

What is a Section 106 planning obligation?

Planning obligations are legal contracts made under section 106 of the 1990 Town and Country Planning Act. They are generally entered into by agreement between councils and landowners, although a landowner may also offer a unilateral, "one-sided", s106 obligation.

Planning obligations are linked to a planning application decision, made either by the local planning authority or by the Planning Inspectorate in the case of an appeal against a refusal of planning permission. The planning obligation relates to the land within the planning application, rather than the person or organisation that develops the land. It is therefore recorded as a land charge, and the obligations under it run with the land ownership until they are fully complied with, often indefinitely.

Planning Obligations are used for three purposes to:

- **prescribe** the nature of development to comply with policy (for example, requiring a given portion of housing to be affordable),
- **compensate** for loss or damage created by a development (for example, loss of open space), or
- **mitigate** a development's impact (for example, through contributions to mitigate against harm to the Special Protection Area).

An example, if land at Monks House playing field was to be sold for a housing development, any 106 agreement could stipulate what monies could be used for new leisure facilities, as a replacement for the loss of the playing field.

What is a CIL –Community Infrastructure Levy.

The Community Infrastructure Levy is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010. Development may be liable for a charge under the Community Infrastructure Levy (CIL), if your local planning authority has chosen to set a charge in its area. These CIL funds can be collected together to fund infrastructure to support development in the area.

Once planning permission is granted, collecting authorities will issue applicants with a levy liability notice. Applicants should then assume liability to pay the levy charge prior to commencement of development by sending a completed assumption of liability form ('Form 1: Assumption of Liability') to the collecting authority.

A liable party who subsequently wishes to withdraw or transfer their liability must complete either 'Form 3: Withdrawal of Assumption of Liability' or 'Form 4: Transfer of Liability' and send this to the collecting authority.

The levy charge becomes due when development commences. A commencement notice must be issued to the collecting authority (Form 6: Commencement Notice')

and all owners of the relevant land to notify them of the intended commencement date of the development. The collecting authority will then send a Demand Notice to the person or persons who have assumed liability.

These reforms ensure that planning obligations and the CIL operate in a complementary way.

The new regulations limit the use of planning obligations in three ways.

1. planning obligations entered into after from 6 April 2010 must meet three new legal tests. For developments that are capable of being charged the CIL, planning obligations must 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

These are also set out as policy tests in paragraph 204 of the National Planning Policy Framework (the NPPF).

2. to ensure that the use of planning obligations and the CIL does not overlap, planning obligations cannot be used to fund infrastructure that the Council has included in its CIL infrastructure funding list (known as its 123 list). Developers cannot therefore be asked to pay twice for the same item of infrastructure.

3. from 6 April 2015, or sooner if a council introduces the CIL in their area before this date, councils may not use planning obligations as a tariff. This is because from that date, councils cannot pool more than five planning obligation contributions (counted back from April 2010) for infrastructure that is capable of being funded by the CIL.

Planning obligations will continue to play an important role in making individual developments acceptable through site-specific infrastructure such as highways improvements. Affordable housing will also continue to be delivered through planning obligations rather than the CIL. Councils can also continue to pool contributions for measures that cannot be funded through the CIL.

In theory a CIL could be used to collect monies from development to contribute towards something like a leisure facility.

It should be noted that there would be a rigorous process to go through to adopt a CIL and none were in place within SHDC at this time.