

## S106 Planning Obligations Protocol, 2019



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Hull City Council

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## 1. Introduction

1.1 This protocol provides guidance concerning the management of S106 planning obligations. It describes the process and who does what to aid wider understanding. It also provides a guide for applicants for planning permission. Guidance is also given for Area Teams and Committees. *National Planning Policy Framework (February 2019), policies in the Local Plan (February 2018) and amendments to the Community Infrastructure Levy Regulations, 2010 brought into being on the 1 September 2019 are also referred to in keeping guidance relevant and up to date. For clarity purposes the revisions made to previous versions are made in italics. These changes also require provision of an Infrastructure Funding Statement which is currently under development.*

### A. Context

1.2 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as S106 agreements, is a mechanism that makes a development proposal acceptable in planning terms, that would not otherwise be acceptable. They can focus on site specific mitigation arising from the impact of development. S106 agreements are often referred to as 'developer contributions' along with highway contributions and the Community Infrastructure Levy.

1.3 The common use of planning obligations in Hull is to make provision for off-site publicly accessible urban greenspace and children's play provision/improvements and recycling bins but other forms include:

- restricting the development or use of the land in any specified way;
- requiring specified operations or activities to be carried out in, on, under or over the land;
- requiring the land to be used in any specified way; or
- requiring a sum or sums to be paid to the authority on a specified date or dates, or periodically.

1.4 Publicly accessible urban greenspace is defined as areas such as public parks or amenity areas that are open to the public to use and are maintained for such purpose, but excluding private gardens or highway verges. Children's play space involves play equipment that in combination make up a neighbourhood equipped (minimum 1,000 sq m activity zone) or local equipped play area (minimum 400 sq m activity zone) with provision to be made depending on the scale of residential development proposed along with other casual or informal amenity areas, that are maintained for such purpose.

1.5 *Dwellings are also defined as being within Class C3 of the Use Classes Order, 1987 but the requirements also relate to new build flats, apartments and student accommodation where new build floor space is created.*

1.6 A planning obligation can be subject to conditions, it can specify restrictions definitely or indefinitely, and in terms of payments the timing of these can be specified in the obligation. If the s106 is not complied with, it is enforceable against the person that entered into the obligation and any subsequent owner. The s106 can be enforced by injunction. In case of a breach of the obligation the authority can take direct action and recover expenses.

- 1.7 The planning obligation is a formal document, a deed, which states that it is an obligation for planning purposes, identifies the relevant land, the person entering the obligation and their interest and the relevant local authority that would enforce the obligation. The obligation can be a unitary obligation (called a Unilateral Undertaking) or a multi-party agreement. The obligation can also become a land charge.
- 1.8 The legal tests for applying the S106 (as set out in Regulation 122 of the Community Infrastructure Levy Regulations, 2010) are that it should be:
- 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.

- 1.9 As well as the legal tests, the policy tests are contained in the National Planning Policy Framework, 2019 (NPPF):

*“54. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.”*

- 1.10 In Hull’s case planning obligations are applied to housing schemes involving requirements to make provision for new public open space and/or play provision, preferably on-site, as required by Policy 42 of the Local Plan. These requirements are applied to all housing schemes based on a varying degree of impact. So larger schemes generate a need for large public open spaces and/or play provision. Smaller schemes have an impact but to a lesser degree. There remains a requirement to mitigate the public open space and play provision impacts for small schemes below 10 units and in meeting the planning obligation tests and on the basis that the guidance relates more to tariff based requirements.

- 1.11 *The Community Infrastructure Levy (CIL) is a relatively new levy that local authorities can choose to charge on new developments in their area. The money can be used to support development by funding infrastructure that the council, local community and neighbourhoods want. This does not replace Section 106 agreements, but the introduction of CIL resulted in a tightening up of the s106 tests. S106 agreements, in terms of developer contributions, should be focused on addressing site specific mitigation required by a new development. CIL has been developed to address the broader impacts of development. There should be no circumstances where a developer is paying CIL and s106 for the same infrastructure in relation to the same development. The balance between the use of s106 and CIL will be different depending on the nature of the area and the type of development being undertaken. Further guidance on the balance between S106 and CIL will be set out in the CIL Protocol, also updated in 2019.*

