

Conwy County Borough Council

Section 106 Spending Protocol

October 2023



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Contents

1	Introduction, Planning Policy and Place Plans.....	4
2	Spending Protocol	6
3	S106 Monitoring.....	9
4	Exemptions from the approval process.....	10
5	Affordable housing S106 spend protocol	12
	Appendix 1: Process flowchart for S106 spending requests	15
	Appendix 2: S106 spending requests guidance	16
	Appendix 3 – Place Plan Boards	18
	Appendix 4: Proposal for S106 spend - proforma	19

1 Introduction, Planning Policy and Place Plans

The purpose of this Protocol is to set out the procedure for prioritising and spending Section 106 (S106) moneys obtained by the Council from new development in parts of the County Borough that fall outside of the National Park. It seeks to ensure that:

- funds are spent on priority projects for that community,
- the process for allocating spend is democratic,
- proposals meet the definitions detailed in the legal agreement, and
- moneys received are spent by the deadline specified in the legal agreement.

As the legal agreement is secured using Local Development Plan (LDP) policies, it is proposed that the function of co-ordinating spend, monitoring pooling restrictions and ensuring that it is in line with the requirements outlined in relevant legal agreements, remain with Strategic Planning Policy (SPP).

Planning policy

Planning obligations, also known as S106 agreements (based on that section of the 1990 Town & Country Planning Act) are private agreements made between local authorities developers and/or landowners. They are attached to planning permissions to make development acceptable which would otherwise be unacceptable in planning terms. Obligations are secured via a legal agreement.

Further background including legislative and planning policy basis for seeking planning obligations can be found in the Planning Obligations and Viability Guidance Note available from [the Planning Obligations web site](#).

Place Plans

Conwy County Borough Council (CCBC) wants to offer every community in the Council area the opportunity to write their own Place Plan. Once written, the Place Plan can inform planning decisions. The plan could focus on an entire community council area, a single village, a group of villages or a town. The scale of the project is up to each individual community to define. It is important that the Place Plan area doesn't make decisions for communities who are not involved in the project.

When adopted, Place Plans can allow more local influence on what planning obligations are required from developments happening in their area. For communities that have an adopted Place Plan or are working towards one, there will be a Place Plan Board. Members of the Board will make decisions on S106 spending in these areas.

For more information about Place Plans, visit [the Place Plan website](#).

2 Spending Protocol

The process for authorising S106 spend is set out below. This is summarised in the flowchart at Appendix 1.

Step 1: spending proposal

Projects may be identified by Elected Members and/or CCBC officers which they consider have the potential to be supported by S106 funding. Such projects should align with the relevant objectives of the Local Development Plan and Place Plan (if adopted).

Step 2: availability of S106 funds

Please contact the Planning Obligations and Community Infrastructure Officer in SPP regarding the proposal to confirm if there is S106 moneys available and if the project will meet requirements specified in the legal agreement.

S106@conwy.gov.uk

Only proposals for land outside of the National Park can be considered.

Welsh language proposals will need to link with proposed recommendations or mitigation suggested by relevant consultees or the Linguistic Statement/Impact Assessment at planning application stage.

Proposals for spend will normally only be considered where the S106 funds have been received. The Council has no control over when or if a site with planning permission will ever be developed, and therefore meet the triggers for payment in the S106 agreement. Priority projects may change over time, and proposals for spend should reflect the priorities for the community at the time the funds are received. Account should be taken of relevant projects included in the Place Plan and LDP where appropriate.

The department / service responsible for the project must ensure that all requirements of the legal agreement are met, for example notifying the developer of any proposed or completed works.

Some electoral divisions were changed for the 2022 local elections, following the Electoral Commission Boundary Review. Where the areas for spend as defined in S106 agreements refer to electoral divisions that have since been changed or renamed, any spending proposals should be in accordance with the geographical extent of electoral divisions as they were at the time the S106 agreement was signed.

Step 3: local community consultation

Areas with a Place Plan in place

Where a Place Plan has been adopted there will be a local board. To make sure the aspirations of the community are reflected, the board will be a cross section of the community, including local residents, businesses, voluntary and community groups and land owners. The aim is to engage as wide a section of the community as possible. This board will be responsible for monitoring a list of projects created through widespread local consultation and engagement. This Project list is likely to have been prioritised based on a number of factors i.e. community demand, funding availability, urgency.

