Conwy County Borough Council

Guidance Note:

Planning Obligations & Viability

May 2023

Mae'r ddogfen hon ar gael yn Gymraeg hefyd.

CONWY
CYNGOR BWRDEISTREF SIROL
COUNTY BOROUGH COUNCIL

Sir Conwy, yr amgylchedd iawn i fyw, gweithio a darganfod

Conwy County, the right environment to live, work and discover

Contents

Aim of this Document

This document is intended to provide additional guidance for applicants, developers and other interested parties about planning obligations, financial viability and the S106 legal agreement process. It brings together relevant sections from the adopted Conwy Local Development Plan (LDP), Supplementary Planning Guidance (SPG) as well as national policy and legislation into a single place. The aim is to help applicants and developers understand their responsibilities in terms of the requirements of planning policy and guidance, to ensure they take account of planning obligations and development viability in an appropriate way when formulating development proposals.

Document Status

This document is not adopted as Supplementary Planning Guidance (SPG), therefore does not carry weight in itself. However the substance of this Guidance Note is sourced directly from the adopted LDP and SPGs, so the content of this note should be viewed as a material consideration in determining planning applications, in the same way as the documents from which the extracts are taken. This document makes it clear which parts of this document are direct extracts from the LDP, SPG or National policy or legislation, and which parts offer additional advice or guidance. Weight should be attributed accordingly by the decision maker.

Extracts from adopted local policy, SPGs, national planning policy, guidance and legislation are shown in a grey box.

This document, and other information relating to planning obligations, S106 and viability can be found on the council's website:

www.conwy.gov.uk/planningobligations

For questions specifically relating to viability and S106 agreements, please contact:

S106@conwy.gov.uk

Introduction to Planning Obligations

Some developments have potential to cause harm to their surroundings, or increase pressure on physical, environmental and social infrastructure in communities. To avoid or reduce these negative impacts and make the development more acceptable, Local Planning Authorities (LPAs) can ask the applicant or developer to provide facilities (like public open space) or make improvements (such as to make a road junction safer). In some circumstances, applicants can be asked to pay money instead, for the Council to use to make improvements or provide facilities.

Some of these matters can be controlled by Planning Conditions placed on a planning permission, and such Conditions should be used in the first instance where possible. Some matters however cannot be dealt with by Condition, such as payment of a financial contribution, and in this case will need to be controlled by a legal agreement, known as a 'Planning Obligation'.

Welsh Government Circular 016/2014: The use of Planning Conditions for Development Management

4.21 Local planning authorities should seek to overcome planning objections, where appropriate, or secure mitigation by condition rather than by a planning obligation. Legal agreements can take considerable time to draw up and it is important to avoid burdening applicants with unnecessary costs and delay. Also, the imposition of restrictions through a planning obligation limits the ability of developers to seek to have restrictions varied or removed by an application or appeal. Further, conditions can be enforced using a breach of condition notice and this is likely to offer a simpler and less costly way to remedy a breach than recourse to the Courts for breach of an agreement. Matters required by condition should not be duplicated in a planning obligation.

4.22 There are however some matters which are more appropriately required through a planning obligation and should not be required in a condition, for example, commitments on behalf of the developer involving transfers of land or payments to be made to the local planning authority. Further guidance on the use of Planning Obligations is provided in Welsh Office Circular 13/9718 and guidance on the use of the Community Infrastructure Levy is provided by the Department of Communities and Local Government.

Planning permission can't be granted until the applicant has entered into a Planning Obligation, by signing a legal document or deed. This can be in the form of either a Deed of Agreement or a Unilateral Undertaking (UU) under Section 106 of the Town & Country Planning Act 1990 (TCPA). For the purpose of this guidance note and unless stated otherwise, 'S106 agreement' refers to the deed used to enter into a Planning Obligation by way of either a Deed of Agreement or UU.

The process from submission of a planning application, to entering into a Planning Obligation and payment of financial contributions and/or completing of on-site works, is summarised in the flow chart at Appendix 1.