- 1.12 *The CIL regulations have been amended to remove the previous restriction to the pooling of s106 planning contributions. When the levy is introduced (and nationally from April 2015), the regulations restricted the use of pooled contributions towards items that may be funded via the levy. At that point, no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a s106 agreement, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy. This restriction was removed by CIL Regulations, 2019 although in Hull’s case accessibility requirements still apply, arising from Local Plan Policy 42.5. These relate to 10-20 minute walking distances for different*

*categories of open space (although athletic tracks/golf courses refer to 20 minute drive time), but 1km is taken as equating to the 20 minute walk distance. This distance should be measured as the time it takes to walk a readily accessible route (and not as the crow flies) between the site where new development has occurred and the siting of the new or improved public open space. An exception to this would be to combine numerous s106 funding sources in applying this to major parks in the city because of the multi-functional nature of such spaces and them being accessible to a wide catchment.*

- 1.13 *The Council has replaced former Policy NE6 of the Local Plan with a new Policy 42 that requires certain amounts and categories of public open space depending on local needs with the aim of replacing deficits. More details about the way funds are determined is provided in a Supplementary Planning Document 11, Protecting existing and providing new open space.*
- 1.14 *Open space can often be required equivalent to urban greenspace and play space, should such provision be necessary in planning terms and if not physically able to be accommodated as part of the proposed housing development. As a consequence, funds provided are often pooled to enable new or improvements to existing provision off-site.*
- 1.15 *Further changes to the Local Plan include making provision for trees derived from new build housing schemes following adoption of Policy 45. Provision is sought on site but if this cannot be achieved that a financial sum of £150 per dwelling for 3 trees is the required tariff. Where trees are to be planted off-site funds will be transferred to bona fide organisations to undertake such works. Area Committee's have authority to agree and manage planting schedules.*
- 1.16 *Affordable housing is also required through Policy 5.2 – 5.4, in certain parts of the city identified as being within housing market value zones 1 – 4, where 10% on sites of 15 or more dwellings is required. This is extended to 15% within housing zone 5 locations on sites of 11 or more dwellings. A separate SPD is being devised that will determine what these figures mean in financial sums should the option become a last resort in agreeing a planning consent. Funds procured will have to be determined but is likely to be through a Registered Social Landlord including Housing Associations operating in the city.*

## B. Planning Obligation costs and process

- 1.17 The s106 Planning obligation process and responsibilities are set out in brief in table 1 below. This clarifies who does what and when. Notice of the costs should be appended to the Council decision notice should s106 be applied.
- 1.18 When a Planning Obligation Contribution (s106 Agreement) is required to address urban greenspace deficiencies, the Development Control case officer will consult the relevant Area Team Co-ordinators, consult with the Parks Services section and the Local Plans Team, amongst others. This gives the opportunity for views to be expressed about local urban greenspace deficits, on the type of facilities that may be required and the site where they should be provided. If it is necessary to incorporate such information into the s106 agreement, then the results of these consultations will be used to do so.
- 1.19 In most cases where agreements do not contain reference to a specific site or specific works, there will instead be a general undertaking by the developer/owner to pay the council a specified sum of money to be used for the provision of recreational facilities or improvements to existing facilities in the locality of the site. However, it is preferable for provisions to be

specified up front as part of the consideration of the planning application. This provides a degree of certainty for the land owner/developer in knowing what and where urban greenspace is to be required as well as the Council in determining an acceptable form of mitigation.

- 1.20 Costs of maintenance also need addressing. If new provision, then the burden of cost for maintenance should fall to the provider of facilities. Refurbishment of existing facilities will not normally lead to maintenance requirements as the City Council has already taken responsibility for this. Normally, an extra 25% of project cost will be added to the s106 to cover a 10 year maintenance period. These should be negotiated between the applicant (or scheme promoter) and the Council’s Parks and Leisure Services department, in combination with the Planning case Officer. Beyond this timeframe the provider can make a request for Council adoption of the project. This requirement could also form part of future s106 legal agreements (in securing commuted payments) on request from Parks and Leisure Services.
- 1.21 When Planning Committee determine an application for planning permission which includes a recommendation that a s106 Agreement be entered into and decides that permission should be granted, the permission will not be issued until the s106 agreement has been signed. Any conditions contained within the agreement, which may include details of the site and works, will become legally binding once the agreement has been signed. Details contained within the agreement cannot subsequently be changed unless the consent of the owner is obtained together with further approval by Planning Committee, although the City Planning Manager also has scope to vary in specified circumstances. If a dispute arises over the interpretation of an agreement, Planning Committee will need to determine necessary action.

