

**Audit Programme: S106 & Commuted Sums**

Key Objective	Control	Risk	Test
<p>SSDC has developed, and regularly reviews, policies that ensure it has a thorough understanding of the variety of different forms of contributions and the circumstances in which it would be appropriate to use them to improve delivery.</p>	<p>The authority's policies on payment types are set out in Development Plan documents and details of their application in Supplementary Planning documents.</p> <p>The development plan sets out the differing types of contribution and their applicability</p> <p>Development Policy appropriately recognises the authority's capacity and expertise to provide the infrastructure works themselves and options for either placing responsibility for delivery with another provider or the developer directly.</p>	<p>Failure to apply s106 agreements correctly, risk that planning agreement not adhered to</p> <p>Inappropriate contribution type applied with risk that unable to enforce agreed development conditions, or significant unplanned cost to the authority</p> <p>Unable to complete s106 works risk developer reclaims contribution or works left undone - financial or reputational loss.</p>	<p>Are the Council's policies in respect of s106 contribution set out in the current Development Plan? Obtain a copy of current Plan and verify.</p> <p>Review the Development Plan and confirm that it sets out the differing types of contribution and their applicability?</p> <p>Through discussion with planning staff and examination of the Development Plan verify that the capacity and expertise of the authority to provide the infrastructure themselves or to have it undertaken by the developer or another party is properly identified and managed as part of the planning process?</p>

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<p>When phasing obligation payments over time SSDC has established and utilises monitoring systems to ensure payments are tracked and delivered and that funds are spent on the relevant infrastructure.</p>	<p>There is approved guidance notes that explain and amplify the determination of the most appropriate method of making financial contributions</p> <p>Phased in-kind contributions are made in accordance with the approved scheme</p> <p>There are clearly identified responsibilities for the collection of s106 revenues as agreed</p>	<p>Infrastructure facilities are provided in an inappropriate manner relevant to the development</p> <p>Failure to reduce the administrative burden of administering contribution.</p> <p>In-kind developments left to end then 'forgotten' by developer.</p> <p>Income due to the authority not received and infrastructure works not done, or worse works performed without contribution receipt</p>	<p>Is there a method of determining whether infrastructure costs should be met as a lump sum, or as phased payments to match stages of development?</p> <p>If lump sum is there a process for determining whether this is made at the start or end of the development? (Or at a determined mid-way point)</p> <p>Confirm that all contributions are diarised with key completion/adherence targets and developers are routinely made aware that the process is being monitored.</p> <p>Identify whether an officer has responsibility for ensuring income due is received at the appropriate time.</p>

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<p>The authority should make use of the relevant cost indices to help inform the cost of providing obligation payments over a significant period of time.</p>	<p>Staged long-term financial contributions are appropriately index-linked to counter effects of inflation</p> <p>The planning authority has a developed, approved policy in respect of the application of Maintenance Payments.</p> <p>The Authority's Development Plan make provision for 'pump priming' payments</p>	<p>Contribution when ultimately received no longer accurately reflects the cost of provision of infrastructure elements.</p> <p>Long-term costs for the provision of infrastructure costs fall unreasonably on the authority</p> <p>Developer fails to keep up long-term maintenance contribution and Authority incurs greater costs.</p>	<p>Is there a policy/process for index-linking where contribution is made over a protracted period of time?</p> <p>The council has an approved policy? If so is it set out in the approved Development Plan and supplemental Guidance?</p> <p>Is there a process for establishing whether it is more appropriate for a developer to pay a one time pump-priming' contribution rather than get locked into a succession of small payments over time?</p>

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<p>The authority sets out in s106 agreements the timescale for any unspent financial contributions to be returned to the developer if the infrastructure is not brought forward and whether or not it will attract an interest payment.</p>	<p>The Deed of agreement between the authority and the Developer clearly sets out the rights and duties of all parties and the remedies to be applied in the event that the Agreement is not complied with.</p> <p>Details of the Agreement are recorded on a s106/Planning database</p>	<p>Agreed infrastructure not provided and default costs fall upon the authority</p> <p>Unable to track/monitor compliance with s106 agreement</p>	<p>Sample 2 recent s106 agreements and verify all expected elements present.</p> <p>Establish existence of database/record keeping system. Confirm by sample testing that all s106 Agreements are systematically recorded.</p>

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<p>Where management or trust company is established to manage and maintain relevant facilities over time, the authority has considered and engaged with the community to see if there is an interest and willingness for such an organisation to be managed by the community</p>	<p>Representation on the board of a trust company is incorporated within the articles of agreement to ensure the authority's objectives on infrastructure item are safeguarded.</p>	<p>Purpose of infrastructure item subverted from its original intent, or mis-managed.</p>	<p>Does the authority have any management or trust companies arising from s106 agreements? If so, is the authority appropriately represented on the management board?</p>

