

Appended Report

1. Introduction

New developments can bring benefits to local communities. They can also put pressure on facilities such as schools, parks, roads and leisure centres as more people use them. These effects can be addressed through planning obligations, namely a requirement placed on developments and the commitment made by the applicant or developer to contribute to meeting the needs or impacts arising from a particular development. The contributions are formalised by a legal agreement known as a Section 106 agreement, with contribution to be paid and used in accordance with the terms of the agreement.

The planning obligations may be to undertake works but can also be through financial or in-kind contributions or to provide affordable housing.

Note: A briefing session on Planning Obligations and Section 106 was held for all County Councillors on 27th October 2022. As part of that briefing members whose wards have section 106 monies available have been contacted with a breakdown of the money available and the use that it has been collected for.

The Place and Sustainability Service is currently running a series of briefing and awareness raising sessions for Clerks of Town and Community Councils on section 106 and how they can access monies.

2. What are Planning Obligations?

A Planning Obligation (also known as a Section 106 Agreement and/or developer contributions) is a legal agreement between the Local Planning Authority (LPA) and the applicant/developer, and any other party that may have an interest in the land.

Planning Obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. They can also be issued unilaterally to the Council by the persons with an interest in the land; these are known as Unilateral Undertakings (UU). A UU is a commitment offered by the applicant to the LPA to address issues that would otherwise be dealt with through a s106 agreement.

The procedures and framework for the collection of planning obligations is set through Community Infrastructure Levy Regulations 2010 (Reg. 122) which requires that a contributions can only be sought when determining a planning application if it is:

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

If they cannot meet the above tests then an agreement should not be entered into.

The Council's approach to planning obligations is set out in [Policy GP3 'Planning Obligations'](#) of the Carmarthenshire Local Development Plan (LDP).

Further detail on the implementation of this policy is provided in the Planning Obligations Supplementary Planning Guidance (SPG) as well as in the Affordable Housing SPG, Caeau Mynydd Mawr Special Area of Conservation SPG and the Leisure and Open Space – Requirements for New Developments SPG.

Note: The Council does not have Community Infrastructure Levy (CIL) in operation. The Council having commenced the preparation of preparation of the CIL charging schedule resolved to hold any further preparation in abeyance pending Welsh Government review of the regulations. This review is still pending.

3. What are Planning Obligations used for?

Whilst most planning applications can be dealt with simply by the issue of a permission with conditions attached to it, it is quite common for the LPA to have concerns which cannot be effectively dealt with by condition. Those concerns may in certain circumstances be met by the developer accepting obligations under section 106 of the Town and Country Planning Act 1990.

These planning obligations can cover almost any relevant issue, acting as a main instrument for placing restrictions on developers, often requiring them to minimise the impact on the local community and to carry out tasks which will provide community benefits, and can include the payment of sums of money.

These obligations are contained in a contract and legally bind not only the applicant or developer but also all existing and future owners of the land in question. The obligations may:

- Restrict the development or use of the land in a specified way;
- Require specified operations or activities to be carried out;
- Require a specific use of the land; and
- Require monies to be paid to the LPA.

Examples of types of infrastructure or services that planning obligations can include:

- Highway Improvements
- Provision of Affordable Housing
- Educational Improvements
- Regeneration
- Improved and maintenance of community facilities – e.g. Public open space/ play areas
- Specific measures to mitigate impact on a local area – e.g. Habitat protection or management

The above list is not exhaustive. Each planning application is dealt with individually on its own merits with the needs arising considered and balanced against the impact on the viability of the sites and the prospect of it being subsequently delivered.

4. S106 Monitoring Overview

It is crucial that developers provide financial contributions under S106 agreements in a timely manner in accordance with the requirements set out within the terms set out in the relevant Section 106 Agreements. The Agreements will usually set out a trigger or, less commonly, a specific date for the payment of contributions. These are varied according to the requirements of the specific development but usually relate to a specific stage of a development, for example, at the development's commencement, or a later date, such as the first occupation of a residential unit.

The Section 106 Agreements typically set out the following details:

- How much of a contribution should be paid and when it should be paid;
- What the developer contribution should be spent on; and,
- Where the developer contribution should be spent

The progress of developments is monitored, and the developer contributions are sought accordingly.

5. Governance and Applications to use Section 106 monies

Whilst the Place and Sustainability Service and specifically the Forward Planning Team manage and administer the collection and monitor the use (including compliance) of monies, the responsibility for the management and administration of the application and draw down processes for the use of monies sits with the Community Bureau within the Regeneration Service. Given the Bureau's focus on grant funding this enables potential links with other funding streams and grant opportunities and the better use of the monies held.

There are two processes for the application for the use of monies held. These must be submitted to the Community Bureau:

- Draw Down – where internal service areas apply to access money secured for a defined and specific purpose.
- S106 application process (see section 4 below) – where community-based organisations as well as the internal service areas can apply for funding.