Table 1 – S106 Process

Stage	Action	Who does what?	Timescale
1. Permission sought and decision	Applicant discusses with Council officers need for S106 and scope for/agreement of new/improved urban greenspace/play provision nearby	Council in discussion with applicants	Normally within 8 weeks of application submission
	Planning permission approved subject to S106 detailing location and nature of urban greenspace use	Decision notice issued to applicant	
	S106 to be confirmed and signed by all parties. Planning permission issued and registered on local land register	Applicant, owner and Council to sign agreement	Within 4 weeks of Planning Committee decision*
	Applicant to issue notice of commencement of development	Applicant to submit to Planning Services	14 days prior to development commencement being anticipated*
	Applicant to issue notice that triggers	Applicant to submit to Planning Services	14 days prior to triggers outlined in the

	outlined in the S106 are to be met		S106 being anticipated*
2. Confirmation of s106 triggers	Payment letter from the Council once development has commenced or other triggers met	Council sends letter to owner of land requesting funds and owner responds accordingly	Payment needed within 1 month of letter date or instalments agreed (usually if large scale projects)*
	Payment received from owner or instalments agreed	Payment received by the Council and acknowledgement letter sent	Within 4 weeks of receipt Council confirms receipt of funds or instalments (on request)
3. Legal support	A. If payment is not received then Council legal services team is involved	Planning Services instructs Legal Service Team to action recovery of funds arising from non-payment	Action taken to pursue land owner or issue a land charge (confirming that S106 cost applies to land/property so this will appear if land/property is sold). May also involve court action*
	B. Should ownership transfer then this is confirmed by legal services	Planning Services or legal services (on instruction) requests payment from new owners	Depends on land transfer and capacity to deal with this. Council has 12 years to recover S106. May also involve court action*
4. S106 project delivery	Payment confirmed by finance into s106 pot	Liaison between Planning Services, Legal and Finance to confirm payment	Ideally, within 2 weeks of receipt of funds
	Planning informs Area Teams of available funds	Planning to confirm with Area Teams	Quarter year (at least) basis
	Area Team devise/procure projects for new/improved urban greenspace/play provision (confirming the specifications of the s106 legal agreement, should these have already been determined as part of the planning approval)	Area Team to confirm project meets s106 agreement requirements with Planning Services, in writing, including details of works (including before and after drawings) to be undertaken and estimated costs including fees. In using s106 funds it must be demonstrated (as part of the bid for s106)	Funds will not be released until drawings have been reviewed in Planning Services

		how the residents of new housing derived from the planning approval and related s106 will benefit from the works/project indicated.	
	Area Committee agrees project and expenditure on project	Area Team to submit minute to Planning Services and Finance	Ideally, within 2 weeks of decision
	Finance transfers fund to Area Team fund subject to project being confirmed in Planning Services	Finance to transfer to identified cost centre and s106 Area Tables are updated by Planning Services	
	Area Team procures project which is implemented		Project has to be implemented within the limits specified in the s106 agreement
	Area Team to monitor progress and/or seek re-allocation if needed (that may require Area Committee approval)	Area Team to advise Planning Services of progress including project completion date	Ideally, within 2 weeks of project completion
	Planning Services confirms with owner that works have been undertaken and are completed	Letter from Planning Service confirms expenditure has occurred and S106 is discharged	

*\*surcharges may apply (see below) (Note – new provisions for informing Planning Services about projects including before and after drawings, prior to release of funds, where agreed at November 2015 Planning Committee. Failure to provide drawings and cost details will delay a project or might mean projects not receiving funds as anticipated.)*

- 1.22 Retail Price Index (RPI) costs are also added to the planning obligation requirement figure for urban greenspace, *trees, affordable housing*, play provision and recycle bins or other works expressed in the s106. This covers cost increases including for materials and inflation. The figure for calculating the RPI cost is taken as the difference between the date of signing the s106 agreement contract to the date when payment is first made subsequent to development commencement or when triggers set out in the legal agreement have been met. Costs can also be minimised if payment is made quickly. Additional costs can occur if payment is not made on time, as RPI will also be charged up to the date of case review, which can sometimes be years after development has been completed or if ownership has changed. RPI is also charged on outstanding balances should payment instalments be agreed.
- 1.23 It is the responsibility of the land owner to ensure payment of s106 occurs on time and in accordance with the legal agreement. Surcharges can be applied to late payment of s106 or non-compliance, to be paid to Planning Services directly. These charges are expected to cover costs of reviewing unpaid planning contributions including officer time, site visits, research on ownership, confirming commencement dates or triggers, review of planning consents covering



the land or property where s106 is due, or in assisting legal services in taking necessary court action to resolve unpaid contributions or evidence needed for court hearings.

