Background note on S106 governance consultation, s106 procedures and guidance on why we need you to specify projects.

Mid Devon District Council collects financial contributions from new development through legal agreements signed under Section 106 of the Town and Country Planning Act 1990 (as amended), sometimes also referred to as planning obligations.

The need for planning obligations are considered on a case by case basis and may only constitute a reason for granting planning permission if they meet the following statutory tests from the CIL Regulations, namely that they are:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind.

Planning obligations must be fully justified (usually by reference to development plan policy requirements) and evidenced.

Since April 2015, Regulation 123 of the CIL Regulations has placed a national restriction on the traditional approach of 'pooling' Section 106 contributions from numerous developments towards the provision of infrastructure, such as public open space, schools or roads. As such sec 106 funding must now be project specific and any agreed project can only have contributions from up to five separate planning obligations.

Local planning authorities are expected to use all of the funding they receive through planning obligations in accordance with the terms of the individual planning obligation agreement.

The aim of the regulations is to ensure that new developments meet the three statutory tests from the CIL Regulations (shown above), benefit local communities and support the provision of local infrastructure.

Agreements will normally include clauses stating when and how the funds will be used by and allow for their return, after an agreed period of time, where they are not. Equally, if monies are not spent in accordance with the terms of the s106 agreement, developers can request that their contribution is returned to them.
Once discussions as part of the planning application process have agreed sec 106 contributions for a specific project, the following has to happen before the money becomes available to spend on that project:

- Planning permission has to be granted
- The money has to be collected (sometimes the money will be collected during the planning process and other times certain triggers will have to be met before any payment is due)
- The development must have commenced on site (this does not include preparatory groundworks and certain investigative works)

This process can take place up to five times on some schemes for the maximum amount of funding to become available as funds for the same project will sometimes be collected from more than one development.

It should be noted that it is unlikely that funding generated this way would be suitable for projects that need quick delivery. As it can sometimes take years before the full amount of funding is available and we are therefore asking that all Parish Councils act now to come up with a list of Public Open Space projects for delivery in five to ten years.

For example; some equipment in your local play park looks tired but is safe and does not need replacing for another four or five years minimum. Contact the Planning Obligations Monitoring Officer (POMO) as soon as possible to nominate this as a project to receive S106 public open space funding for new equipment in the play park. If the project is confirmed as being suitable, contributions can be collected straight away but are unlikely to be available for several years. Therefore in five years when the equipment needs replacing the funding will be there specifically to support new equipment in that play park.

What you need to do to get Sec 106 funding for your projects

We need your help to identify projects at the outset of any planning discussions for a development so we can make our best endeavours to secure funds to help you to deliver the project.

There is no limit to how many projects can be set up within a parish/catchment but it is worth considering the levels of development likely to occur locally. e.g. it would be unlikely for sec 106 contributions to meet the full cost of a £250,000.00 sports pitch in a locality that only receives one or two small scale planning applications for new dwellings per year.

The key is to be realistic and plan ahead; have a rolling works programme that is deliverable. Contributions that can't be spent on the specified project are liable to be refunded to the Developer so aim for projects that have a degree of certainty when it comes to delivery. Plan for future costs but again, be realistic. Prices will go up over five to ten years but try not to over-estimate as any unspent money may be returned to the Developer. Also please be mindful that funding cannot be transferred to another project unless the S106 agreement is amended with the consent of the developer.

What to do next

All Town and Parish Councils are invited to nominate projects for the allocation of future funding. In fact all Town and Parish Councils are actively encouraged to nominate projects. Without sufficient projects we are unable to allocate contributions and we risk losing the funding. This funding opportunity exists to benefit local communities and support the provision of local infrastructure.
When nominating projects, it is helpful for the following information to be provided:

A. **Applicant Details** – *(e.g Town/Parish Council or Community body details – name, address, contact email address and telephone number).*
B. **Project title** – *(e.g Provision of new toddler play equipment at Somewhere Recreational Ground, Somewhere).*
C. **Description of proposed works** – *(e.g a written paragraph on the need, purpose and content of the project in this location).*
D. **Location** – *(e.g site address and location plan).*
E. **Guide target figure to collect** *(e.g. Aprox £15,000).*

Please feel free contact the Planning Obligations Monitoring Officer (POMO) at Mid Devon District Council (see contact details below) with your project suggestions and an estimate of the project cost. As part of this process we will also contact other Parishes that may be located in the catchment, together with the local Ward Members and relevant Officers at the District Council to ensure there is adequate local support for the project. We will also consider whether it is eligible to receive financial contributions and align it a priority where there is more than one eligible project within the catchment area. Once the project has gained approval it will be added to our list of Public Open Space projects and contributions can be allocated to it

Going forward

Please engage with the POMO who will be happy to advise and assist with prioritising projects. Please remember this is a rolling process so we will always need your suggestions for new public open space projects.

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