The board should identify, deliver and monitor the priority projects. Each group will be responsible for ensuring the project priorities are up-to-date, costed and deliverable. They will identify which project should be delivered first.

As new projects are proposed, they should be submitted for circulation and discussion by the board. Submissions may be made by the department/service responsible for delivering the project, a resident, elected Member or board representative. Once circulated to the board for consideration, the department / service delivering the proposal will contact the Strategic Engagement & Place Plan Officer and the relevant board to finalise scheme details and overall costs.

Board members, Elected Members and Town and Community Councils will be included throughout the process to ensure that priority projects are identified democratically.

Should an urgent proposal arise, for example relating to a health and safety matter or where there is a short timescale for spending the funds the project/issue should be submitted to the Strategic Engagement & Place Plan Officer or Chair and an email consultation inviting comments with relevant Board members can take place instead of a meeting.

Areas where there is no Place Plan

Where there is no Place Plan Board, the department or service responsible are encouraged to engage with local Members early in the process of developing a project.

Details of the proposals and discussion with local Members should be submitted to the Planning Obligations and Community Infrastructure Officer responsible for S106. The appropriate Head(s) of Service, Cabinet Member(s) and local Member(s) will be consulted with on the proposal. This will be via email, inviting comments.

Step 4: Authorisation

The Strategic Planning Policy Manager will authorise all proposals for spend that have met the relevant steps above. Officers and Members involved with the approval process will be notified that a project has been authorised. At this point the S106 money will be ring-fenced for this project to ensure it can't be spent on anything else.

Step 5: Spending

The department responsible will undertake the project in accordance with the details approved for S106 spend. Once the project is complete and evidence of spend (e.g. invoices) are provided, CCBC Finance will transfer the S106 money.

3 S106 Monitoring

Project overspend

Where appropriate, and where there is a risk of project costs increasing, departments responsible for putting together proposals for S106 funding are encouraged to budget for an element of contingency. If project costs increase and additional S106 money is required in excess of the amount authorised, the additional spend will need to go through the full S106 spend process in line with this protocol.

In the case of projects that are funded by multiple funding sources, additional money should be sought from other contributors before seeking additional S106 funding.

Unspent S106 funds

Where projects cost less than the amount of S106 spend that has been authorised, or if the contingency allowance within the project budget is not required, any unspent funds will return to the S106 fund. This money will then be made available for other projects subject to the S106 spending criteria and spending protocol process.

In the case of authorised S106 money that remains unspent for long periods, the Planning Obligations and Community Infrastructure Officer will seek to establish whether the project is still going ahead and if the S106 funding is still required.

Section 106 Monitoring Group

This Group consists of representatives from various departments at officer level that meets on an ad-hoc basis to identify key projects for S106 spend, highlight risks of spending deadlines being missed and to assist with balancing end-of-year budgets. The group's meetings can be of a virtual nature and will be given regular updates of S106 funds, projects agreed and spend.

S106 monitoring reports

Reports on S106 including agreements signed, money received and amount spent are produced annually. These will be published online and presented to Scrutiny. A more detailed breakdown of available S106 balances will also be published quarterly.

4 Exemptions from the approval process

Monitoring

National planning policy has changed and for most planning obligations, we will not be able to secure a monitoring fee. Section 21 of LDP4: planning obligations SPG sets out what monitoring fees can be spent on. The areas of work outlined are completed by Planning Enforcement, Finance and SPP. It is proposed that fees already received be split equally three ways on receipt to cover the officer time. Any fees received in future will be split on a case-by-case basis, based on officer time.

Waste

The wording of the S106 agreements are very specific for this type of obligation. It is normally to provide for waste and recycling bins on the site. It is, therefore, considered appropriate that no consultation is required, and moneys received for this can be transferred directly on receipt into ERF budget to reimburse for the cost of these items.

Highways

Proposals which are required solely as a result of the development and are exempt from the steps above as they are required to secure safety and will have been agreed at planning application stage.

Proposals which deliver wider interventions or improvements desired for the area, but not solely as a result of the development will be required to meet the steps in the S106 Protocol above.