- 1.24 Surcharges to be applied, also in bringing these into line with the Community Infrastructure Levy proposals, are as follows:
- £200 should the applicant not inform Planning Services within 14 working days of an anticipated development start date or if the triggers identified in the s106 have been met; and
  - £200 following expiry of the due payment date or instalment payment dates not being complied with (providing the triggers outlined in the s106 agreement have been implemented).
- 1.25 These surcharges cannot be applied retrospectively to existing s106 agreements. All the above costs will be added to the local land charge as appropriate should non-payment occur.
- 1.26 The Council can also issue letters confirming discharge of s106's. There is a charge of £50 - £250 to cover costs of this, payable prior to a letter being issued, depending on the scale of the planning application or extent of the detail involved in the s106. This may be useful in confirming the discharge of planning obligations particularly in selling on property or land. Fees are calculated on the basis of working days involved in checking details based on half day (£50) to up to 2 days (£250).
- 1.27 The above charges will be retained by Planning Services to offset costs, be reviewed annually and updated as needed. Surcharges made will also be monitored and reported to Planning Committee.
- 1.28 Every effort is made to recoup planning contributions as quickly as possible. Legal proceedings (through the courts if necessary) can be used to compel owners to make payments should there be an unwillingness to do so. This can be expensive and the process can be protracted. The Council is also able to recoup funds as a land charge should there be a change in ownership of land or property. Successors in title can therefore be liable for s106 should this not be paid by the original owner of land or property the subject of a planning contribution agreement. However, there may be circumstances where ownerships fragment to an extent that it becomes impractical to enforce, such as land ownership changing to numerous individual householders or where the costs of court action (combined with officer time) far exceeds the amount outstanding.
- 1.29 In providing a steer for officers in progressing future s106's it is suggested that the following cases no longer be pursued in circumstances where ownership has transferred from the original land owner/developer or house builder:
- ownership has fragmented by more than around 10 new units or by more than 3 consecutive occasions for individual land parcels;
  - that the costs of recouping the outstanding s106 payment (through court action and officer time) exceed the potential cost benefit of open space and/or play provision by a ratio of around 2:1; and
  - in circumstances where there is limited prospect of s106 being paid, should this be indicated by local economic/social background of residents who become liable for any outstanding planning contribution.

- 1.30 It may also seem unfair for the Council to recoup in this way but land searches (undertaken on sale transactions) should make new owners aware of this. Taking this approach may not be popular with those people who inherit the s106 liability but it may enable price negotiation. However, from practical experience, it is often the case that new owners are either unaware of a respective land charge or they choose to ignore it. In terms of a way forward it is reasonable to consider progressing cases where there is a good prospect of the planning contributions being repaid and from the original signatory to the s106 agreement. To become more cost effective the Planning Service (and allied legal and finance services) should focus its efforts accordingly.
- 1.31 Sometimes, ownership transfers without the s106 planning obligation being discharged. This has occurred where land owners have become insolvent. New prospective owners should be aware of these liabilities should a local land search be carried out because liabilities are concurrent with the land. The Council will recoup these liabilities wherever possible even if the prospective new owner is not aware of these at the time of purchase or if the ownership has fragmented from one to numerous ownerships.
- 1.32 In circumstances where ownership has changed and s106 liabilities have not been discharged the Council will take the appropriate action, including legal proceedings through the courts if necessary. As a local land charge is registered any subsequent purchaser might want to raise this in negotiations about property price. However, it is unlikely that the Council would receive any S106 funds that remain outstanding unless brought to the attention of the new occupiers through a local search, with payment being volunteered or via a subsequent letter from Planning Services requesting payment. The Council has 12 years to seek payment through court action if necessary, from the due payment date, as the debt effectively changes with transfer of ownership.
- 1.33 The Council's Legal Services Team is responsible for debt recovery and the discharge of these liabilities after the demand notice is issued by Planning Services. This also involves confirmation of receipts and notification of payment to Planning Services and Finance.

