

Section 106 contributions

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A brief history of Section 106

- Section 106 is named after the relevant Section of the Town and Country Planning Act 1990 which allows local authorities to conclude legal agreements with developers as part of the planning process to mitigate the effects of a development
- It follows on from similar provisions in earlier legislation
- Highways and education are the main beneficiaries in ECC from S106. Districts also seek S106 for affordable housing, open space etc

Current position

- Criticisms of S106 by developers and local authorities eg – too time consuming ,mainly fell on residential sites in South and East, ‘free rider’ problem led to search for alternatives, eg tariffs, PGS,OPC
- Finally Governments decided to bring in Community Infrastructure Levy (CIL) .s106 will be reduced but will not disappear
- As part of CIL introduction restrictions on S106 brought in
- Since April 2010 new contributions must by law not guidance be now ‘fair, reasonable and directly related to the site which limits the use of S106 away from the site

Current position 2

From April 2014 a maximum of five contributions for a single piece of infrastructure backdated to April 2010 will be in force.

ECC Highways holding approx £22m at 31/3/12

Annual Highway receipts approx £3-4 m

Life time of contribution mainly 5 years , occasionally 10 or 15 years

Returns since March 2006 approx £1m of which time expiry approx £400k

Reasons for S106 returns

- Job done – small residual to return
- Job not technically feasible
- Not sufficient S106 money to do job – long time gap between S106 agreed and job being done
- Lack of top up funds – Panels
- Job done but booked to other budgets and impossible to reverse afterwards
- 5 Time expiry

Renegotiating S106

- It is possible to **renegotiate** S106 agreements with developers to extend timescale and/or vary the use of contributions
- Any renegotiation of an S106 agreement concluded before April 2010 would be subject to these three ‘tests’ so is likely to be narrower in scope not wider.
- **But** no requirement on developer to agree variation – can ask for return of contribution with interest

Why should Highways Panels be interested in Section 106?

- Local accountability. LPA has key role in securing contributions
- Limited amounts of capital for Highways over the next few years.- need to ensure that all monies spent as effectively as possible
- Where S106 schemes lack sufficient funds to go ahead Panels could decide to put some of their own funds into those schemes If not, we may be looking at greater returns of S106

How CIL fits in

- District will be the Charging Authority (CA) for CIL. But can contract out administration to another authority etc
- To have a CIL, CA will have to establish an Infrastructure Delivery Schedule showing a gap between cost of infrastructure required by development and the total of all other likely sources of funding.
- A viability assessment all rates /boundaries to be justified by viability
- 2 rounds of consultation on draft CIL Charging Schedule
- Public inquiry

CIL and S106

- CA could start on CIL if its Local Plan is found 'sound' after Public Inquiry.
- Can also have Local Plan and CIL Schedule examined in a single PI but dangers in that.
- Reg123 list -what to be funded by S106 and what by CIL – can be changed by CA relatively quickly and easily
- Instalments policy determined by CA as above.

CIL- who's in charge?

- The Charging Authority is ultimately responsible but
- It will have to find a way to allocate the revenues from CIL between competing infrastructure uses and providers
- In commenting on Chelmsford and Colchester's draft Charging Schedules ECC has proposed a two tier structure – a decision making body involving senior Members and officers and an advisory group of officers which makes recommendations to the decision making body

Contact details

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