

QUICK GUIDE: Section 106 Legal Agreements and Viability

An overview of Section 106 Legal Agreements, development viability and viability appraisal

What is a Section 106 Legal Agreement?

A S106 Legal Agreement is a legal agreement between Dartmoor National Park Authority (DNPA), the applicant and sometimes other parties such as the landowner, District Council or Devon County Council. They must be agreed and signed for planning permission to be granted.

By signing a S106, the applicant agrees to deliver certain requirements or make financial contributions. These requirements or contributions ensure a development is acceptable in planning terms and complies with Local Plan policy, where without them, it wouldn't be acceptable. For example, a S106 Legal Agreement might be used to ensure delivery of children's play space, affordable housing, highway improvements or money towards school transport, without which the development would not meet policy requirements and shouldn't be given planning permission.

What can a Section 106 Legal Agreement require?

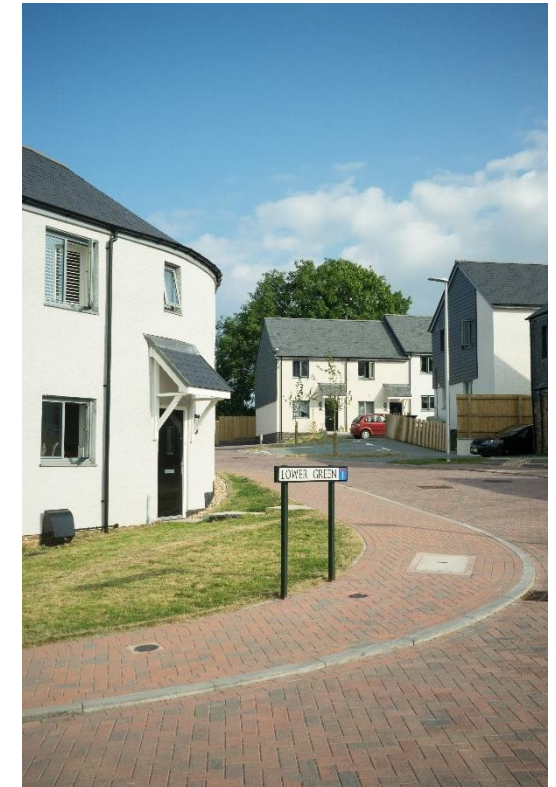
There are statutory (legal) tests for whether something can be required in a S106 Legal Agreement.

To be included it must be:

- necessary to make the development acceptable in planning terms (for example, securing affordable housing in order to meet policy requirements)
- directly related to the development (for example, improvements to the drainage for the development)
- fairly and reasonably related in scale and kind to the development (for example, a contribution to improve an existing local play area as a result of the number of families in a new development that are likely to use that play area).

Can we get money for community projects from a Section 106 agreement?

The S106 legal tests limit contributions to only what is required to make the development acceptable in planning terms. Local Plan policy sets what can be sought via s106 and will often only require contributions where there is an identified and evidenced need for something. S106 does not provide a general 'pot' of money for community projects.



How do I tell DNPA about infrastructure needed in my community?

The [Infrastructure Delivery Plan \(IDP\)](#) records key infrastructure items necessary to accommodate development in Dartmoor. DNPA use the IDP to assess whether an infrastructure item is needed, identify potential funding sources and delivery bodies. Projects funded through s106 will typically be identified on the IDP. Communities can contact us with details of projects or works they think should be included and these will be assessed when the IDP is reviewed.

Does DNPA charge CIL (Community Infrastructure Levy)?