Schools

The legal agreements for S106 moneys secured for school facilities are normally worded to be available for spend on a specific school to address capacity constraints only. For this reason, it is not normally considered necessary for proposals to go through the above process. Instead, Education will liaise with the school on the most appropriate way to spend the moneys.

If a S106 is worded to allow money to be spent on schools within an area, rather than a specific school, any proposals for spend will need to go through the normal approval channels in line with the steps above.

Other specific projects

There may be other instances where S106 money is requested for site-specific projects not covered by the categories above and where the wording of the S106 is very narrow. In these instances, where the wording of the legal agreement provides a very tight control on how the money can be used in order to mitigate the impact of development, spending will also be exempt from the above steps.

5 Affordable housing S106 spend protocol

In seeking developer contributions, the presumption will be that affordable housing will be provided on-site by the developer. As an exception, commuted sums will be acceptable where certain criteria are met. Commuted sums that are generated as a result of the Council's affordable housing policy will be used for initiatives that support the delivery of affordable housing on a County-wide basis. This is only possible for affordable housing, as it is exempt from pooling restrictions (see 'Planning Policy' section above). The use of any commuted sum will normally be referenced under the heading 'Improving the Delivery of Affordable Housing in the County Borough' in the S106 agreement.

Examples of the type of initiatives that are to be financed through the use of commuted sums will include:

- Assisting in full (or part) development of rented and low cost home ownership.
- Assisting in full (or part) via Loans / grants to RSL's / agencies in return for affordable housing nominations.
- Assisting in full (or part) development of the accommodation element of supported housing schemes and key worker initiatives.
- Assisting in full (or part) the purchasing of properties undergoing repossession proceedings for the purpose of providing them as affordable housing units.
- Assisting in full (or part) initiatives that support regeneration projects such as offering loans/grants to tackle empty homes or poor housing conditions, in return for affordable housing nominations.
- Assisting in full (or part) to fund the infrastructure required to support self-build and modular build schemes.
- Assisting in full (or part) the purchase of land for affordable housing.
- Assisting in full (or part) the provision of site access, infrastructure or other enabling works, to facilitate development of land for Affordable Housing
- Assisting in part (or full) the use of commuted sums as a lever to generate additional resources / funding from external sources in providing affordable housing.
- Assisting in part (or full) the provision of a Homebuy / Equity Loan Scheme for qualifying households.
- Assisting in part the Council's revenue and associated administration costs in facilitating either the above and / or developing a more strategic approach to affordable housing policy and investment across the County Borough

Housing Strategy will complete their Social Housing Grant (SHG) scoring matrix to identify which schemes are put forward for S106 sums. Schemes will be selected in one of the following ways:

- through the Specialist Housing Panel e.g. Band 1 urgent priority need households, which the Council has a statutory duty to provide,
- identified by Social Services,
- a gap in funding to a committed scheme such as VVP or SHG,
- where there is no SHG available and the unit represents good value for money and is identified in the Local Housing Market Assessment or Local Housing Survey as the type of property in need, or in an area of high demand, or
- low cost home ownership scheme which is not eligible for SHG funding.

Housing Strategy will provide the Planning Obligations Officer in SPP with the relevant information including proposal details, how it has been selected and overall cost.

If the proposal for spend meets the criteria above and is for less than £15,000, the Strategic Planning Policy Manager will authorise without consultation.

For proposals of £15,000 or more, the appropriate Head(s) of Service and Cabinet Member(s) will be consulted. This will be via email, inviting comments.

Some large scale affordable housing proposals for spend already go through the Cabinet process. If this is the case, the relevant S106 information will be included in the Cabinet report, meaning that no further consultation will be required.

Details of affordable housing proposals will be provided at Place Plan Board meetings. Should a Place Plan Board have a project for affordable housing spend, this will be passed on to Housing Strategy to go through the steps in the Affordable Housing S106 Spend Protocol.