CIL Regulation 122 part 2 sets out three tests which planning obligations must meet in order to be lawful:

CIL Regulation 122
(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is— (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.

For an obligation to meet part (2)(a) of CIL Regulation 122 it must be necessary to make the development acceptable. Conversely without the planning obligation, the development would be unacceptable in planning terms. Consequently the planning application should generally be refused if the applicant does not enter into a planning obligation.

Obligations must also be *directly related to the development* to meet CIL Regulation (2)(b). For example, an Obligation could not be sought from a development in Llandudno towards open space improvements in Kinmel Bay.

In order to meet part (2)(c), Obligations must be proportionate to the development proposed. For example, it would not be reasonable to request an applicant re-configure a major road junction in order to accommodate a proposal for a single dwelling. It is also important to note the following point:

Welsh Office Circular 13/97: Planning Obligations
B12 Developers should not be expected to pay for facilities which are needed solely in order to resolve existing deficiencies nor should attempts be made to extract excessive contributions to infrastructure costs from developers

Planning obligations will either be financial in nature, such as paying a contribution towards open space; or non-monetary, e.g. providing affordable housing on site. The obligations broadly fall into two categories; either way the obligation must meet the requirements of CIL regulation 122.

1 To meet known requirements in accordance with adopted LDP policies and SPGs

Those falling into the first category are based on specific policies and guidance which identify requirements for particular developments to provide social,

environmental and/or physical infrastructure to support the residents and/or users of a development. This is particularly relevant for residential developments, with requirements for developers to provide affordable housing, open space amongst other things, in accordance with LDP policies DP/4, HOU/2, CFS/11 and the corresponding SPGs (LDP4: Planning Obligations and LDP13: Affordable Housing). These obligations can generally be worked out using the standard methodology contained in policy or SPG and a Planning Obligations calculator (Microsoft Excel format) is available to download.

In addition to planning obligation requirements based on LDP policies, some areas benefit from a Place Plan. Where the Place Plans are adopted as SPG, they may include infrastructure requirements that would result in planning obligation requirements from developments. Further information on Place Plans is available from the Council's Place Plan website.

LDP Policy DP/4: DEVELOPMENT CRITERIA

1. Development proposals, where appropriate and in accordance with the policies of the Plan and the Council's Standards, should provide the following:
    a. Affordable Housing for Local Need;
    b. Safe access from the highway network and enhancement of public transport, cycling and pedestrian infrastructure;
    c. Car parking;
    d. Safe and secure cycle parking;
    e. Open Space;
    f. Safe and convenient access for all to public buildings and spaces, including those with limited mobility or those with other impairments such as of sight or hearing;
    g. Screened storage of refuse, including recyclable materials;
    h. A design and layout that minimises opportunities for crime;
    i. Financial contributions towards the provision and maintenance of infrastructure, services and facilities required by the development

2. Planning permission will not be granted where the proposed development would have an unacceptable adverse impact:
    a. On residential amenity;
    b. From traffic generated;
    c. On archaeological interests and the built form;
    d. On the Welsh language;
    e. On environmental conditions arising from noise, lighting, vibration, odour, noxious emissions or dust;
    f. On ecological and wildlife interests and landscape character;
    g. On flooding and flood risk;
    h. On the best and most versatile agricultural land;
    i. On quality of ground or surface water;
    j. On essential community facilities.

2 Obligations assessed on a site/application-specific basis

Obligations in the second category will, by their nature, be varied as each site and each development is different. The LDP contains a number of policies designed to protect communities from unacceptable development, such as DP/4 (above) which includes criteria against which developments should be assessed. Highway improvement works will commonly fall into this category, and improvements (if any) that are required will depend on the development proposed and the standard of pedestrian and vehicular infrastructure already in place around the development site.

Which Planning Obligations are needed?

As explained earlier, the LDP and SPGs set out the Planning Obligations required from some developments.