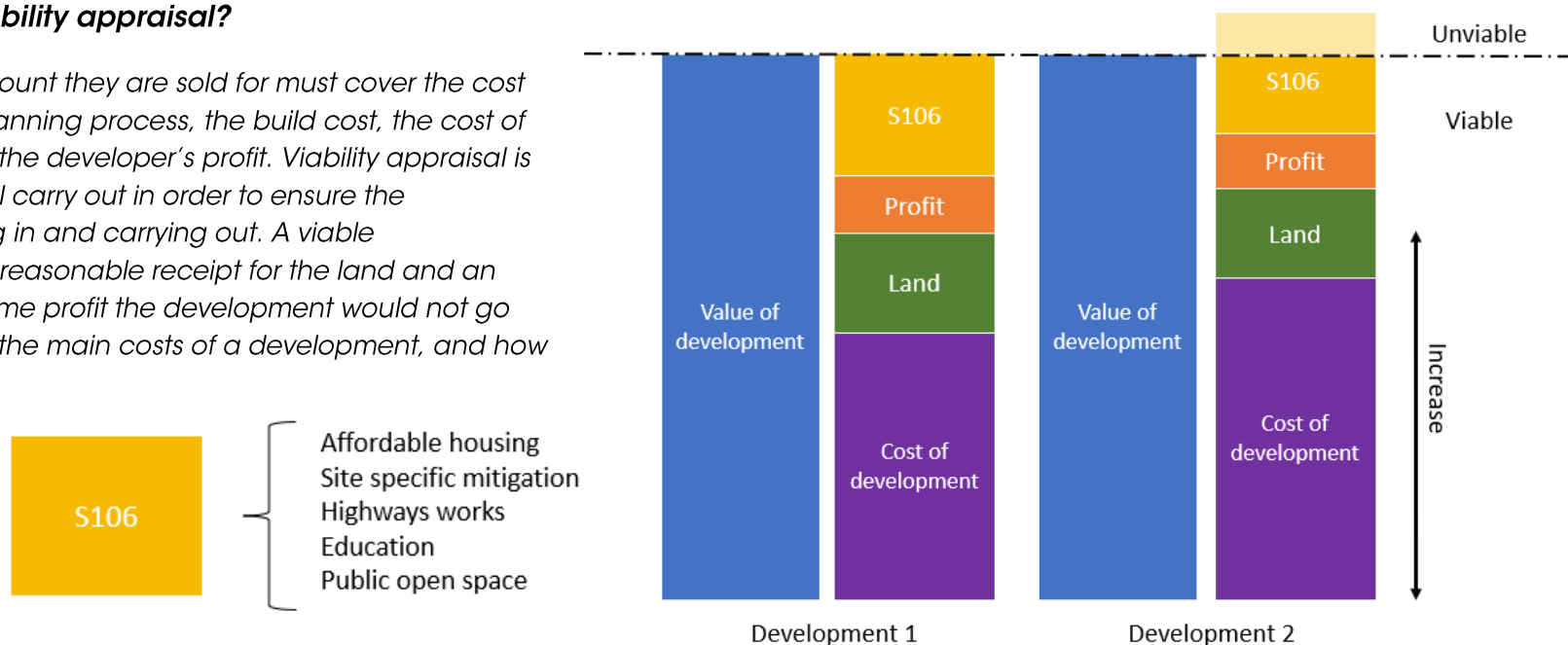
Some Local Planning Authorities charge a CIL – a fixed charge per m² of all development that is used to fund infrastructure in the wider area. CIL funds infrastructure but cannot be used to provide affordable housing. Affordable housing is a priority in the National Park; we use market housing to cross-subsidise ('pay for') affordable housing. Because CIL is fixed, whereas s106 can be negotiated site by site, a CIL may mean less money is available to deliver affordable housing. DNPA therefore does not charge a CIL. Further information about the different Developer Contributions can be found on the [Planning Advisory Service website](#).

