

S106 FREQUENTLY ASKED QUESTIONS

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What are Section 106 (s106) agreements?

A Section 106 Agreement is a type of planning obligation authorised by Section 106 of the Town and Country Planning Act 1990.

A Section 106 Agreement is a legal agreement in the form of a deed between the Local Planning Authority (LPA) and the owner of land, who is normally the applicant/developer.

What are planning obligations used for?

Planning Obligations are usually completed following a resolution to grant planning permission (normally major developments) to mitigate the impact of new developments.

How is a S106 Negotiated?

The negotiation of a S106 legal agreement is led by an allocated Planning Officer in discussion with the Developer and other colleagues both within and outside the Council.

LPA's negotiate two types of planning obligations to facilitate a proposed development:

- **in-kind contributions** - these are non-monetary contributions, for example, affordable housing, apprenticeships, and local labour.
- **monetary contributions** - these are financial contributions which fund interventions necessary to mitigate the impact of the development, for example, environmental improvements in the vicinity of the site, tree planting, new child play facilities or estate enhancements.

How do I make S106 payments to the Council?

It is the applicant's responsibility to make payments when they are due and to ensure that they are on time.

Payment is accepted by BACS/internet transfer to account 00000000 Sort Code 57-00-99. Important: Please quote the **invoice reference** when paying.

Alternatively, you may pay by cheque payable to "London Borough of Lambeth" sent to Lambeth S106 Team, 2nd Floor Phoenix House, 10 Wandsworth Road, London SW8 2LL.

When are S106 monies paid?

S106 monies are usually paid in instalments at key stages during the construction of a development. The stages at which payments are due are known as 'Trigger Points'. For example S106 contributions could be payable by instalments with 50% paid upon commencement of development and the remaining 50% paid upon completion of a development. As developers have three years to commence a development once planning permission is granted, it can therefore take a number of years before S106 contributions are received by the Council from the time permission was originally granted. Where a development does not commence at all, the S106 will most likely expire.

Does S106 money earn interest?

Whilst schemes are waiting to be programmed and delivered, the Council is legally obliged to hold the S106 contributions it has received in an interest bearing account in accordance with the specifications in the agreement.

The accruing of interest is necessary to ensure that the contribution does not lose value from the date it is paid; and as most accruing sums are restricted through a S106 agreement, the interest will accrue against the specific contribution. It is then used as part of the budget to deliver a specific improvement.

How are planning contributions enforced?

- Planning contributions are enforceable by the Local Planning Authority. Under the Act, the LPA has two avenues for enforcement:
- (a) by applying for an injunction from the courts; or
(b) by entering the subject land, carrying out the work and recovering any costs incurred in doing so.

Can planning contributions be discharged or varied?

Yes, by a Deed of Variation to the original legal agreement. Planning contributions made under the Act may be modified or discharged at any time by a deed between the LPA and all parties to the agreement; or

Where an application is made to modify or discharge a planning contribution made under the Act, the LPA may decide to either:

- (a) continue the planning contribution without modification
- (b) discharge it, if it no longer serves a useful purpose; or
- (c) if it continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications applied for, then allow the modifications, provided it does not place any burden on a third party

Where the LPA decides not to allow a modification or change, and the agreement has been in existence for 5 years or more the applicant may appeal the determination to the Secretary of State, pursuant to s106B.

There is also a special procedure for varying affordable housing requirements under Section 106 BA of the act.

If a deed of variation is requested, a planning officer will need to authorise the variation, determining whether or not the change is justified. In certain cases, the variation may need to be authorised by the Planning Applications Committee.

A planning officer will then instruct the Council's legal services team to draft the variation. Once the deed of variation is agreed it will be signed by all relevant parties.

Can I view and obtain copies of the S106 agreement?

Yes, you can search for and view electronic copies of completed planning obligations via our free on-line live planning interactive service which has been designed to be comprehensive and easy to use. To search for planning obligations via our planning interactive service click on following link:

<https://planning.lambeth.gov.uk/online-applications/search.do?action=advanced&searchType=LicencingApplication>

You can also email S106-CIL@lambeth.gov.uk with the planning reference number for the copy of the S106 agreement.

Can I find out whether planning obligations have been completed on a site and whether the associated S106 contributions or provision has been received or remains outstanding?

You can direct your S106 enquiries to S106-CIL@lambeth.gov.uk.

Who is responsible for S106 obligations?

Planning obligations contained in S106 agreements run with the land to which they relate. Because planning obligations run with the land, any outstanding obligations will be transferred with the land if it is sold. Planning obligations can therefore effect the value of land. The existence of a planning obligation is registered as a 'Local Land Charge' on the Local Land Charges Register indefinitely and will be revealed in searches submitted on behalf of a potential purchaser of an individual unit or entire development site. If they have been discharged in their entirety then the land owner can apply to have them taken off.

Any outstanding planning obligations are legally enforceable against the owner. This applies to successors in title, of the land to which the obligation relates.

Planning obligations will not normally be enforceable against individual units within a large development site. This is not to say that section 106 obligations will not impact upon your property. Where "car free" obligations apply, for example, you will not be eligible to apply for a permit for on-street parking. The Council will enforce against non-payment of a S106 contribution if a developer is found to have reached a 'trigger point' without paying the Council within the required timescales as set out in the agreement.



Are Section 106 obligations subject to Indexation?

Yes, if indexation is required by the S106 agreement then the section 106 charges are subject to indexation.

The Council will use whatever figure is published in the BCIS All-in Tender Price Index.

How is S106 indexation calculated?

Indexation is calculated using the formula below:

Each S106 Covenant sum x (Indexation rate at the date of the demand notice)
divided by (Indexation rate on the date of the Legal Agreement being signed)

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