The main policies relating to these Obligations are DP/4, DP/5, HOU/2 and CFS/11. Refer to page 6 above for policy DP/4; the other policies are shown below. Further detail on specific requirements is contained in SPGs; in particular LDP4: Planning Obligations SPG and LDP13: Affordable Housing SPG. There is too much detail in the SPGs to repeat here, but references to particular paragraphs or sections are given below and links to the documents are provided at the end of this guidance.

LDP Policy DP/5: INFRASTRUCTURE AND NEW DEVELOPMENTS

All new development, where appropriate will be expected to make adequate contributions towards new infrastructure to meet the additional social, economic, physical and/or environmental infrastructure requirements arising from the development or future maintenance and upkeep of facilities. Contributions will be sought in line with the Council's priorities.

LDP Policy HOU/2: AFFORDABLE HOUSING FOR LOCAL NEED

1. The Council will require the provision of AHLN in new housing development as identified in The Local Housing Market Assessment and the Conwy Affordable Housing and First Steps Registers. The delivery of AHLN will be guided by Table HOU2a, the Housing Delivery and Phasing Plan and the following hierarchy:
   - Giving AHLN provision a high priority through negotiating with developers to include AHLN on-site in all housing developments within the settlement boundaries of the Urban Development Strategy Area and Tier 1 Main Villages, according to the following distribution:

     Llandudno and Penrhyn Bay, Rhos on Sea - 35%
     Conwy, Llandudno Junction, Glan Conwy, Llanrwst - 30%
     Llanfairfechan, Penmaenmawr, Colwyn Bay, Dwygyfylchi, Llanddulas & Llysfaen - 20%
     Abergele, Towyn and Kinmel Bay - 10%

   - A lower provision may be acceptable where it can be clearly demonstrated and supported by the submission of evidence including completion of a Viability Assessment Pro-Forma. Off-site provision or commuted payments will be acceptable for development proposals consisting of 3 or less dwellings, and may be acceptable for proposals consisting of 4 or more dwellings provided there is sufficient justification. It is expected that the AHLN units will be provided without subsidy.

Further guidance on commuted sums in lieu of on-site affordable housing is provided in the Affordable Housing SPG, sections 5.9 – 5.10.

LDP Policy CFS/11: DEVELOPMENT AND OPEN SPACE

1. New housing development of 30 or more dwellings shall make on site provision for the recreational needs of its residents, in line with the Council's standards for open space of 3 hectares per 1000 population, comprising of:
    - 1.2 hectares for playing pitches
    - 0.4 hectares for outdoor sport
    - 0.8 hectares for children's playing space
    - 0.6 hectares for amenity open space
2. In exceptional and justified circumstances, consideration will be given to the provision of a commuted sum as an alternative to on-site provision, in accordance with Strategic Policy DP/1 – 'Sustainable Development Principles' and Policies DP/4 – 'Development Criteria' and DP/5 – 'Infrastructure and New Developments'.
3. New housing development of less than 30 dwellings shall make provision of a commuted sum as an alternative to on-site provision, in line with the Council's standard for open space of 3 hectares per 1,000 population.

Conwy LDP supporting text – Open Space

4.5.10.1 Housing developments should, in the majority of cases, incorporate play and amenity spaces into a scheme or, where this is not feasible, make a financial contribution secured through a planning obligation made under Section 106 of the Town and Country Planning Act 1990. Financial contributions will be accepted for residential developments of less than 30 dwellings. For residential developments of 30 or more dwellings, the Council will seek the provision of on-site children's play facilities and a financial contribution to off-site outdoor sports space. Developments of 200 or more residential dwellings will normally be expected to provide all required outdoor sport and children's playing space on-site. Further details on provision of open space and commuted sums can be found within LDP4 – 'Planning Obligations' SPG.

In the case of residential developments, certain Obligations (for example off-site affordable housing, allotments, education, libraries, open space and waste) can be calculated as these are based on costs per dwelling or per person. A calculator (Microsoft Excel format) has been provided to download from the Planning Obligations web page to assist applicants and give an indication of the potential planning obligation requirements.

