

Leicester and Leicestershire Local Authorities

Section 106 Protocol (May 2015)

Introduction

This protocol sets out how local planning authorities across Leicestershire will deal with requests for S106 planning obligations as part of the planning application process. The purpose is to introduce a more consistent approach to how requests for contributions are dealt with and improve working practices between different public authorities involved in securing infrastructure through planning obligations.

The process relates, in part, to how local authorities consider requests in light of the three tests contained in Regulation 122 of the Community Infrastructure Regulations 2010 (as amended). It establishes how authorities will deal with requests for information from consultees and sets out how authorities will deal with situations where the developer has raised viability as an obstacle to securing a full package of S106 planning obligations.

While this protocol will help to establish consistency in the way requests for contributions are handled across the Leicestershire area, the consideration of requests will continue to be considered on a case by case basis by each Local Planning Authority.

Information Requirement

Consultees are requested to provide the following information in support of their requests for S106 planning obligations:

- How the request would be compliant with local and national planning policies.
- Site-specific evidence of how the contribution would off-set the additional demands on facilities or infrastructure that would arise from the development
- Existing facilities in the locality relevant to the obligation and evidence of the extent to these are unable to meet demands created by the development
- The methodology for calculating how the financial contribution would provide or improve facilities to mitigate the impact of the development
- Details of how and when the financial contribution would be spent, including how the payment could be phased to help developers to reduce up front infrastructure costs
- Whether the facility or infrastructure would need to be provided if the development were not going ahead and if so, how that would be funded
- Confirmation that no more than five S106 planning obligations for that project or type of infrastructure have already been entered into since 6 April 2010
- An explanation of the consequences of not securing the funding, for instance if the scheme were found to not be viable

Application of the CIL Test

Subject to the receipt of the necessary information, the Local Planning Authority will consider the request against Community Infrastructure Levy tests as set out at Appendix 1. In assessing whether a planning obligation can be applied to an application, the council will determine:

1. Whether the obligation would meet the statutory tests as set out in Regulation 122 and 123(3) of the CIL regulations.
2. Whether the S106 planning obligation of such significance in this particular instance that the application should be refused if it were to not be provided.

At stage 2 in particular the judgement should be informed by the impact of the obligation on the viability of the development where this is identified as being an issue.

Viability

Where developers claim that a development would not be viable if the full package of S106 planning obligations are provided, local planning authorities will normally ask for a viability appraisal to be submitted. This will help the council to determine the level of contributions that the scheme can afford.

Where a viability appraisal has not been submitted, or where the appraisal does not contain sufficient information allow a decision to be made, it will be for each Local Planning Authority to determine how to proceed.

In circumstances where it is accepted that a development can not afford the full package of S106 planning obligations, the Local Planning Authority will usually explain to infrastructure providers how those conclusions have been reached. They will also explain how they have applied local circumstances and priorities in determining the appropriate level of obligations. How this is communicated will be a matter for each Local Planning Authority on a case by case basis.

Processing Requests for S106 Obligations

Local planning authorities will promote engagement with developers and consultees as early as possible. This will usually be part of pre-application discussions, or in the case of the most strategic schemes, at plan-making stage.

As part of the consideration of any request by a consultee for a S106 planning obligation, the following process will apply:

1. If it is not clear whether the request complies with CIL Regulations, the Local Planning Authority may seek further information to establish whether a request can be made compliant. In some cases, a view may be taken that the principle of what is being requested is not CIL Regulation compliant and it would not be appropriate in those circumstances to request further information. In this situation, the Local Planning Authority would explain the decision to the consultee making the request.

2. If the developer claims that the S106 planning obligations cannot be afforded for viability reasons, local planning authorities may request a viability appraisal to allow the developer the opportunity to substantiate the claims that are being made. This will be considered and a view taken about the level of contribution that a scheme can afford.
3. Once it has been established how much the development can afford, the Local Planning Authority will weigh up the merits of the proposal, having regard to planning policies and other material consideration (including the S106 planning obligations) to determine whether a recommendation to grant planning permission can be made. Where a scheme can be supported, the council will apply local circumstances and priorities in deciding which requests should be provided. Local Planning Authorities will discuss these priorities with relevant consultees where appropriate.
4. Following the resolution to grant planning permission, subject to a S106 agreement, local planning authorities will seek views from relevant consultees about when payment should be made and any phasing arrangement. While agreement on the payment terms/dates may not always be reached, Local Planning Authorities will take reasonable steps to secure payment at the earliest opportunity.
5. The Local Planning Authority will work with interested parties, including consultees, to monitor the implementation of developments and seek to recover funds promptly so they can be passed to the appropriate body without delay.

Appendix 1

“CIL Test” – Regulation 122 Community Infrastructure Regulations 2010

The Statutory Tests	Definitions and Explanation
1. Necessary to make the development acceptable in planning terms	a. Needed to mitigate an unacceptable impact of development. b. Needed following an assessment of existing and planning infrastructure capacity. c. Needed to mitigate an impact up to a minimum standard. d. Needed to mitigate an impact that would not normally be provided by other mechanisms. e. Supported by local planning policy.
2. Directly related to the development	a. Geographically linked in terms of the infrastructure provider’s operational geography. b. Infrastructure that might reasonably be impacted by the type and use of development. c. The impact is generated by the development itself, not as the result of external or cumulative factors. d. A type of obligation recognised in local planning policy.
3. Fairly and reasonably related in scale and kind to the development	a. Proportional to the scale and impact of the development. b. Proportional to the financial viability of the development. c. Clear relationship between the nature of the development and the nature of the infrastructure or service.