



# **Section 106 Agreements**

## **Frequently Asked Questions – September 2019**

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Following questions raised at the Parish Council's Planning Committee meeting on 16 August 2019, this briefing note for residents and businesses sets out the position regarding Section 106 agreements.

### **What are Section 106 agreements?**

Planning obligations, also known as Section 106 agreements (based on Section 106 of the Town and Country Planning Act 1980), are legal agreements made between local planning authorities, developers and any other interested parties (e.g. landowners, where not the applicant). Such agreements can be attached to a grant of planning permission in order to make acceptable development which would otherwise be unacceptable in planning terms. The land itself, rather than the person or organisation that develops the land, is bound by a Section 106 agreement, something any future owners will need to take into account.

### **Who is responsible for setting out what is covered by Section 106 agreements?**

In most situations, Maidstone Borough Council (MBC) is the local planning authority. MBC may seek input from other public bodies, such as Kent County Council (KCC, the highway and education authority) and the National Health Service (NHS) West Kent clinical commissioning group (CCG), but this is purely at the discretion of MBC, and Marden Parish Council (MPC) cannot change any decision that MBC makes.

### **Who is responsible for implementing Section 106 agreements?**

Again, the planning authority (i.e. MBC in most situations). No other organisation, such as KCC, the NHS West Kent CCG or MPC, can alter or enforce these since they are not parties to the agreements.

### **What part does the Parish Council play in this process?**

MPC can suggest local priorities for improvements that might potentially be funded (at least in part) by a Section 106 agreement. However, the key point is that such agreements must relate to a specific planning application that would otherwise be unacceptable in planning terms, and thus it cannot be a general 'wish list' for improvements. For example, it is unlikely that a contribution for a children's play area could be justified for a development comprising light industrial units or a housing scheme specifically targeted at senior citizens. As a result, the Parish Council's response in terms of Section 106 agreements cannot be given in advance of any particular planning application since each case needs to be considered on its own merits.

### **Which organisations can input into Section 106 agreements?**

As noted above, KCC (the highway and education authority) and the NHS West Kent CCG (as the health authority) can propose items to be included in a Section 106 agreement. Similarly, MPC can do the same within its field of legal responsibility (e.g. playing fields, cemeteries and other open spaces) but it has no power to over-ride any decision made by other bodies having that legal responsibility.

As an example, MBC will listen to KCC as the highway authority about any road improvements that may be required to make a development acceptable that would otherwise be refused if planning permission was applied for. Any contrary view from MPC is likely to be disregarded.

The same applies to education or health issues, where the Parish Council is not the relevant authority.

### **So what can the Parish Council do?**

Again, as noted above, Section 106 agreements must relate to a specific planning application that would otherwise be unacceptable in planning terms.

This means that the Parish Council cannot provide a specific recommendation in advance of any particular planning application. Of course, it can draw on its general priorities for improvements that might potentially be funded (at least in part) by such an agreement, but each case needs to be considered on its own merits so additional or different priorities may apply and MPC will respond accordingly.

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### **Who is responsible for enforcing Section 106 agreements?**

MBC as the local planning authority, and the Parish Council cannot take any action itself since it is not a party to the agreement.

### **What happens if there is no immediate action about a highways, planning or health improvement?**

In some cases, a highways, planning or health improvement cannot be funded by a single development. This may mean that visible improvements are not implemented immediately because further contributions may be required before this happens.

The Parish Council cannot make the relevant authority change its priorities or schedule, although it will of course lobby such other bodies where this is appropriate.

### **Does the Parish Council monitor what these other organisations are doing?**

Yes, the Parish Council maintains a list of Section 106 agreements and monitors their implementation. This is updated at intervals, and if concerns emerge then these are taken up with the relevant authority.

### **Can MPC make KCC improve a road junction or expand the primary school?**

No, although it will of course lobby MBC and KCC if it appears that the terms of a Section 106 agreement have not been complied with.

### **Can MPC make the NHS West Kent CCG improve the medical centre?**

No, as for KCC or any other body, although it will of course lobby the MBC and CCG if it appears that a Section 106 agreement has not been complied with.

### **Can Section 106 contributions be 'lost'?**

Yes, most Section 106 contributions have a time limit, and this is one of the reasons why the Parish Council monitors the situation (see above).

### **What about the Community Infrastructure Levy (CIL)?**

The Community Infrastructure Levy (CIL) provides an alternative route to fund infrastructure improvements associated with planning applications. In principle, this could provide MPC with a greater role in the future.

However, this is a relatively new legal provision applicable to Parish Councils, and no CIL schemes have yet been approved in the parish.

It should also be noted that any required infrastructure funding will either be addressed through a Section 106 agreement, or a CIL payment, but not both.

### **Cautionary note**

It is also essential to note that Section 106 agreements and CIL payments only apply to applications where planning permission is granted. No planning permission = no money, so neither route can be used to address existing problems in the absence of new development.

Of course, MPC doesn't see new development as a panacea to solve existing problems, so each proposal is considered on its own merits.

In the absence of any new planning applications, the Parish Council continues to lobby the relevant authority (and, where applicable, its elected representatives) to address such existing problems.

### **So what can we do to help?**

Since the Parish Council is not the decision-maker in such situations, support from local residents and businesses is not only welcomed but encouraged.