This calculator uses the costs and calculation methodology directly from the relevant SPG, where appropriate taking account of inflation through a published costs update, in line with section 2.2 of the Planning Obligations SPG. Details of the updated costs are available from the link provided in the References.

This calculator should be seen as the starting point for planning obligations for a development – additional Obligations may be also be required depending on individual site circumstances (for example for Highway improvements). Some of the Obligations worked out by the calculator may not be required, for example if existing schools have sufficient capacity to accommodate children from the development. The exact planning obligations needed to make a development acceptable will be refined through the planning process.

If there is an adopted Place Plan in the community where the development is taking place, this may also set out infrastructure requirements from developments. Applicants/developers should check the Place Plans website.

For more information on which planning policies are relevant and what obligations are likely to be needed from a development prior to submission of a planning application, developers are strongly recommended to seek pre-application advice from the Council. Where appropriate, developers should ensure the pre-application advice request includes relevant information from Housing Strategy, regarding tenure and size of on-site Affordable Housing. Having all of this information at an early stage can help avoid lengthy delays in some cases. It will provide clarity on planning obligation expectations and other planning matters which may affect financial viability and application validity.

The Principles of Viability

For a development to take place, it must be viable. In simple terms, that means that the total value of the completed development must be enough to cover the cost of buying the land, developing the site and leave enough profit to make the scheme worthwhile.

The cost of developing a site isn't just about physical build costs, but also things like connecting to water and electricity supplies, building access roads, architect's fees and Planning Obligation costs. Some sites can be particularly expensive to build on, if they have 'abnormal costs' for example if the land is contaminated, or if a main gas pipe needs to be moved, this will cost a lot of extra money.

Before starting on a project, it's important that developers understand all of the costs involved in developing a site, to make sure they can afford to build the development.

The LDP and SPGs emphasise that it is the developer's responsibility to make sure that they take account of all development costs, including planning obligations and abnormal costs, when negotiating the purchase of a site and when designing a development. This also means that landowners should allow for development costs and be realistic in the value they can expect from their land.

Conwy LDP supporting text – Viability
4.2.13.3 The assumption is that land purchase costs are negotiated on the basis of taking on board known planning obligations as identified in the Plan and known constraints. Applicants should complete the Affordable Housing Viability Assessment Pro-Forma available on the council's website, or as detailed in the Planning Obligations SPG, where new unknown viability issues become apparent which impact on the deliverability of the scheme.

LDP supporting text – Flexibility
4.2.16.1 The Council expects developers to purchase land for housing in the future having taken into account the need to provide the 'known' planning obligations and any 'known' abnormal costs (e.g. contamination costs). This step change in purchasing land over time will further assist the delivery of affordable housing as it is anticipated that this reduction in the value of the land will make such sites attractive to Housing Associations seeking to provide affordable housing. However, it is inevitable that changes to the economic climate, site specific issues and the level of need will change over the period of the Plan which could warrant sites being unviable or indeed more viable to seek a higher provision. Therefore, a flexible approach is applied to Policy HOU/2 and trigger points have been put in place in the Monitoring and Implementation section for when actions need to be taken to release contingency sites or warrant a review of the Plan.

LDP04: Planning Obligations SPG – section 8.4 Viability

The general presumption is that the cost of providing affordable housing will be offset in the negotiation of the land purchase or option price. The Council considers the affordable housing percentages to be reasonable and justified. Only in exceptional circumstances will lower percentages be justified.

Developers should be providing planning obligations in accordance with LDP and SPG requirements, although viability is a material consideration in determining planning applications. It is made clear both in local and national policy however, that undertaking viability assessments and negotiating down Obligations should be the exception and not the rule.

