such as the provision of large scale road improvements, new schools and community facilities.

# Financial Contributions and Definitions

- **Affordable housing** - housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford housing at open market values - Social Rented Housing and Intermediate Housing
- **Education** - to provide or enhance nursery, primary and secondary educational facilities likely to be used by future occupiers of the Development
- **Community facilities** - means facilities or services within the vicinity of the site, which meet local community needs and are publicly available
- **Sustainable transport** - means information, facilities or infrastructure which provides or improves access for pedestrians, cyclists, public transport users, motor cycles, taxis or car shares in the vicinity of the Site.
- **Public open space** - means land laid out as public garden, or used for the purpose of public recreation, or open space of public value including land or areas of water which offer opportunities for sport, recreation and tourism and children's playgrounds



# Planning Policy Context

## Relevant Legislation

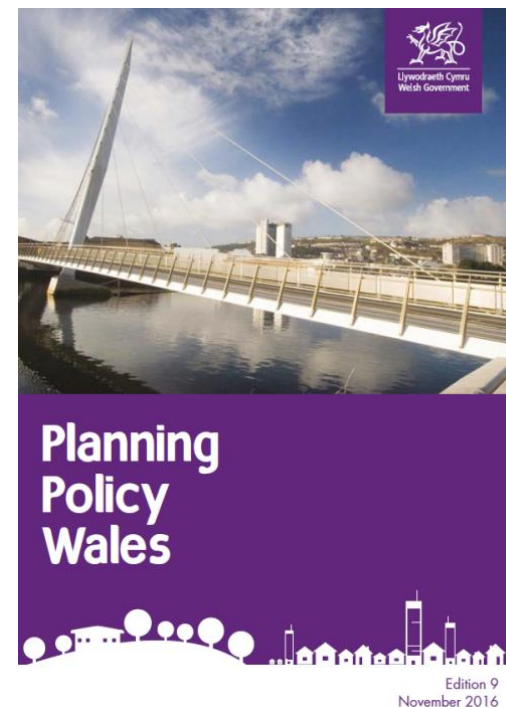
- Section 106 of the Town and Country Planning Act 1990 as amended by Section 12 of the Planning and Compensation Act (1991)
- Community Infrastructure Levy Regulations 2010 (as amended)

## National Planning Policy

- Planning Policy Wales (November 2016)
- Technical Advice Notes

## Local Planning Policy

- The Vale of Glamorgan Adopted Local Development Plan (2011-2026)
- Planning Obligations Supplementary Planning Guidance (2017)
- Affordable Housing Supplementary Planning Guidance (2017)



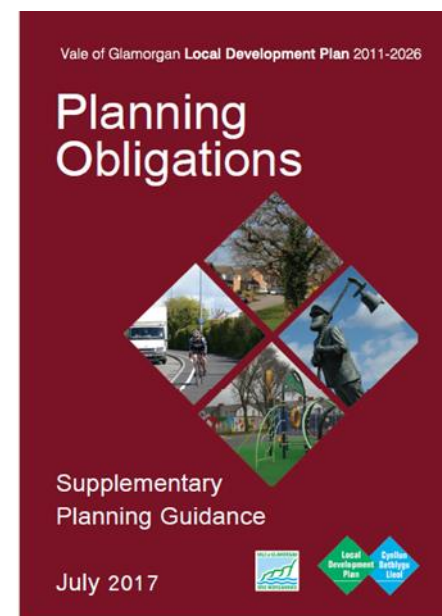
# LDP Policy MD4 Community Infrastructure & Planning Obligations

*‘Where appropriate, and having regard to development viability, the Council will seek to secure new and improved community infrastructure, facilities and services appropriate to the scale, type and location of proposed developments through the use of planning. Community infrastructure may include the provision or improvement of:*

