

SECTION 106 AGREEMENTS – CHECKLIST

PROCEDURE FOR PREPARATION AND COMPLETION OF PLANNING OBLIGATIONS		✓
1	LEGALITY AND POLICY	<p>Does the obligation satisfy the legal and policy tests set out in regulation 122 (Limitation on use of planning obligations) of the CIL regulations and the NPPG? Is it:</p> <p>(1) necessary to make the development acceptable in planning terms;</p> <p>(2) directly related to the development; and</p> <p>(3) fairly and reasonably related in scale and kind to the development.</p>
2	CIL	2.1 If CIL has not been introduced (until 6 April 2015)
		Are the tests at section 1 above satisfied?
		2.2 If CIL has been introduced – a planning obligation must:
		Satisfy the tests at section 1 above
		Relate to affordable housing
		Provides for 'on- site matters including the direct replacement of facilities or amenities caused by the development
		Note - Not to be used for items mentioned in the regulation 123 infrastructure list or if no list, any infrastructure
		2.3 If no CIL and on/after 6 April 2015 (or later date specified by the Government)
		Are the tests at section 1 above satisfied?
		Does the obligation relate to affordable housing?
Does it provide for 'on- site matters including the direct replacement of facilities or amenities caused by the development		
There are not already 5 or more separate planning obligations for the infrastructure project or type subject of the obligation granted by the authority since 6th April 2010		

3	PRELIMINARY ACTION	3.1 Instructions to the legal department enclosing relevant documentation:	
		Planning permission to be issued upon completion of the obligation (must remain undated)	
		Ordinance survey map showing the property subject to the obligation	
		Details of committee approval if relevant	
		A copy of the committee report	
		Details of the covenants to be included in the obligation	
		3.2 Developer/agent details	
		Contact the developer/agent requesting evidence of title (preferably by way of up to date office copy entries)	
		Obtain an undertaking for the legal fees	
4	TITLE TO THE LAND AND PARTIES	Are all parties with an interest in the property either: (1) a party to the obligation; or (2) have signed a letter of consent in respect of it	
5	FORMALITIES	Ensure the obligation is in the form of a deed	
		State the name of the LPA by whom enforceable	
		State interest in land of parties entering into agreement	
		Identify the land	
		State that the obligation is a planning obligation for the purposes of s.106 TCPA 1990	
6	SUBSTANTIVE MATTERS	Draft planning permission should be attached to agreement so that trigger for obligations is clear.	
		Trigger for obligations – “commencement of development” does it exclude preparatory works?	
		“Commencement of development” should be linked to implementation of the <i>relevant</i> planning permission.	
		Parties released on parting with their interest in the land (subject to antecedent breaches)	

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		If any of the obligations relate to payment of monies consider whether these should be linked	
		Include provision requiring any monies to be repaid if they are not spent within [five] years.	
		Exclude rights of third parties.	
		Ensure other parties sign the obligation before the LPA	
		Copy of the obligation to be sent to Local Land Charges section for registration	