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4.2.21 Where up-to-date development plan policies have set out the community benefits expected from development, planning applications which comply with them should be assumed to be viable and it should not be necessary for viability issues to be considered further. It is for either the applicant or the planning authority to demonstrate that particular exceptional circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision-maker, having regard to all the circumstances in the case, including whether the development plan and the viability evidence underpinning it are up-to-date, and any change in circumstances since the plan was adopted. Such circumstances could include, for example, where further information on infrastructure or site costs is required or where a recession or similar significant economic changes have occurred since the plan was adopted. Where negotiation is necessary, the planning authority and developer should operate in an open and transparent manner with all information provided on an 'open book' basis.

Land Value

As stated previously, landowners and developers should take account of all development costs, including planning obligations costs, when negotiating a sale or purchase cost for land. Development costs can't always be off-set by reducing the land value to achieve a viable development however. There are a few circumstances when development costs, or land values might be too high for this to be possible.

The first of these is when a site has extremely high development costs, for example significant contamination. It is possible that the cost of this remedial work could render the site valueless in development viability terms, so may be unable to deliver the full suite of planning obligations.

LDP04: Planning Obligations SPG – section 8.4 Viability
Where an applicant proposes to demonstrate that there are particular costs (e.g. abnormal costs or other obligations) that cannot be offset by depreciating the land value or where they cannot be recouped in the open market sale price of the new homes, a financial viability assessment will have to be supplied. If, following the completion of an assessment, a developer is able to demonstrate genuine viability problems, a revision may be agreed either to the overall scale of affordable housing provision, or to the property mix and/or tenure type.

Secondly, a site may have a high Existing Use Value (EUV) based on its present lawful use, For example, one large house occupying a 1-hectare plot is likely to be worth much more than 1 hectare of agricultural land. It would not be reasonable to ask applicants to negotiate the residential site down to agricultural value, as the price of the house will be set by the residential market. In this instance, the development value of the site may not be high enough to deliver all planning obligations, so some reductions may be appropriate. Likewise, redevelopment of a commercial development site would be subject to the EUV of the land for employment use.

In practice, for developments on Previously Developed Land (PDL) viability issues may be caused by a combination of higher development costs (e.g. demolition and remediation works) and a higher EUV compared to a Greenfield site. The EUV must relate to the individual site circumstances however. A derelict residential or commercial site is likely to need significant investment to bring the site back into use – regardless of what that use is – the value of the site should therefore reflect this.

LDP13: Affordable Housing SPG
11.11 In cases where disputes remain, an independent appraisal and/or the services of the District Valuer Service will be sought to resolve such disputes with the costs to be borne by the applicant.

In any case, if an applicant disputes the viability and/or planning obligations, the amount paid for a site will be considered carefully as part of a viability process, which will include consideration of alternative development schemes. Where necessary, external advice will be taken to resolve disagreements. Planning obligations will not be reduced simply because an applicant has paid too much for a site.

Viability Assessments

It is important that developers understand the financial viability of their project from the outset, and factor this into the design of developments. As a development proposal evolves and circumstances change (for example house prices, build costs), it is recommended that developers also re-visit their viability assessment to ensure it is still valid and that the development can meet all development costs including Planning Obligation costs.

The Council use a Development Appraisal Toolkit (DAT) to assess viability, based on the principle of finding the Residual Value (RV) of a development. The RV is essentially what a developer can afford to pay for a site after subtracting all the development costs including developer profit and planning obligations from the gross development value. If the developer can purchase the site for the RV or less, the site is viable and all obligations can be met. If the developer (or landowner) think that the site is worth more than the RV, which would make the scheme unviable, they will need to provide evidence to justify this.

LDP13: Affordable Housing SPG

11.10 The DAT will be used if necessary by the LPA where there is a dispute about the provision of affordable housing on a site which is the subject of a planning application. The toolkit is software used to arrive at a residual value for the land by comparing the full costs of building a residential development with the revenue generated through house sales and any revenue generated by the affordable housing. The results can then be compared against information about commercial land values to determine whether and individual site is viable. A range of planning obligations, including affordable housing, can be added in to the calculation and their impact on the scheme's residual value can be reviewed. In simple terms it calculates the level of profit a landowner and developer can expect according to different scenarios.

