



Derby City Council

# **A Guide to Planning Obligations and Section 106 Agreements for Councillors and Neighbourhood Boards**

**November 2013**

## **1.0 What are Section 106 Agreements?**

1.1 Section 106 (S106) of the Town and Country Planning Act 1990 allows a local planning authority (LPA) to enter into a legally-binding agreement or planning obligation with a landowner in association with the granting of planning permission. The obligation is termed a Section 106 Agreement.

1.2 These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms. They are entered into between the Council and developers when a planning application requires mitigation measures and/or community benefits which cannot be secured through planning conditions. They are used to secure either payment in-kind or financial contributions towards the provision of infrastructure, such as highways and transportation, public open space, affordable housing, public realm, education and other community facilities.

1.3 The type and scale of planning obligations that can be secured must be consistent with Government guidance and the Local Plan. Under planning law, all contributions must be:

- Necessary to make the proposed development acceptable in planning terms;
- Directly related to the proposed development;
- Fairly and reasonably related in scale and kind to the proposed development.

## **2.0 Who negotiates S106 Agreements?**

2.1 The Implementation Team in Spatial Planning which is part of the Planning Section negotiate the draft Heads of Terms of the S106 agreement with developers and their agents. The team base the negotiations on the thresholds and standards contained in the Council's adopted Planning Obligations Supplementary Planning Document (SPD). The team also takes advice from officers in Highways, School Provision, Strategic Housing, Leisure and Culture, Economic Regeneration and other departments where appropriate.

2.2 The Planning Obligations SPD can be viewed at the link below:  
<http://www.derby.gov.uk/environment-and-planning/planning/planning-policy>

## **3.0 How do I find out if a planning application requires a S106 Agreement?**

3.1 All Councillors and Neighbourhood Managers are emailed the Council's Weekly List of planning applications registered in the previous seven days. At the bottom of the list is a separate section listing the applications requiring S106 agreements.

#### **4.0 Can I influence what is included in a S106 agreement?**

4.1 The best time to influence what is included in a S106 Agreement is soon after the planning application has been registered.

4.2 Neighbourhood Managers and Councillors should send their views on the community impact of planning applications and their priorities for the S106 negotiations, to Rachel Reid in the Implementation Team. These views can then be taken into account in finalising the S106.

4.3 The Implementation Team will discuss any suggestions with the department responsible for delivering the service or infrastructure.

#### **5.0 When are the draft Heads of Terms for S106 Agreements negotiated?**

5.1 In most cases, draft Heads of Terms for each S106 agreement will have been negotiated by the Implementation Team before the application is registered. They are negotiated in advance of registration in order to minimise delays to the planning application process and to help meet the targets in the Development Control Charter. The draft Heads of Terms include details on the type and amounts of each contribution required for the proposed development. As they are only in draft form, there is opportunity to alter or add requirements at this stage.

#### **6.0 Where can I see the draft Heads of Terms?**

6.1 The draft Heads of Terms can be seen on the e-planning pages of our website. The draft Heads of Terms are included in the list of documents in the planning application details. The link to the relevant page is below:  
<http://eplanning.derby.gov.uk/acolnet/planningpages02/acolnetcgi.gov>

#### **7.0 When will I know if a S106 agreement has been signed and completed?**

7.1 Planning Control Committee Reports contain details of the contributions being sought from planning applications involving S106 agreements. The Reports are published seven days before Committee.

7.2 When a S106 is signed and completed, and planning permission is granted, the Implementation Team will email a summary of the contributions to the relevant ward Councillors and Neighbourhood Managers. Neighbourhood Managers should report these to their Neighbourhood Board.

7.3 Payments will normally only be received if the developments are actually built and agreements should be reported for information purposes only. Board Members are advised not to make spending suggestions at this stage as the money may never be received.

## **8.0 How do I find out if the contributions have been paid?**

8.1 The Implementation Team emails a Monitoring Report to all Councillors and Neighbourhood Managers on a quarterly basis. The report comprises a spreadsheet containing information on all S106 contributions which have been received by the Council and are currently available to spend. It states the amount of each contribution and the status of the contribution in terms of whether it has a “proposed” use for its expenditure or whether it is “unallocated”.

