

MALVERN HILLS DISTRICT COUNCIL

# SECTION 106

# FAQs



## Q1: WHAT IS A SECTION 106 AGREEMENT?

See <http://www.malvern hills.gov.uk/section-106>

## Q2: WHO IS RESPONSIBLE FOR MANAGING SECTION 106 FUNDS?

Council planning policies and plans set the framework for what is required from planning obligations. Council officers negotiate planning obligations with the developer, and the council's legal department draws up the Section 106 agreement to secure these contributions. The agreements are made under Section 106 of the Town & Country Planning Act 1990.

The District Council negotiates Section 106 Agreements with the developer to address issues relating to public open space, public realm and affordable housing. The District Council is then responsible for ensuring payments are made and monies spent within the timescales specified in the S106 Agreement and for allocating funds to projects in the community.

Worcestershire County Council has responsibility for managing funds in relation to highways and education.

## Q3: HOW DO THE FUNDS RELATE TO THE DEVELOPMENT?

Contributions can only be sought against a future need that would arise as a result of a particular development. They are intended to make development acceptable where it would otherwise be unacceptable in planning terms. They deal with those non-planning aspects of the development proposal that could not be covered through a condition on the planning permission. Every Section 106 Agreement will be different and reflect the development that it relates to.

All development has the potential to impact on the environment and place pressure on local infrastructure and services. The planning system can be used to ensure that new development contributes positively to the local environment, and helps to mitigate against any adverse impacts on infrastructure. Mitigation is typically secured through conditions attached to planning permissions and/or through legal agreements with developers (known

as planning obligations or Section 106 agreements) to secure provision of, or contributions towards, necessary infrastructure. The Community Infrastructure Levy Regulations and the introduction of the Community Infrastructure Levy Charging Schedules mean that some future infrastructure contributions will be made in the form of Community Infrastructure Levy payments, rather than through s106 planning obligations.

When the required level of open space and / or recreational facilities will not be provided on site, the developer will be required to pay a financial contribution towards separate off site provision. These contributions should mitigate for the lack of on site provision and for the impact of the development and are normally spent within the vicinity of the site. Please refer to the South Worcestershire Developer Contributions Supplementary Planning Document.

The three key tests that obligations must comply with to be considered lawful are:

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

## Q4: WHO CAN APPLY FOR S106 FUNDS?

Applications are normally invited from the following not-for-profit organisations whose activities benefit residents of the district:

- Local Authority (District, Town, Parish Council, County Council)
- Educational Establishment
- Company Limited by Guarantee with Charitable Status
- Registered Charitable Organisation
- Unincorporated not for profit organisation
- Registered providers of affordable housing

Organisations should be properly constituted.

## Q5: WHAT IF THE TOWN OR PARISH COUNCIL OBJECTS TO THE DEVELOPMENT?

Town and Parish Council's should take an active role in

the identification of the strategic priorities and set out their wishes in respect of the allocation of any potential Section 106 contributions. Submitting this information will in no way prejudice any objections raised within the consultation response.

## Q6: WHAT TYPES OF PROJECTS CAN SECTION 106 PUBLIC OPEN SPACE MONEY SUPPORT?

Section 106 funding is available for capital projects only (not to cover revenue expenditure) but may include project management costs. Section 106 funds may only be spent on new facilities or improvements to facilities where the new development has, at least in part, contributed to the need for that facility or will have an impact on the existing facilities. Funds may be used for the provision, improvement, enhancement or adaptation of:

- Outdoor play spaces
- Indoor and outdoor sports facilities and associated ancillary facilities (e.g. changing rooms, pavilions and parks)
- Outdoor leisure and recreational provision including allotments; amenity green spaces; natural green spaces, paths and pathways; parks and recreation grounds and youth activity areas.
- Community centres and village halls

Examples of eligible projects include:

- Installation of a new sprung floor
- Installation of an artificial turf pitch
- Upgrading of play area with new equipment
- Purchase of land for additional pitches
- Extension of community hall
- Informal youth facilities – ball courts, skate parks, youth shelters etc.
- Purchase of land for burial ground
- New car parking area if directly related to sport/recreation facility

Please cross refer to Q3.

## Q7: WHAT CANNOT BE SUPPORTED BY SECTION 106 FUNDS?

Costs related to revenue expenditure or costs which primarily relate to the maintenance of existing facilities such as minor repairs, replacement or redecoration

cannot be funded. S106 funding is not an opportunity to solve existing deficiencies. Movable equipment items are also excluded from the scheme.

Examples of projects that are unlikely to be eligible for funding include:

- Patch repairs to an artificial turf pitch
- Goal posts or other movable sports equipment
- Replacement boiler
- Installation of a new kitchen
- Provision of disabled access and /or facilities
- Soft landscaping ie. plants/planting for gardens, parks, amenity area

Retrospective funding is not permitted.

## Q8: HOW MUCH FUNDING IS AVAILABLE?

The amount of funding available for individual catchment areas will depend on the sum of the contributions received by the district council through the planning obligations process. There is no upper limit to what funding can be applied for, although this will obviously be limited to how much is available. The assessment panel can make the decision to offer part of the funding requested as opposed to the whole amount. Recent restrictions on the pooling of S106 contributions (Max. 5) may affect how projects can be funded in the future.

## Q9: IS MATCH FUNDING A REQUIREMENT?

Funds may be awarded for the entire project, but applicants are positively encouraged to seek funding from other grant bodies and community sources. Additional contributions demonstrate wider partnership support and commitment to the scheme and increase overall value for money. Applications that include an element of match funding will often be assessed favourably than if there was no match funding. [See Q17].