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<p>Processes are standardised to ensure all relevant aspects of s106 provision identified and incorporated in to any agreement made.</p>	<p>The authority has one (or more) specialist S106 planning officers who specialises in planning obligations, negotiates the agreements, and tracks them through the legal process</p> <p>The authority has a designated officer responsible for monitoring the implementation of s106 actions/improvements.</p> <p>Legal Agreements drawn up are based upon an approved standard model using 'boilerplate' clauses.</p> <p>A project management approach has been adopted toward negotiations, with agreed deadlines and milestones.</p>	<p>Incorrectly formulated agreement failing to properly incorporate the authority's obligations and policies that can subsequently be challenged/frustrated.</p> <p>Agreed s106 actions not performed.</p> <p>Failure to adequately capture agreement legally leaving open to challenge or non performance with resultant non achievement of planning requirements.</p> <p>Unstructured s106 negotiation introducing the possibility of error or omission.</p>	<p>Is there (an) officer(s) with special responsibility for setting s106 agreements either alone or as advisor to planning officers?</p> <p>Is there an officer with responsibility for monitoring the progress/implementation of s106 agreements?</p> <p>Are s106 agreements drawn up using the Law Society standard agreed model template for the drafting and finalising of the agreement by Legal?</p> <p>Does the authority 'impose' a negotiation structure on the developer with mutually set out and agreed deadlines and milestones?</p>

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	<p>The authority uses publicly available standard 'heads of terms' for use as a basis for negotiations.</p> <p>Authority has implemented documentation in standard form where this will lead to savings in resource and time.</p> <p>Standardised obligation documents regularly reviewed to ensure currency with changing policy and circumstances.</p>	<p>Failure to identify all elements that need to be captured within a s106 agreement.</p> <p>Ineffective use of resources through bespoke application of standard procedures.</p> <p>Flawed submission of development applications complicating any subsequent negotiation and agreement</p>	<p>Does the authority use heads of terms to demonstrate serious intent within the negotiation of the s106 agreement between the authority and the developer. Has this been agreed within the Local Development Framework?</p> <p>Identify where there are areas of standardised processes that these are supported by pre-defined documentation and procedures.</p> <p>Is publicly available documentation subject to regular scrutiny and review to ensure information supplied/requested is correct and up to date.</p>

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<p>The authority has agreed and uses standard policies for the derivation of the formulae and standard charges for the calculation of S106 contributions to the approved development</p>	<p>The authority has identified and agreed policies within the development plan and supplemental guidance as the basis for calculation of the contribution required as part of any approved development</p> <p>There are standardised documented processes that record the application of these processes leading up to agreement with the developer.</p> <p>The standard processes address non-financial as well as financial contribution (i.e. number of affordable homes on estate development).</p>	<p>Inconsistent application of contribution, which may be subject to challenge by developers.</p> <p>Incomplete or inaccurate calculation of contribution.</p> <p>Incomplete or inaccurate calculation of contribution.</p>	<p>Are there agreed policies for the calculation/negotiation of planning contributions within the agreed local development plan and supplemental guidance?</p> <p>Verify existence of agreed procedures for the calculation of contribution. Confirm through enquiry and files examined that process is in use. Obtain copy of procedures.</p> <p>Verify through sample testing that non-financial Agreements subject to standardised formulaic regime.</p>

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<p>The authority has a robust process for the monitoring and enforcement of planning obligations</p>	<p>Planning obligations database integrates with the Council's GIS.</p> <p>s106 agreements integrated with development control monitoring. Reporting mechanism that triggers actions at pre-determined phases of development or where agreed milestones recorded as not achieved.</p> <p>Annual reports are produced for senior management and relative risk assessment</p> <p>Mechanisms in place to ensure and demonstrate that s106 payments are 'ring-fenced' and only spent on what they are intended for</p>	<p>Developments subject to s106 agreements not identified</p> <p>Failure to pursue completion of s106 obligations by authority or developer. Where authority fails to provide developer entitled to return of contribution. Where developer fails to provide in breach of planning approval.</p> <p>Failure to highlight to senior management where works/actions required by Authority following s106 contributions have not been undertaken/commenced and consequences thereof.</p> <p>Developer contributions not used for the agreed purpose.</p>	<p>Are s106 agreements mapped onto GIS? By examination of GIS affirm</p> <p>Does planning database identify a report on key milestones/phases of development to enable officers to monitor compliance with s106 agreement?</p> <p>Is a report produced at least annually for consideration by senior management showing progress of s106 agreements and risk ranking outstanding actions required by the authority?</p> <p>Establish the existence of a financial recording mechanism that identifies s106 contributions received and disbursements against this to achieve the required changes to the infrastructure are correctly applied.</p>



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The authority has robust arrangements in place where s106 contributions for infrastructure works are passed to another agency/authority for completion to monitor both developers and agencies compliance with s106 requirements	Mechanism in place to forward s106 monies to agency/authority for completion of agreed infrastructure works.	Agent authority fails to complete/undertake works and a s106 default occurs	Verify existence of a defined process for collection and onward transmission of s106 monies to agency/authority to undertake works (e.g. county highways)

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There is a clear management trail evidencing receipt and ultimate disposition of s106 monies in the authority's financial records	Each s106 agreement has a unique ledger reference through which income received and expenditure defrayed is recorded.	Monies received from s106 works incorrectly applied or costs not matched to income received.	Verify that income for s106 is uniquely recorded in the authority's ledgers and a clear trail exists to evidence receipt of money from developers and expenditure defrayed to meet agreed infrastructure works