## **9.0 What are “proposed” S106 contributions?**

9.1 These are contributions which are already earmarked for spending. These will be recommended by officers and based on the following information:

- The requirements to mitigate the impact of the development on the surrounding area
- Any parameters in each individual S106 that constrain its use;
- Council priorities at the time the money is available;
- Opportunities to increase the value of contributions through pooling and match funding;
- Links to the Capital Programme; and
- Neighbourhood priorities and the views of local Councillors and Neighbourhood Boards

9.2 On some occasions, there may be contributions that are intended to resolve site specific, technical problems that would otherwise render the proposed development unacceptable. For example, a residential development may be required to contribute towards school places within a specified school. In such cases there will be no opportunity to change the contributions in the S106 agreement but this would be made very clear to Councillors when this is the case.

## **10.0 Can Councillors comment on the “proposed” S106 contributions?**

10.1 Yes, comments should be made to either the Lead Officer in the relevant department named on the spreadsheet or to Rachel Reid in the Implementation Team. Councillors should state if they disagree with a recommendation and suggest alternative uses of the funds if they feel this would be more appropriate.

## **11.0 When should Neighbourhood Managers comment on recommendations for the “proposed” expenditure of the contributions?**

11.1 Comments must be made within two weeks of the next available Neighbourhood Board meeting. Neighbourhood Managers should comment using the relevant sections of the Quarterly Monitoring Report and insert the date of the meeting when the report was discussed. Neighbourhood

Managers should state if their Board disagrees with a recommendation and suggest alternative uses of the funds where appropriate.

11.2 When a quick decision is needed, Neighbourhood Managers should contact the local Councillors and Board members electronically and seek a resolution either to go ahead or defer for further discussion.

11.3 Neighbourhood Board proposals for the use of funds for Highways will be incorporated into the Highways and Transport Programme. This goes to Cabinet for approval on a yearly basis. Any questions about the use of Highways funds should be directed to the Transport Planning Team on Tel: 641758.

## **12.0 Do contributions secured in a ward have to be spent in the same ward?**

12.1 No, the contribution spreadsheets in the Quarterly Monitoring Report are only broken down on a ward by ward basis to help Councillors and Neighbourhood Managers find what is secured in their ward. The purpose of spending a S106 contribution is to mitigate the impact of a development on its surrounding area and this is likely to affect more than one ward. When Neighbourhood Managers and Councillors are considering projects to mitigate the impact of such developments, they can take into account contributions available in adjoining wards.

## **13.0 What happens if a Neighbourhood Board disagrees with an Officer's recommendation for spending the contributions?**

13.1 When there is a difference in opinion in agreeing projects, the Neighbourhood Manager should negotiate with the relevant officer to reach a consensus.

13.2 Where a difference in opinion remains, an officer recommendation will be presented to Cabinet whilst highlighting the difference of opinion. Cabinet will make the final decision.