Prioritisation of Affordable Housing S106 funds

When identifying S106 funding for proposed AH developments, priority should first be given to using money that has come from developments in at least one of the following locations:

- a) within the same electoral division as the proposed AH development, or
- b) within the same community council area as the proposed AH development

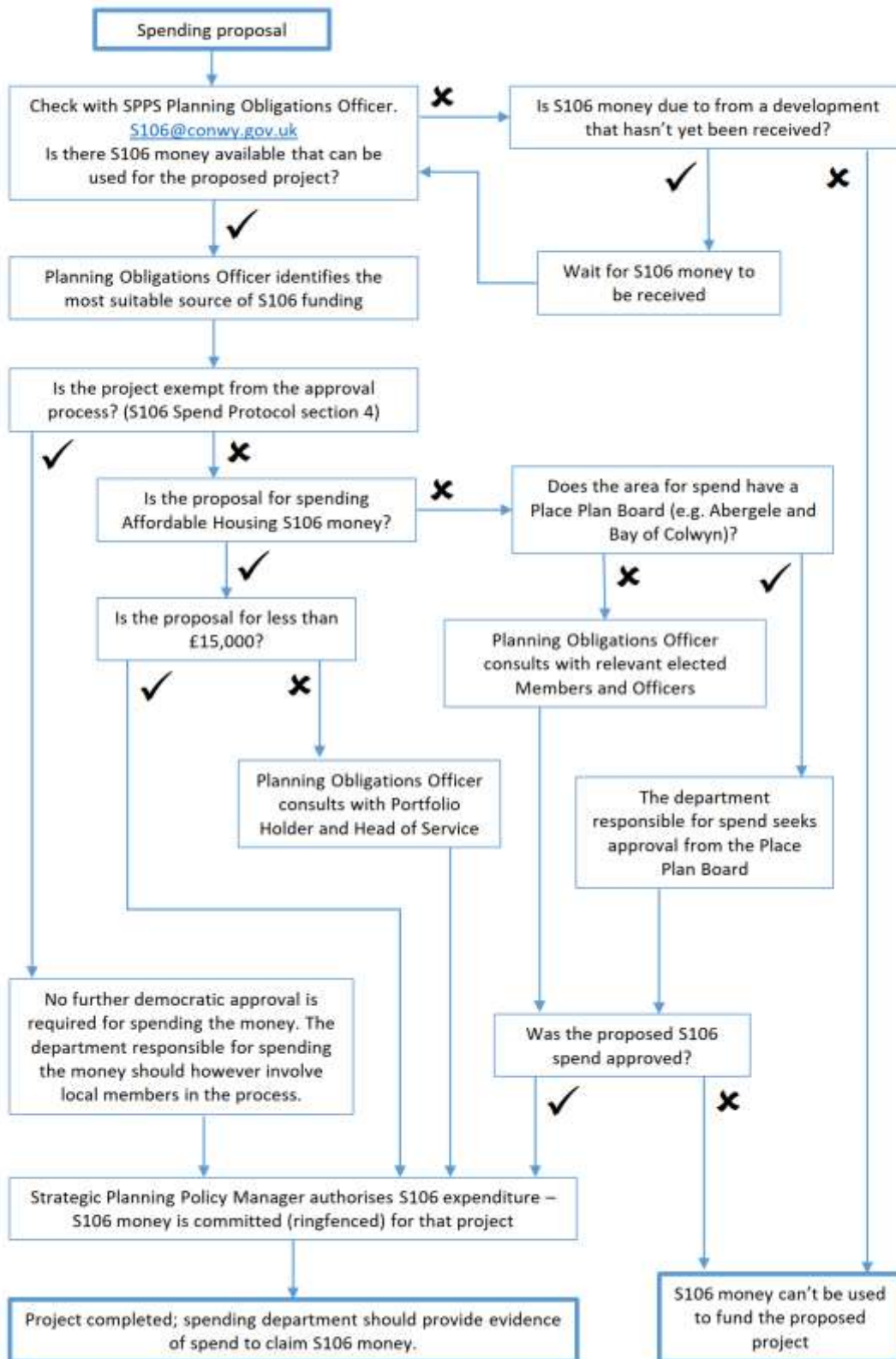
Once these sources of S106 funds have been exhausted, priority should be given to using S106 money that has come from developments in at least one of the following locations:

- a) within the same Local Area Forum area, or
- b) within an adjacent electoral division as the proposed AH development,
or
- c) within an adjacent community council area as the proposed AH
development

Once these sources of S106 funds have been exhausted, S106 money can be used from elsewhere, with priority to be given to S106 funds with the shortest spend deadline.