For affordable housing and other planning obligations to be reduced on viability grounds, the Council will have to be satisfied that the developer has used reasonable endeavours to provide a viable development on the site. As it states in policy HOU/2, the viability issue will have to be clearly demonstrated and supported by evidence including a pro-forma, which will feed into the Council's viability assessment. Other evidence requested may include site valuation based on its present use; valuations of the proposed dwellings once complete (acknowledging some uncertainty in valuing dwellings off plan) and cost estimates (example contamination remediation).

LDP Policy HOU/2: AFFORDABLE HOUSING FOR LOCAL NEED

- A lower provision [of Affordable Housing] may be acceptable where it can be clearly demonstrated and supported by the submission of evidence including completion of a Viability Assessment Pro-Forma. Off-site provision or commuted payments will be acceptable for development proposals consisting of 3 or less dwellings, and may be acceptable for proposals consisting of 4 or more dwellings provided there is sufficient justification. It is expected that the AHLN units will be provided without subsidy.

When a planning application is submitted in Outline form with matters of appearance, layout and/or scale reserved, build costs and sale prices cannot be assessed accurately. In this scenario, sufficiently robust evidence will not usually be available to clearly demonstrate that a development is unviable and justify a reduction in planning obligations. Where there are concerns about viability therefore, the Council would encourage an applicant to submit a Full application. Alternatively, if the limited information available from the Outline application means it can't be clearly demonstrated that the site is unviable for planning obligations, the applicant should enter into a S106 agreement to control all planning obligations in line with policy. When there is more detail on the proposed development at Reserved Matters stage the applicant can highlight viability concerns with the Council, although they should be aware of the restrictions placed on amending S106 agreements by Section 106A of the TCPA.

Virtually any site can be made to look unviable through inappropriate development proposals. For example building few, large houses on a site can increase developer's profit but reduce the RV of a development compared to a development of smaller houses, making a development appear unviable for planning obligations. As detailed above, it is the applicant/developer's responsibility to design a viable development, so the Council will also consider alternative housing mixes as part of the viability assessment process. Where the applicant has chosen a housing mix that makes a scheme unviable, this is unlikely to be a reason to reduce planning obligations when a reasonable alternative scheme on the site would be viable.

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4.2.29 Where development plan policies make clear that an element of affordable housing or other developer contributions are required on specific sites, this will be a material consideration in determining relevant applications. Applicants for planning permission should therefore demonstrate and justify how they have arrived at a particular mix of housing, having regard to development plan policies. If, having had regard to all material considerations, the planning authority considers that the proposal does not contribute sufficiently towards the objective of creating mixed communities, then the authority will need to negotiate a revision of the mix of housing or may refuse the application.

Ideally the Council and developer/applicant will reach agreement on planning obligations through negotiation. If not, it may be necessary to seek external advice on land values and/or viability assessment. Where both parties still cannot agree, the Council may refuse the application.

LDP Policy HOU/5: HOUSING MIX
Development proposals should reflect the requirements for tenure, house types and sizes as set out in the Local Housing Market Assessment and the Conwy Affordable Housing and First Steps Registers, unless it can be demonstrated by evidence that the local circumstances of the particular settlement or location suggests a different mix of housing which would better meet the local needs. A proposed mix of dwellings which results in a negative residual value and lower affordable housing provision will be discouraged.

The Council have a version of the viability toolkit available for applicants/agents to make use of to help them achieve a viable development. Please contact S106@conwy.gov.uk if you would like a copy.

This should be used to test a range of different housing mixes and development types, to help ensure that the applicant can deliver the affordable housing and other planning obligations as requested by the Council.

Failure to provide Planning Obligations

If an applicant fails to enter into a Planning Obligation without providing satisfactory evidence or justification for reductions in provision, this is likely to result in the development being contrary to policy and the application being refused on this basis. It will be for the decision maker to take account off all material considerations when determining an application – this includes whether or not a proposal meets LDP planning obligation requirements.