- 1. Affordable housing;*
- 2. Education facilities;*
- 3. Transport infrastructure and services for pedestrians, cyclists, public transport and vehicular traffic;*
- 4. Public open space, public art, leisure, sport and recreational facilities;*
- 5. Community facilities;*
- 6. Healthcare facilities;*
- 7. Service and utilities infrastructure;*
- 8. Environmental protection and enhancement such as nature conservation, flood prevention, town centre regeneration, pollution management or historic renovation;*
- 9. Recycling and waste facilities; and*
- 10. Employment opportunities and complementary facilities including training.’*

# Supplementary Planning Guidance: Planning Obligations

- The adopted SPG provides clarification of where, what, when and how planning obligations will be sought, in order to assist the Council in creating sustainable communities that provide social, economic, and environmental benefits.
- The SPG seeks to ensure that a **consistent approach** to site assessment and requirements for planning obligations is taken.
- This SPG forms the basis of negotiations between all parties and it represents a material consideration in the determination of relevant planning applications and appeals.



Type of Obligation	Residential development threshold	Commercial Development Threshold	Formula
*Affordable Housing in Barry	Net gain of 5 dwellings	-	30% on site
*Affordable Housing in Llanwit Major, Rhoose and St Athan	Net gain of 5 dwellings	-	35% on site
*Affordable Housing in the rest of the Vale of Glamorgan	Net gain of 1 dwelling**	-	40% on site unless otherwise agreed
Sustainable Transport	10	1000sqm floor space / 1ha site	£2300/dwelling or £2300/100sqm floor space
Education	10	-	Contributions per dwelling (depending on available capacity in local schools) Nursery = £1,8255 Primary = £5,073 Secondary = £5,720 Post 16 = £1,193 Total = £13,811
Training and Development	-	1000sqm floor space / 1ha site	one trainee (£1255) per 500sqm of new floor space
Community Facilities	25	-	0.74sqm of community floor space per dwelling = a financial contribution of £1260 per dwelling
Public Open Space	5	1000sqm floor space / 1ha site	2.4 ha per 1000 population = 55.68m <sup>2</sup> per dwelling or £1150 per person = £2,668 per dwelling
Public Art	10	1000sqm floor space / 1ha site	1% of Build Costs

\*\*Applications for the conversion of an existing building, will only be triggered upon the development of 2 or more residential units.

# How is a Section 106 Agreement negotiated?

1. Pre application discussion - Case Officer, s106 officer and relevant service area raise potential planning obligations if applicable, at an early stage.
2. Planning application received.
3. Initially assessed for s106 implications by case officer and s106 officer and relevant service areas consulted.
4. Case Officer reviews planning submissions and visits the site, to consider what site specific requirements may be necessary.
5. Case Officer to review comments received from service areas.
6. Negotiation with the developer/land owner to secure the planning obligations.
7. Assessment of any viability assessments either in-house or by the District Valuer Services.
8. **Planning Application** report considered via delegation or by Planning Committee including details of the agreed Section 106 Planning Obligations. S106 Officer instructs Legal Services to draft legal agreement and this is checked by all parties.
9. Section 106 Agreement signed and entered onto monitoring database. **Planning consent and decision notice issued.**

# Requesting and Assessing Viability Appraisals

- The Council will not agree to a deduction in Planning Obligations, unless a viability appraisal has been submitted by the developer.
- Any viability appraisal will need to be scrutinised either externally via the District Valuer Services at the developers expense, or internally via the Council's relevant service areas - i.e. Property, Building Control etc.
- The Council only accepts a reduced s106 package, if the viability appraisal is considered correct and based on robust evidence.



# Section 106 Protocol for Implementation

1. Monies received – Managing Director, Head of Regeneration and Planning Operational Manager for Development Management Leader of the Council relevant Cabinet Members, and relevant service areas are notified in writing and consulted in order to highlight any potential opportunities for implementation, allowing for a 21 day consultation period.
2. Local Ward Members (including adjoining wards within 100m of application site) and the relevant Cabinet Members notified in writing of any proposed scheme(s) and allowing a 14 day consultation period for comments.