## Q10: WHEN IS THE MONEY AVAILABLE?

A planning application has to be implemented for planning obligations to be triggered. The Section

106 Agreement will specify the trigger for payment e.g. occupation of first dwelling or occupation of the 20th dwelling. If a development does not go ahead, the Section 106 Agreement will not be implemented. Applications are invited once the money has been received by MHDC at which point parish & town council, ward councillors and other interested parties will be informed. Applications cannot be formally considered before money is received although informal discussions, planning and consultation can be progressed.

## Q11: IS THERE A DEADLINE FOR APPLICATIONS?

The district council does not set specific deadlines for the submission of applications for S106 funding and applications are treated on a first come first served basis. Most Section 106 Agreements will include time limits for financial contributions from developers to be spent, typically five or ten years depending on the scale of the development to which the Section 106 Agreement relates, after which the district council will have to return any underspend to the developer.

## Q12: HOW LONG DOES THE PROCESS TAKE?

The Grant Fund Guidance Notes <http://www.malvern hills.gov.uk/section-106-grant-funding> provide an Application Process Timetable with indicative timeframes for each phase of the process. The district council aims to release funds approximately 6 months from receipt of the application. However, issues can arise that are entirely dependent on the applicant to resolve and that may delay this process, for example the requirement of a planning consent or evidence that the applicant has an interest in the land to which their project relates. Therefore it is not possible to precise about timescales in every case.

## Q13: CAN APPLICATIONS BE AGREED 'IN PRINCIPLE'?

Applications agreed 'in principle' and awaiting confirmation of conditions such as planning permissions, match funding etc. will lapse after 6 months and will need to be resubmitted.

## Q14: WHAT ARE THE FUNDING ARRANGEMENTS?

Once funding has been approved, you will be required to enter into an agreement (see sample agreement <http://www.malvern hills.gov.uk/section-106-grant-funding> to include any additional conditions that the council considers appropriate. Payment will be made once the district council is satisfied that all terms and conditions of the allocation of funding have been met. You will normally receive a single, 'up front' payment.

Applicants will be required to commence the works on or before the end of a period as specified in the grant agreement.

## Q15: WHO SHOULD WE BE SPEAKING TO ABOUT OUR PROJECT?

Community groups and organisations are encouraged to work with Parish and Town Councils in identifying projects that are of benefit to the local community. We would expect all applications to evidence support from the relevant Town or Parish Council where the applicant is not the Town or Parish Council. It is also important that District Council ward councillors are closely involved in this process. Visit [www.malvern hills.gov.uk](http://www.malvern hills.gov.uk) for contact details of your ward councillors.

## Q16: HOW DO WE EVIDENCE LOCAL SUPPORT?

It is important to demonstrate that your project has the support of the local community. There are many different approaches to successful community consultation and engagement depending on the specific aims and objectives of the project. Here are just a few examples of methods for consulting and engaging with your community:

- Leaflets, flyers, posters
- Exhibitions / interactive displays (e.g. in village hall or at local event) Website
- Social media e.g. Facebook
- Newsletters, email updates
- Surveys or questionnaires by post / door to door / online
- Competitions e.g. for project ideas / designs
- Public meetings

Further information on community engagement can be found at <http://www.homesandcommunities.co.uk/community-engagement-toolkit>

- describe the significant achievements of the project
- share the lessons learnt
- offer feedback on the grants process

## Q17: WHERE CAN WE GET SUPPORT?

Community Services [communityservices@malvernhillsgov.uk](mailto:communityservices@malvernhillsgov.uk) will be able to provide guidance on the completion of the form and advise whether the applicant is likely to meet the relevant funding criteria. Some applications may benefit from additional support from advisory bodies such as The Sports Partnership Herefordshire and Worcestershire <http://www.morethansport.com>.

## Q18: HOW ARE APPLICATIONS ASSESSED?

The application form has been designed to capture all the information required to enable a fair and considered assessment. Having established that the applicant meets the relevant eligibility criteria, the application will be assessed against the following broader determinants:

- evidence of match funding [see Q8]
- value for money
- evidence of need
- evidence of increase and/or diversification of usage
- evidence of community consultation and local support [see Q15]
- financial viability and sustainability
- project management capacity
- alignment to local plans & strategies (parish/district/county) eg. Parish Plan, Neighbourhood Plan, MHDC Strategic Vision & Objectives <http://www.malvernhillsgov.uk/policies-and-strategies>, Malvern Hills District Sport and Leisure Strategy 2014-2024 <http://www.malvernhillsgov.uk/sport-and-leisure-strategy>

## Q19: WHAT ARE THE MONITORING REQUIREMENTS?

Projects will be expected to carry out monitoring and evaluation. Applicants will be required to complete and submit an evaluation report 12 months from the date the project is open to the public. You will need to:

## Q20: WHAT IF THE APPLICATION IS NOT SUCCESSFUL?

The panel's decision is final and there is no right to appeal. Applicants have the right to submit a complaint through the district council's complaints procedure if they feel that the council has not followed the correct procedure <http://www.malvernhillsgov.uk/compliments-and-complaints>.

## Q20: WHAT SHOULD WE DO IN THE EVENT OF AN UNDERSPEND OR OVERSPEND?

The applicant is responsible for any project overspend above the agreed limits and any other expenditure in relation to the project. Any underspend will need to be returned to the District Council.

**This FAQ sheet has been produced jointly by Planning Services and Community Services at Malvern Hills District Council.**

**V3 – June 2016**