## **14.0 How do Councillors and Neighbourhood Managers make recommendations for the use of "unallocated funds"?**

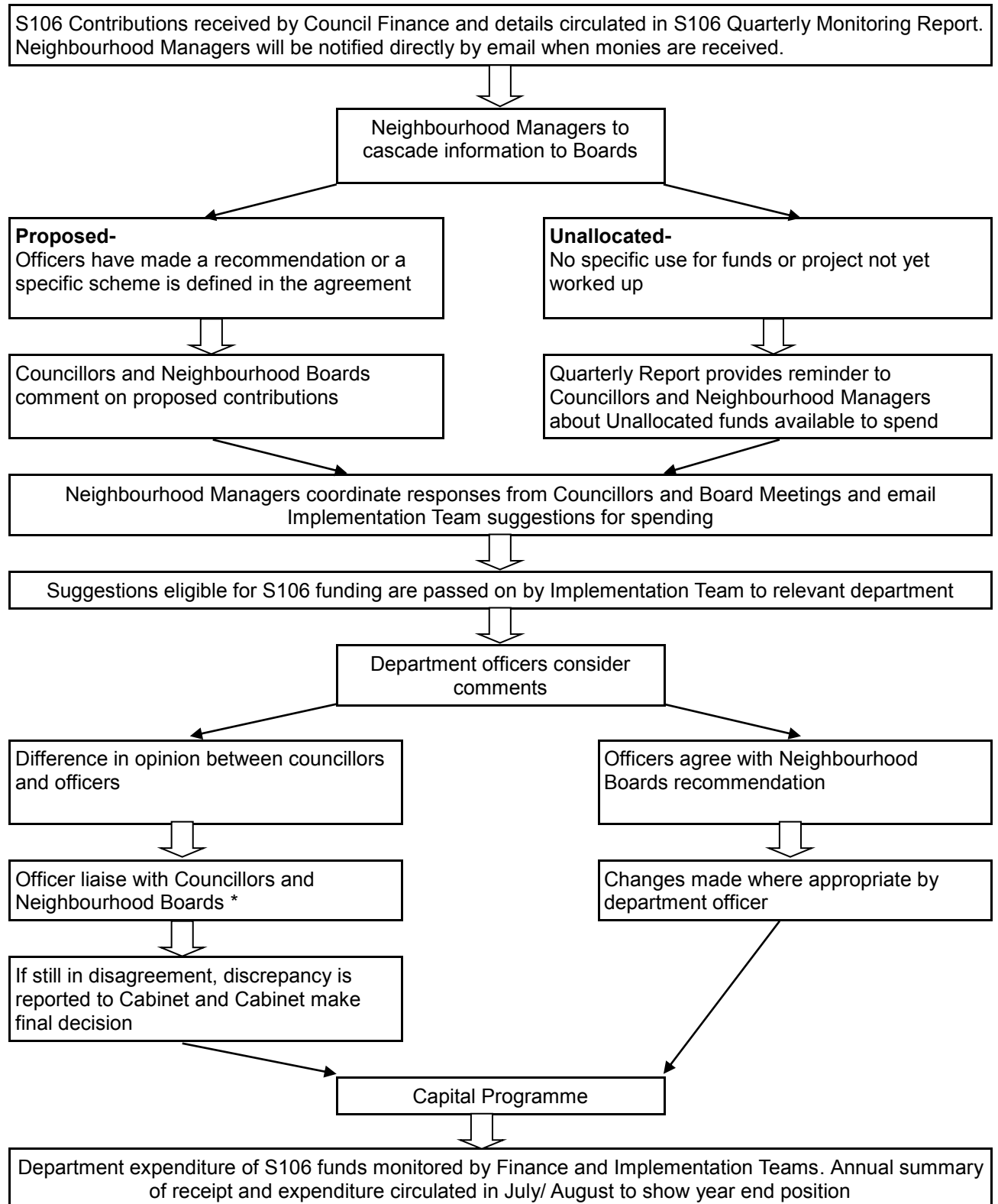
14.1 "Unallocated funds" are those funds which have not yet been proposed for spending or which exist where a scheme has not been worked up. Councillors and Neighbourhood Boards can influence the use of these funds and should email Rachel Reid the details of their recommendations.

14.2 The officers will consider recommendations in the development of the Capital Programme. The recommendation needs to be consistent with the "Type of Works" description in the Quarterly Monitoring Report spreadsheet.

**15.0 Is there a time limit on when the contributions can be spent by?**

15.1 Yes, the S106 agreements specify time limits on the expenditure of the contributions received by the Council. Any contributions that remain unspent by the specified time period may be repaid to the developer upon their request.

## Appendix 1: Flowchart showing how to influence the spending of Proposed and Unallocated Contributions



\*In exceptional circumstances, a department will need to add an unallocated or proposed contribution to the Capital Programme between the Quarterly Reports. The Implementation Team will then contact Neighbourhood Managers to explain the reasons for the change.

## Appendix 2

### Implementation Team Contacts:

Rosie Watson, Team Leader, Tel: 642113; [rosie.watson@derby.gov.uk](mailto:rosie.watson@derby.gov.uk)

Rachel Reid, Planning Officer, Tel: 642112; [rachel.reid@derby.gov.uk](mailto:rachel.reid@derby.gov.uk)

Kathryn Armstrong-Prior, Senior Planning Officer, Tel: 642111;  
[kathryn.armstrong-prior@derby.gov.uk](mailto:kathryn.armstrong-prior@derby.gov.uk)

Team Tel: 640807