Whilst Viability is a material consideration, arguments based on viability will not always be relevant if an applicant seeks to reduce planning obligation requirements. Some planning obligations may be considered so fundamentally important to make a development acceptable in planning terms, that viability arguments will not outweigh the need for the obligations. Again, failure of the applicant to enter into a Planning Obligation in these circumstances is likely to result in the application being refused.

Planning Policy Wales – Edition 11
4.2.29 If, having had regard to all material considerations, the planning authority considers that the proposal does not contribute sufficiently towards the objective of creating mixed communities, then the authority will need to negotiate a revision of the mix of housing or may refuse the application.

Entering into a Planning Obligation

When a developer agrees to enter into a Planning Obligation to control payment and/or on-site provision, this will take the form of a deed submitted in accordance with Section 106 of the TCPA. This will commonly be a Deed of Agreement which will be signed by the applicant, the Council and any other parties with an interest in the development, such as the landowner (if different from the applicant), a mortgage lender, etc. Alternatively the applicant may submit a UU to control planning obligations. A UU will be signed by the applicant/developer but not by the Council.

Details of payments of commuted sums, or phasing of affordable housing delivery will be included in the S106 agreement, based on the guidance in the Planning Obligations SPG. A fee will also be required to cover the Council's legal costs involved in drafting a Deed of Agreement, or checking a UU. A template Deed of Agreement is available from the Council's website (see Planning Obligations SPG – link available in the references). This can be used as a starting point, in order to minimise time and costs involved.

LDP04: Planning Obligations SPG – section 4.7 Financial and Delivery Provisions
Developers will be required to cover the costs incurred by the Council in negotiating, drafting and completing planning obligations and are therefore advised to contact the Council to be advised of any costs. In most cases these costs will be required to be paid prior to completion of a S106 agreement.

The planning application cannot be determined (i.e. certificate of planning permission issued) until the S106 agreement is signed. If the planning application is being discussed at Planning Committee and the case officer is minded to support the application, the recommendation to committee will normally be to approve the application subject to completion of a S106 agreement. Once the S106 agreement is signed, the planning permission can be issued.

If a signed UU has already been submitted and the LPA and the Council's legal team are satisfied that the provisions in the UU are appropriate and it meets the planning policy requirements, then (subject to all other planning matters being resolved) the application can typically be determined shortly after planning committee's decision.

LDP04: Planning Obligations SPG – section 4.6 Commencement of Obligations

Planning obligations are normally conditional upon the granting of planning permission and the commencement of development. As a consequence, the planning obligation must be executed before the planning permission is issued.

If necessary, the Council will be minded to grant planning permission subject to the completion of a planning obligation. In such circumstances, planning permission will not be formally granted (and development may not lawfully commence) until the planning obligation has been finalised.

Where planning obligations are relatively simple, particularly where they are financial only and there is no need to bind the Council to the provisions in the Obligation, the applicant may find it advantageous for these to be controlled by UU rather than Deed of Agreement. This may lead to faster determination of the planning application if the signed UU is submitted as part of the planning application, is of a standard form and is otherwise correct. In most circumstances and unless other planning obligation requirements arise, there is no need to wait for an Agreement to be drawn up before a decision can be issued.

LDP04: Planning Obligations SPG – section 4.1 Types of Planning Obligation

A planning obligation may take the form of a S106 (or Bilateral) agreement or a Unilateral Undertaking. In most cases, it is expected that the Council will seek to finalise planning obligations by agreement (S106). However, it is recognised that there might be circumstances where only the developer needs to be bound by the agreement with no reciprocal commitments by the local planning authority. In such cases, the Council would prefer a developer to offer a Unilateral Undertaking.