Appendix 1: Process flowchart for S106 spending requests

Appendix 1: Process flowchart for S106 money spending requests



Appendix 2: S106 spending requests guidance

When a project requires democratic approval for S106 spend (Step 3 of the protocol), this will either involve approval by the Place Plan Board, or email consultation with relevant Members and Officers.

It is important that all Members and Officers involved in approving S106 spend have the necessary information available to inform their decision making. The Planning Obligations officer will be involved and provide advice on the process, however the proposal for spending S106 money is 'owned' by the project's proposer or relevant department. It is for them to write the proposal in support of the S106 spend, and answer questions arising as part of the approval process (either at a Place Plan Board or through email consultation) relating to the detail of a project. The proposer is also encouraged to involve local elected Members at an early stage to ensure there is local support before progressing the project.

The project's proposer or responsible department will need to produce a brief overview of the project and proposed spend which will be circulated in line with the Protocol. A proforma has been provided at Appendix 4 which proposers may wish to use to help organise the information required for a submission. This is optional – it is entirely up to the proposer if they would like to use the proforma or put together information to support their request in a different way. The level and type of detail needed will depend on the nature of the project and the amount of money requested. The following list gives examples of information that may be useful as part of a proposal:

- Location plan
- Photographs of the site
- Specifications for the proposed works/installation
- Written description of the proposal, including background to the project and benefits of the project to the community
- Alternative projects considered
- Project delivery – who is responsible for undertaking the project? If external, how have they been selected?
- Details of engagement with/support from local elected Members
- Breakdown of costs – how have these been calculated? Is there a risk of cost over-run, is there a contingency allowance?
- Other sources of funding contributing to the project

The proposer should have already contacted the Planning Obligations and Community Infrastructure Officer to confirm that S106 money is available and that the proposed project meets the criteria in the S106 legal agreements (Step 2). The Planning Obligations and Community Infrastructure Officer will identify the source of funding, including Ledger code(s) and amount available. This information should also be provided as part of a proposal, so that Members & Officers are aware of the sources of S106 funding for the project.

Areas with a Place Plan

Where there is a Place Plan Board, the proposer/relevant department are responsible for seeking approval for the S106 spend. The proposal should be sent to the relevant Place Plan Board for consideration (Appendix 3).

Areas without a Place Plan

In other areas, the proposal should be sent to the Planning Obligations and Community Infrastructure Officer who will organise email consultation with relevant elected Members and Officers.

Appendix 3 – Place Plan Boards

Information last updated March 2023

Abergele Place Plan

Website: [Abergele Place Plan Website](#)

Email: placeplan@abergetowncouncil.gov.wales
clerk@abergetowncouncil.gov.wales

Electoral divisions: Gele and Llanddulas, Pen-sarn Pentre Mawr

Colwyn Place Plan

Website: [Colwyn Place Plan website](#)

Email: colwynplaceplan@gmail.com

Electoral divisions: Llandrillo-yn-Rhos, Rhiw, Glyn, Eirias, Colwyn

Towyn & Kinmel Bay Place Plan

Website: [Towyn Kinmel Bay Place Plan website](#)

Email: clerk@tkbtc.co.uk

Electoral divisions: Tywyn/Towyn, Kinmel Bay

Appendix 4: Proposal for S106 spend - proforma

The proposer/department responsible for the project may wish to use this to support proposals for S106 spend. This should clearly describe the purpose of the project, relevant details of the project and costings. The information should be concise, but should include all key details needed to enable a decision to be made whether to approve S106 funding.

Please make sure you also include any relevant information not covered in the boxes below, such as location plans, photographs, specifications, etc.

Date
Name and role of proposer
Contact details
Project title
Local – electoral division(s)

Project overview – brief summary of the project

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Detailed project description – background to the site and project, including purpose of the project, details of the proposal, benefits of the project

--

Project delivery – how, when and by whom will the works be undertaken, including project management responsibilities

Details of engagement with community/elected Members

Costs – project costs, other sources of funding, total S106 requirement

Sources of proposed S106 spend – to be provided by the Planning Obligations Officer

Source	Code	Amount available	Amount requested
Total			