C. Guidance for applicants and land owners

- 1.34 *Some historic s106 legal agreements stem from previous adopted Local Plan (2000) Policy NE6 urban greenspace standards either to be provided on-site or within the vicinity of the development (usually taken as being within 1,000 metres) should on-site provision not be physically feasible. There are a significant number of successful projects across the city where this has occurred or were other funds have been used in combination with s106 planning obligations.*
- 1.35 *These provisions have been replaced by Local Plan Policy 42 (February 2018) that seeks to protect public open spaces unless surplus to requirements and deficits can be addressed but the walking distance limits still apply (see paragraph 1.11). These requirements are included as part of the s106 Planning Obligation agreement between the Council and the land owner. As s106 planning obligations are taken into account as part of development feasibility owners should be aware of their obligations on signing agreements. Retail Price Index adjustments are also referred to in the agreement. Calculations for RPI is taken from the date of the s106 planning obligation being signed (the effective date of planning permission) and when any trigger set out in the agreement (usually on date of commencement of development) has occurred although it is extended to include non-payment periods. This adjustment takes into account changes in the value of development and costs over time.*

- 1.36 Full payment of s106 planning obligation funding on commencement of development is the Council's preferred route. If large scale development proposals (over 20 dwellings) then phased payments will be included as part of the legal agreement, based on development feasibility and the speed at which returns can be made. Agreement on phased payments should be reached as part of negotiations on planning applications prior to recommendations being made by the case officer. Normally, phased payments should be made on the basis of 25%, 50% and then 100% occupancy. RPI is charged on outstanding balances. On occasion, the Council has authority to amend phased payments but this would require a variation to the original agreement.
- 1.37 There may also be circumstances where owners get into difficulties in making payments such as through financial hardship or potential insolvency. In such circumstances a written request for delayed payment or payment by instalments should be made to the Council but good evidence supplied by the applicant/owner is required to support this request. This could be in the form of a company records check although the Council can make these checks for you for a nominal fee. You could also consider requesting an Experian Report to confirm credit rating. An Experian Report gives details about current liabilities, defaults etc. Should an independent expert be required to demonstrate that payment is not able to be made, then the owner will be liable for the costs of this.
- 1.38 The Council will review each case should payment difficulties be encountered. There are a potential number of options open to ensure payment occurs but agreement is required in the form of pro-forma (attached in **appendix 1**) to confirm arrangements and on recognition that RPI will be charged on any outstanding balances. The Council can offer:
- payment deferral but only by up to 6 months in most cases;
  - instalments, subject to agreement about repayments, but these will normally be on a monthly basis and these must be made through a standing order or direct debit payment, to be confirmed on the pro-forma; or
  - extending the period for repayment by up to 2 years in the most extreme circumstances.
- 1.39 The Council's BACS details are as follows:
- |           |   |
|-----------|---|
| Bank      | Nat West  |
| Sort Code | 56-00-06  |
| A/c No    | 03889149  |
| A/c Name  | Kingston upon Hull City Council Main Income Account |
- 1.40 Any default on agreed postponement or instalments will result in the Council seeking payment of the outstanding balance in full and/or issue proceedings to seek payment or to at least secure the Council's position as a creditor of the Company/persons liable. A County Court Judgement (CCJ) can be sought by way of a charge registered against the property. This is enforceable through instructions to a Bailiff to seize goods to the value of the debt.
- 1.41 Failure to make S106 contributions in accordance with the prescribed legal agreement would entail a breach of contract. As such the Council will make a charge on the land equivalent to the outstanding S106 payment to which funding has been allocated in addition to any Council surcharges. This means that any potential future purchasers of land or property will be notified of these outstanding charges payable to the Council.