**Note 1:**

Where monies have already been specifically accounted for within the terms of the signed legal agreement this will be noted i.e. no scope for consultation on where the monies are spent.

3. Local ward Members to comment on proposals for spends of money having regard to the broad term of the legal agreement during the 14 day consultation period, unless further time is agreed.
4. After 14 day period, the service area is notified of any representations made, which must be considered for feasibility and if dismissed valid reasons provided.
5. Service area, in consultation with relevant Cabinet Members, recommends where the money is best spent.

At this stage, it may be recommended that further consultation is undertaken with the community, particularly for Public Open Space and Community Facilities contributions.

# Section 106 Protocol for Implementation

6. Final decision is made by Head of Regeneration and Planning (Marcus Goldsworthy) in conjunction with the relevant Head(s) of Service(s) subject to 'call in procedure'.

7. Relevant Cabinet Members and Local member(s) notified. If aggrieved, any member has 14 days to request the decision is called in by Cabinet to determine.

**Note 2:**

Where monies are going to fund a capital scheme, prior approval will be required from Cabinet, for the inclusion of the monies into the capital programme. Cabinet approval must be obtained before the scheme commences

8. Service area notified and given authorisation to spend the Section 106 amount.

9. Project Implemented.

10. Annual Monitoring Report notes project implementation and contribution spent.

# Section 106 in 2016/17

- 23 planning permissions were granted, which are subject to Section 106 agreements.
- The value of the financial contributions in these legal agreements totals £9,794,952.16, mainly from major residential developments.



# Section 106 in 2016/17

- At 31st March 2017, the Council had **£10,989,004.65** within the Section 106 account, having received **£6,723,344.97** from developers between April 2016 and March 2017.
- The majority of these contributions have been formally committed to schemes within the Vale of Glamorgan, as agreed in consultation with Members and Service Areas, or are pending further consultation.
- **£1,437,773.02** was spent on Section 106 schemes during 2016/17 across the Vale of Glamorgan, such as:
  - Port Road Footway/Cycle Scheme; Penlan Road Cycle/Footway;
  - Plassey Square Play Area;
  - Nursery provision at Gwenfo Primary School
  - Purchases to enhance facilities at The Murchfield Community Centre, Dinas Powys and Heol Llidiard Community Hall, Llangan.



# Selection of Projects completed / underway in 2017/18

## Education

- St. Brides Major Primary School -build a nursery, nursery play area, a link corridor, and remodel year 5 and 6 classrooms - Ogmore by Sea - near completion.

## Sustainable Transport:

- Wenvoe footpath improvements scheme - ITV Culverhouse Cross - near completion.
- Harbour Road Car Park Cycle Path, Barry Island - Barry Waterfront - completed.
- High Street/Broad Street, Barry - Barry Waterfront - near completion.
- Complete the footway/cycle link along Fford Y Millennium to the train station - Barry Waterfront - designs finalised due on site imminently.
- Treharne Road, Barry pedestrian improvements - Maes Dyfan - designs finalised due on site imminently.

## Public Open Space

- MUGA and Play Area, Paget Road, Penarth - Penarth Heights - Due to start on site in spring.
- Badgers Brook Play Area - Badgers Brook - Due to start on site before Christmas
- Gladstone Gardens Improvements - Theatre Royal/Barry Magistrates - Works underway

# Community Consultation - Rhoose



The Council secured Section 106 contributions for community facilities from the two new Taylor Wimpey developments in Rhoose.

Consultation underway - trying to engage with as many existing and future residents as possible, to establish which scheme should be prioritised:

- Survey online at Council's website for next 7 weeks
- Leaflet drop and posters throughout village
- Promotion via social media
- Friday 6th October - Drop in session at Celtic Way Community Centre - 6pm-8pm
- Thursday 2nd November - Family fun day with Play Development and Family Investment teams from 12pm-3pm.





Any Questions?