**A Practical Guide to Variation of s106 Agreements**

**What is a Section 106 Agreement?**

A section 106 agreement (s106 agreement) is designed to make a development that would otherwise not be possible happen by securing mitigation measure and/or contributions from a developer; known as planning obligations. The agreement is between a developer, local planning authority and any other interested party, such as landowner, mortgagee etc. Section 106 agreements form part of the [**Town and Country Planning Act 1990**](https://www.legislation.gov.uk/ukpga/1990/8/section/106) and must be *necessary* to make the development acceptable in terms of planning, *directly related to the development in question* and be *fairly and reasonable related in scale and kind to the development.*

S106 agreements or developer obligations as they are sometimes known can be negotiated (unlike Community Infrastructure Levy (CIL) obligations) prior to being formalised, depending on the circumstances of a proposed development. For instance, if a developer can demonstrate that a development is not viable with specific obligations via a viability assessment.

The common useof planning obligations is to secure affordable housing and financial contributions to provide locally specific infrastructure. However, these are not the only uses for a s106 obligation. A s106 obligation can:

* restrict the development or use of the land in any specified way;
* require specified operations or activities to be carried out in, on, under or over the land;
* require the land to be used in any specified way; or
* require a sum or sums to be paid to the authority on a specified date or trigger.

**Can you Modify a s106 Agreement?**

Yes – s106 agreements can be renegotiated after its been completed. The agreement can be modified or discharged either by agreement with the ‘appropriate authority’ (i.e the local authority) (if the planning obligation is less than 5 years old) or by applying to the enforcing local authority after 5 years from the planning obligation being set out (or if it predates April 2010).

**Why can a s106 Agreement be changed?**

From the time a s106 agreement is signed to the implementation of a development (or beyond) circumstances can change and make the requirements of the s106 no longer applicable or onerous.

One of the key reasons that agreements are modified is due to unforeseen costs associated with a development. In these cases, a viability assessment can confirm that the costs or obligations contained within a s106 agreement can no longer be met. These assessments must be robust.

The viability of a s106 agreement will usually be based on factors such as:

* Land value
* Professional, project management, sales, marketing and legal costs incorporating organisational overheads associated with the site.
* Building costs
* Abnormal costs, including those associated with treatment for contaminated sites, listed buildings or archaeological works or costs associated with brownfield, phased or complex sites.
* Planning and other obligations such as CIL
* Taxes, duties and costs of financing
* Gross development value (GDV)
* Developers' profits
* Contingency allowances (if any)

**What are the Key Points to Include Within an Application?**

* Name and address of applicant
* Address or location of the land in question, with an accompanying map
* Information on the planning obligation the applicant wishes to modify or discharge
* Reasons for applying
* Any other information considered relevant by the local planning authority

**What can Happen if I Apply for Modification of a Section 106 Agreement?**

In accordance with s106A(6) of the Town and Country Planning Act 1990, a local authority can either:

* Decide that the planning obligation will continue as it is, without modification.
* Discharge the obligation if it no longer serves a useful purpose.
* Modify the planning obligation as per the application.

**How Will the Local Authority Make Their Decision?**

Planning authorities decide whether to accept renegotiation of a s106 agreement based on whether the obligation:

1. No longer serves a useful purpose.
2. OR would continue to serve a useful purpose in a modified way.

(Town and Country Planning Act 1990 – section 106A)

Essentially, the local planning authority will consider whether the agreement still serves a purpose, and if it does, whether it would continue to serve the same purpose if modified in the way proposed by the applicant.

**When will a Decision be Made?**

You should receive a decision within 8 weeks of submitting your application, unless a longer time period has been agreed with the local planning authority.

If the s106 no longer serves a purpose the agreement is discharged.

If the s106 required modification a deed of variation is required to be entered into by the parties who signed the original agreement.

**Can you Appeal a Decision?**

Yes – section 106B of the Town and Country Planning Act 1990 states that you have a right to appeal if your local planning authority decides the planning obligation will continue without modification or discharge, or if they fail to provide a response. Appeals must be made within 6 months of the decision, or, if no decision was received, within 6 months beginning 8 weeks from the date of your application.

If you need additional support with the modification or discharge of a section 106 agreement or with an appeal, a town planner can guide you through the process, ensuring everything runs smoothly to get you the best results possible.

**How can Planning House Help?**

Planning House have secured approval for the modification of a previously agreed s106 legal agreement for residential development where the spiralling costs associated with archaeological works rendered the scheme unviable if the s106 agreement was not discharged. [**Planning Success – Modification of s106 Legal Agreement.**](https://planninghouse.co.uk/planning-success-modification-of-s106-legal-agreement/)

If you are in need of assistance please feel free to [**CONTACT US**](https://planninghouse.co.uk/contact-us/) to discuss your situation.

If you’re not sure we’re the right fit for you then take a look at our blog on [**When to Hire a Town Planner**](https://planninghouse.co.uk/when-to-hire-a-town-planner/) and our download on [**Guide to how to choose a Town Planner**](https://planninghouse.co.uk/wp-content/uploads/2020/09/How-to-choose-a-TP-checklist.pdf) to help you find a town planner that’s right for you.

*Related Content*

More information about Planning Obligations / s106 Agreements can be view in the [**National Planning Practice Guidance**](https://www.gov.uk/guidance/planning-obligations)

Take a look at our [**eBook: CIL & s106**](https://mailchi.mp/4eb5962805cc/cil-and-s106) – which gives the basics on CIL (Community Infrastructure Levy) and developments which may trigger the need for additional works or financial contribution (via s106 agreement). It’s better to know in advance what the financial implications might be.

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