- 1.42 Early payment of S106 contributions will enable speedy and efficient use of public resources in allocating funds to local open/play space projects via Area Committees. The owner of the land/property can also claim a refund should allocated funds not be spent within the timescales set out in the agreement. Also, the Council is statutorily barred from seeking payment through taking action in the courts if no claim is made for S106 funding within 12 years from the due date of payment of the s106.
- 1.43 The owner of the land/property is normally liable for s106 when eligible development occurs. If s106 has not been paid to the Council then liability can be transferred to the new land/property owner. A local search carried out by a competent person should assist whether S106 funds remain outstanding.
- 1.44 On transfer of liability of s106 the Council will seek payment provided ownership can be confirmed within a reasonable timescale, normally within 6 months. It is the responsibility of the new owner (via a new clause in the s106 legal agreement) to inform the Council about an ownership change should an outstanding charge be revealed in a local search. The resource required to track current ownership and the extent of liability needs to be considered in determining whether action is appropriate to recover the charge. In cases where ownership (and liability) has transferred instalments may be offered (or one-off payments close to the outstanding debt) but this would require written confirmation and agreement of monthly payments via a standing order. Any default in these terms would mean payment being required in full and action through the courts if necessary. RPI is also charged on outstanding balances.
- 1.45 Repayment of s106 funding will occur (including any accrued interest) should the owner make a claim to the Council in line with the requirements set out in the legal agreement. Repayment periods are usually set at either 5 or 10 years taken from the date payment is made or on the date of final instalment should these be agreed. Although commitment towards expenditure is taken from the day of the Area Committee minute (that may well involve pooling of funds from numerous planning consents) projects need to be implemented having regard to these time frames.
- 1.46 For any disputes over s106 Planning Committee are final arbiters although the City Planning Manager has delegated authority to accept or refuse offers of not less than 50% of the total value where supported by financial details.

D. Area Committee guidance

- 1.47 Area Committees have delegated authority to implement new or improvements to local urban greenspace and play space arising from s106 funding. Expenditure has to be related to the development to which the s106 has been applied and works must therefore be carried out in accordance with the requirements set out in the s106 Legal Agreement. Usually, this means that new or improvements to existing urban greenspace/play provision must be made in the vicinity of the development to which the s106 relates and within the timescales specified (normally either 5 or 10 years, taken from the day funds are received or last instalment made).
- 1.48 Normal practice is for the case officer dealing with the planning application to consider and agree on-site or off-site improvements to urban greenspace/play provision, to be endorsed by Planning Committee. *It is preferable for off-site provision to be specified in the s106 legal agreement including the location and nature of new or improvement to urban greenspace and*

should be provided via Area Committee project procurement and management. Area Team Co-ordinators should seek out the advice of the case officer in Development Management or the Planning Obligations Officer (Planning Services) where projects are put forward to address such requirements, prior to Area Committee endorsement of projects.

- 1.49 Area Team Officers must clarify the nature of any projects sought in meeting the requirements specified in the legal agreement. *There are pro-forma arrangements about Area Team Officers informing Planning Services about projects including before and after drawings*, prior to release of funds. Failure to provide drawings and cost details will delay a project or might mean projects not receiving funds as anticipated. In using s106 funds it must be demonstrated (as part of the bid for s106) how the residents of new housing derived from the planning approval and related s106 legal agreement, will benefit from the works/project indicated. **Appendix 2** provides the range of details to be supplied to Planning Services. Proposals to be implemented by Area Committees through use of s106 that do not accord with the s106 Legal Agreement, and that are not deemed acceptable, will be referred to Planning Committee for further consideration and action.
- 1.50 In general terms the use of s106 funds to be used by Area Committee's, to address publicly accessible urban greenspace and play space deficits (under the general provisions as set out in paragraph 1.4 above) standards in the Local Plan, should amount to the following:
- capital funded works for new, or remodelling of existing urban greenspace of benefit to local people, including play facilities, fencing or railings to enclose public urban greenspace, seating and bins, outdoor lighting, sports pitches, multi-use games areas or courts or gym equipment, where the intention is for these facilities to be made available for public use and provision is made within the public realm or public urban greenspace; and
  - new provision or improvements should be accessible to local people and normally be within the vicinity of the development i.e. within a maximum of 1,000 metres of the development the subject of the s106, measured from the centre of the development site to the centre of the proposed area for new or improved facilities.
- 1.51 Ideally, any improvement to publicly accessible urban greenspace sought should address identifiable deficits taking account of what there is nearby or the character of the current or planned nature of occupiers. New or improved provision should also be accessible to local people. Should play-equipped areas be proposed in meeting the obligation, then provision should be accessible to local children without them having to cross any major road or other physical barrier.
- 1.52 S106 funds can be used as part of the costs of project procurement including professional fees, usually 10-15% of the value of any project. Funds for these works should be specified as part of project submissions unless these are otherwise detailed in the planning agreement.
- 1.53 The following are not normally regarded as being able to be funded through s106 (unless otherwise agreed as part of a commuted sum, detailed in paragraph 1.19 above) in addressing local urban greenspace deficiencies, including:
- maintenance costs such as for grass cutting (including along highway verges) or other form of cutting back, litter picking or drain clearing;