If the applicant submits a signed UU they will need to make sure that it contains all the necessary provisions to meet the CIL regulations and enable the LPA to determine the application. It's therefore important that any applicant wishing to enter into a Planning Obligation by way of UU seeks pre-application advice and/or takes account of comments received from consultees through the planning application process. There will still be a need for the Council's Legal team to check the UU but this should be a less time consuming process than for drawing up a Deed of Agreement.

Next Steps: after entering into a Planning Obligation

After a S106 agreement has been signed, all parties are then bound to meet their obligations. In the case of an applicant/developer, this is likely to be through on-site provision (e.g. for open space or Affordable Housing) or by payment of commuted sums. This is a legal document that, if necessary, can be enforced through the courts including by way of injunction, if a party fails to meet their obligations. Developers should ensure they fully understand and have complied with all Conditions and Planning Obligation requirements prior to either purchasing or commencing work on a site.

A S106 agreement which includes the payment of financial contributions may contain triggers, stipulating when certain payments need to be made. On larger developments the S106 agreement may define multiple triggers or phased payments. It is the developer's responsibility to ensure they comply with the S106 requirements and late payments may result in a higher contribution being due. 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.

LDP04: Planning Obligations SPG – section 4.7 Financial and Delivery Provisions
The timescales for delivery of the required works will be agreed with the Local Planning Authority and form part of the Legal Agreement. Contributions are likely to be required either prior to the occupation of the first building on the development site or before the occupation of 30% of buildings on site, depending on both the nature of the development and type of contribution required. However, some works may be required prior to the commencement of development, particularly when necessary for safety reasons. For larger scale proposals, the Council will (where appropriate) consider payment of phased contributions. In such cases, the planning obligation must detail the phasing and timing of payments.

The Council will also be bound by the terms of a Deed of Agreement, in particular to only use financial contributions for the purpose as defined in the agreement. Money left unspent after a period of time (normally 10 years, or as otherwise specified in the agreement) may be returned to the applicant/developer, in accordance with the provisions in the S106 agreement.

Decisions on the spending of S106 money are made in line with the Council's S106 Spending Protocol. Details of S106 agreements, including agreements signed and the value of S106 funds held by the Council are published annually in the S106 Monitoring Report. The S106 Spending Protocol and Monitoring Reports are available from the Planning Obligations website.

References

The following links give access to key local and national planning policy documents, guidance and legislation.

LOCAL	Conwy Local Development Plan www.conwy.gov.uk/ldp
	LDP13: Affordable Housing SPG LDP4: Planning Obligations SPG Planning Obligations cost update Template S106 Agreement https://www.conwy.gov.uk/en/Resident/Planning-Building-Control-and-Conservation/Strategic-Planning-Policy/Supplementary-planning-guidance-documents/Housing.aspx
	Planning Obligations Calculator S106 Spending protocol S106 Monitoring Reports www.conwy.gov.uk/planningobligations
NATIONAL	CIL Regulation 122 https://www.legislation.gov.uk/ukdsi/2010/9780111492390/regulation/122
	Town and Country Planning Act 1990 Section 106 https://www.legislation.gov.uk/ukpga/1990/8/section/106
	Technical Advice Note 2: Affordable Housing https://gov.wales/technical-advice-note-tan-2-planning-and-affordable-housing
	Planning Policy Wales https://gov.wales/planning-policy-wales
	Future Wales https://gov.wales/future-wales-national-plan-2040-0
	Circular 13/97: Planning Obligations https://gov.wales/future-wales-national-plan-2040-0
	Circular 016/2014: The use of planning conditions for development management The use of planning conditions for development management (WGC 016/2014) | GOV.WALES

Glossary

CIL	Community Infrastructure Levy
DAT	Development Appraisal Toolkit
EUV	Existing Use Value
LDP	Local Development Plan
LPA	Local Planning Authority
PDL	Previously Developed Land
S106	Section 106 (of the TCPA)
SPG	Supplementary Planning Guidance
TCPA	Town and Country Planning Act (1990)
RV	Residual Value
UU	Unilateral Undertaking

Appendix 1: S106 Process Flowchart