Internal Service areas have a key role and responsibility in ensuring the efficient and timely use of monies collected and for the delivery of schemes. The Head of Place and Sustainability currently chairs the 's106 Working Group' which includes membership from those service areas holding financial contributions. This group provides the focus for cross service discussion and agreement on the use of monies and is meeting monthly.

It should be noted that it is not the responsibility of the Place and Sustainability Service (Planning) to use the money, rather the service is solely responsible for monitoring and compliance on the receipt monies and advising on if the proposed use is in accordance with the terms of the legal agreement.

Whilst the Community Bureau manages and administers the application and draw down processes the use of monies rests with other internal service areas and/or external groups and community organisations.

In this respect all internal service areas and all community-based organisations that operate on a not-for-profit basis in Carmarthenshire can apply for funding which has been secured through a planning obligation or s106 agreement.

Applications for the use of monies are assessed against the terms of the Section 106 Agreements - ensuring that the funds are available and that it conforms to the terms of the agreement. Where appropriate the ward member and service area are consulted on applications prior to approval for the use of the money.

Application forms are available on the Council's Planning webpage via the link below.

<https://www.carmarthenshire.gov.wales/home/council-services/planning/apply-for-section-106-funds/#.Y44S13bP2Uk>

Guidance on the process is available from the Community Bureau.

Successful applications may also be encouraged to seek matching funding from other grant bodies and community sources. They are also encouraged to consider the future financial implications of maintaining and sustaining the relevant project.

6. Planning Obligations – Financial Overview

The following section set out the current position in terms of monies held and the recent trends etc on the use of monies.

Table 1. identifies a current balance of £3,769,161.60 (Note: this excludes monies outstanding where invoices are pending – see section 7 above).

It also identifies monies available (non-committed) against those funds committed. Of the monies currently held, a total of £766,725.56 has been committed in accordance with the specific requirements set out in the legal agreement. These have been committed by request either from Community/ Town Councils, Local members, Schools or Authority service areas or through the terms of the legal agreement (i.e. project specific).

It should be noted that a number of those held under non-Committed are held for specific projects (namely Affordable Housing, Marsh Fritillary and Biodiversity) and are available only for that specific use.

Table 1

	Non-Committed	Committed	Total
Grounds	£ 309,926.39	£444,231.00	£ 754,157.39
Highways	£ 745,409.08	£133,686.45	£ 879,095.53
Education	£ 448,109.46	£140,910.11	£ 589,019.57

Affordable Housing	£ 823,012.41	£ -	£ 823,012.41
Regeneration	£ 113,809.77	£ 27,898.00	£ 141,707.77
Caeau Mynydd Mawr - Marsh Fritillary Butterfly	£ 235,832.40	£ -	£ 235,832.40
Biodiversity	£ 304,529.99	£ -	£ 304,529.99
Externals (Flood Defence)	£ 21,806.54	£ 20,000.00	£ 41,806.54
Totals	£3,002,436.04	£766,725.56	£3,769,161,.60

Contributions Committed by agreement - Of the monies currently held at the end of the 2021/2022 financial year, a total of £444,231.00 has been committed in accordance with the specific requirements set out in the Section 106 agreement. The committed monies will be spent in accordance with the terms of the agreements. These contributions are held for specific projects and may only be transferred upon completion of the approved works and upon receipt of suitable evidence outlining costs incurred.

Table 2 sets out incomings and outgoings for 20/21 and 21/22 (to date). This indicates that during the last full financial year that £ 769,851.83 was spent with a further £ £858,249.98 of income.

Table 2

	Grounds	Highways	Education	Affordable Housing	Regeneration	Marsh Fritillary Mitigation	Biodiversity	External
2020 / 2021								
In	£45,658.00	£665,594.66	£30,833.00	£342,893.19	£70,000.00	£36,233.72	£22,328.68	£75,000.00
Out	£88,077.95	£703,902.76	£50,000.00	£38,328.17	£17,339.23	£98,224.69	£16,599.98	£100,240.00

2021 / 2022 (to date)

In	£75,121.33	£125,825.47	£145,167.00	£297,195.94	£50,000.00	£59,026.47	£105,913.77	£0.00
Out	£182,178.03	£70,352.24	£33,000.00	£354,911.95	£14,834.00	£106,794.99	£7,780.62	£0.00

7. Planning Obligations – Compliance

Pursuing the timely payment of monies remains part a process of continual improvement. However, there is currently £310,597.52 in outstanding invoices pending payment.

Grounds -	£150,112.00
Highways -	£114,000.00
Education -	£0
Affordable Housing -	£32,412.39

Caeau Mynydd Mawr -

£14,073.13

Note: In relation to the above the debtor's process incurs additional costs for the authority (cancelled invoices, bailiffs charges, legal costs).

Conclusions

Planning Obligations (including S106 contributions) can do much to mitigate impact arising from new developments and provide wider benefits through integration with the surrounding area. The Service will continue to secure such contributions in accordance with planning legislation and policies as well as the content of SPG.

However, as part of the preparation of the Revised LDP further consideration will be given to what developer contributions are sought through policy (including areas such as affordable housing), how they are to be spent and the priorities of the authority where there may be challenges arising from development viability.