- highway or footpath work including repairs not associated with the open space improvement or other street scene equipment.
- 1.54 Area Committee's have delegated authority in helping determine where s106 money should be spent *including for affordable housing and tree planting in addressing Local Plan provisions*. Their priorities should be raised through the planning application process as and when urban greenspace provision is involved. This must be in accordance with statutory provisions and with the requirements of the supplementary planning guidance which deals with urban greenspace provision in new housing development. Discussion must be had with Planning, Parks and Area Coordinators to help determine the most appropriate projects and ensure that s106 requirements are addressed. This process also gives the opportunity for Area Committee to consider combining funds from different agreements (or provision across Ward or Area Committee boundaries) to achieve more effective spending on projects in addressing local deficits, although scope for pooling of s106 is to be curtailed by the introduction of CIL regulations.
- 1.55 Maintenance costs should be borne in mind when procuring urban greenspace or children's play space. Commuted payments can be sought for new provision.
- 1.56 From time to time Area Teams are informed about available funds to spend on urban greenspace related projects arising from the implementation of planning permission or the triggers outlined in the s106 being achieved. Notification of available funds is derived from reconciliation of funds with finance which takes place on a quarterly basis. S106 Area Monitoring Forms are supplied (half yearly basis) to Area Teams that explain, in three simple tables:
- funds received by the Council, derived from the s106's triggers (requested on commencement of development or more usually on some later date if a large scale proposal);
  - funds allocated to projects by Area Committee decision that conform with the S106 requirements; and
  - planning application approvals where s106 is anticipated but funds have not yet been triggered or require further investigation in checking delivery.
- 1.57 Received funds and funds allocated to projects should not be taken cumulatively in estimating expenditure. 'Received funds' amounts are transferred to 'funds allocated' once Area Committee confirms projects are to be implemented, by reference to a Minute. Area Teams should inform Planning Services of progress in relation to project implementation to ensure the tables are kept up-to-date.
- 1.58 The process for transferring s106 funds for project delivery is as follows:
1. Planning application involving urban greenspace/play provision establishes scale and nature of provision to be provided off-site, to be specified in the s106 legal agreement.
  2. Development starts and S106 triggers met on – site.
  3. Funds requested from owner or phased payments (if any) agreed.
  4. Payment made to the Council to general s106 funding pot.

5. Area Team devise project specification including potential maintenance costs and project lead identified.
6. Area Team agree urban greenspace/children's play space projects with Planning Services in confirming s106 legal agreement specifics being addressed along with confirming available funding. Before and after drawings are needed along with detailed costs of works. It should also be demonstrated (as part of the bid for s106) how the residents of new housing derived from the planning approval and related s106 legal agreement, will benefit from the works/project indicated.
7. Area Committee decide provision with minute submitted to Planning/Finance.
8. Funds transferred on application to Area Teams to specific cost centres by finance subject to above. Funds will not be released without these being agreed and without invoices for works being produced.
9. Project delivered.
10. Project monitored by Area Team project lead in confirming specifications are met.
11. Project lead requests adoption by the Council, if required, to Parks Services.
12. Area Teams confirm with Planning that project has been delivered in accordance with specification or advises action being taken to resolve issues.
13. Planning Services writes to owner stating use of s106 and confirmation that requirements set out in the s106 agreement, have been discharged

1.59 Projects to be delivered through a third party should be carried out using the Council's procurement process. This will ensure due diligence and value for money. Liabilities should also be made clear on default of services. Details of projects including cost estimates should be provided to Planning Services as part of the procurement process and preferably at an early stage of project development when specifications are being drafted. Doing so could minimise timescales and speedy confirmation of projects in meeting s106 planning obligation requirements.



**S106 Planning Obligations - Repayment agreement**

This agreement relates to (insert address accordingly) and covers terms relating to the repayment of outstanding planning obligations totalling £ . I agree to the following terms (indicate/delete as necessary):

- payment deferral but only by up to 6 months between (insert dates accordingly);
- monthly instalments through a standing order or direct debit payment of £ (insert amount) from Bank (supply details); and/or
- extending the period for repayment by up to 2 years.

The justification for this is that:

- (Please provide a brief description below and submit details including company records check or Experian report or accounts in explaining why the Council should defer or agree to instalments)

I understand that outstanding balances will be charged Retail Price Index changes and final settlement figure will include this calculation.

I agree to make these payments by standing order or direct debit to the Council's Bank (details below) and confirm first payment to be made by (insert date) and subsequent dates (insert dates).

I agree to these terms and confirm ownership of the land/property in question and await the Council's confirmation usually within 1 month of submission of this agreement.

I also understand that on default these terms will be waived and I will be liable for the outstanding balance in full and final settlement.

Land owner or person liable to make payment (print name and address and sign accordingly)

Date (insert date)

Council bank details:

Bank Nat West  
Sort Code 56-00-06  
A/c No 03889149  
A/c Name Kingston upon Hull City Council Main Income Account



**Section 106 Planning Obligations Pro-Forma (to be used by Area Teams)**

This pro-forma is to facilitate Area Committee’s (or others acting on their behalf) submitting requests for S106 funding and to enable Planning Services confirmation that proposed expenditure complies with the criteria set out in the Planning Obligations Protocol. The intention is to speed progress of delivering s106 funded projects and provide transparency in approach.

Parts A – C could be used in supporting Area Committee agreement about a project. Part D should be completed within 1 month of the decision and copies sent to Planning Obligations Officer. Part E is a report on project progress and copies should also be sent to the Planning Obligations Officer.

**PART A – General Planning Obligation/CIL funded project details**

General details	Insert details as appropriate
Project description	
Project site location/development	
Cost breakdown including fees	
S106 contributions sought including details of relevant planning consent/legal agreement (s)	
Extent the project is reliant upon other sources of funding and what these are	
Specify how the residents of new housing derived from the planning approval and related s106 legal agreement benefit from the works/project indicated	
Extent the project conforms with the criteria set out in the agreed protocol	
Compliance with local and national planning policy and guidance	
Refer to any robust evidence to support the request for funds including if there is existing nearby provision or local deficits or if some provision is met on-	

site	
Suggest any evidence of existing and additional demands and the extent to which existing infrastructure can meet those demands	

PART B – Project details

Project Lead Officer/Person	
Project Summary (no more than 150 words)	
Infrastructure Provider/Service/Body making the bid	
Who will the project be delivered by?	
Are other funds available (or could be made available) to fund the project and if so what are these? Are other funds being sought to realise the project and if so what are these?	
Has a project or business plan been produced for this scheme (attach copy if available)	
If your organisation/body is not the body with statutory responsibility for the works proposed have you sought agreement from the relevant statutory body? Provide details of what has occurred or is anticipated.	
What problems are being resolved or addressed in delivering the project?	
Explain the community consultation that has occurred in devising the project	
Scope and progress in accessing other local funds from across ward boundaries?	
What are the consequences of not carrying out the project?	
Briefly describe how the scheme will help support the ongoing development of the city, taking account of where the project has or is proposed to take place: it may help to set out linkages to the Infrastructure Delivery Plan and what other funding sources have been identified/explored. If CIL funding is not available what is the likelihood of funding from other sources within the next 5/10 years?	

PART C: Project delivery and timeframe

Project delivery milestones in outline including anticipated completion date	
If scheme to be undertaken in next financial year set out the outline Q1 – Q4 project plan	
If it's necessary to undertake project development work to address technical issues and establish costings then it may be appropriate to seek project development funds through a two-stage bid with funds allocated over more than one year stage 1: feasibility/evaluation stage 2: implementation Provide details accordingly	
Please specify extent and responsibility for on-going maintenance costs	
What outcomes are anticipated at each milestone	
Explain the risk management details including how these can be addressed and/or mitigated along with any succession planning	

PART D: Area Committee decision

Area Committee details	Please provide details having completed the above first
Date of decision	
Minute number	
Minute details	
Issues raised during decision making	

PART E: Project progress

Progress report detail	Please supply information as needed (normally on quarter year basis)
When did the project start and explain progress in relation to anticipated milestones	
Explain any challenges/difficulties encountered in delivering the project	
When was the project completed	
What underspend is there and how will this be used	
Please provide and photos/illustrations of the completed project	