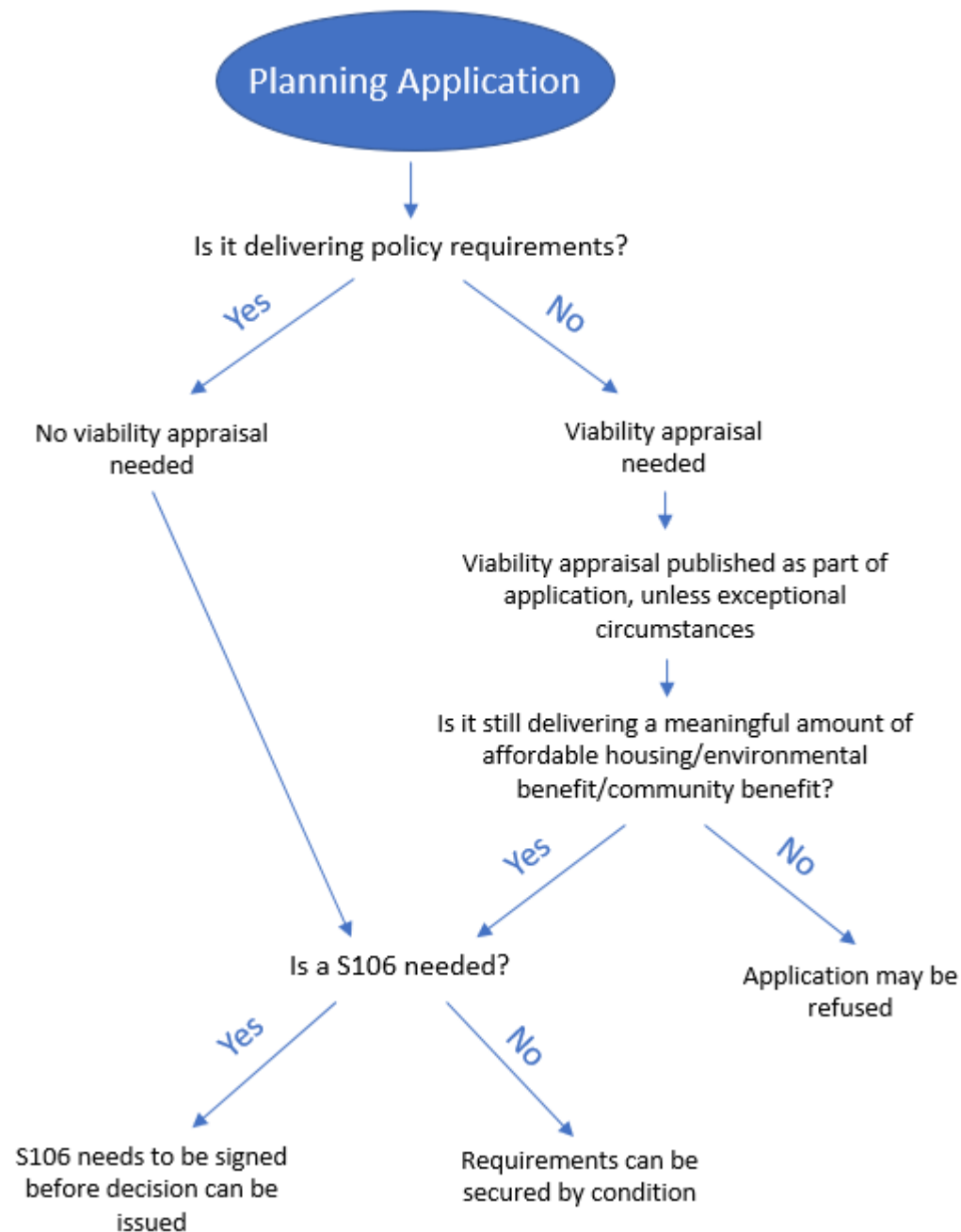
Can I find out what contributions have been received and spent?

We publish an Infrastructure Funding Statement every year so you can see what we have required through s106 and whether it has been received. You can view these on our [monitoring webpage](#) on the DNPA website.

What is a development viability appraisal?

When homes are built, the amount they are sold for must cover the cost of the land, the design and planning process, the build cost, the cost of any planning obligations and the developer's profit. Viability appraisal is a process all housebuilders will carry out in order to ensure the development is worth investing in and carrying out. A viable development must allow for a reasonable receipt for the land and an appropriate profit – without some profit the development would not go ahead. Here is an example of the main costs of a development, and how s106 is part of that cost.





When is a viability appraisal needed?

As the Local Planning Authority, we may require a viability appraisal if a planning application does not include everything required by the policies in the Local Plan. This might be because the development includes 'abnormal costs' such as drainage improvements, earth works, or higher build costs. The viability appraisal should be an 'open book', showing all the costs of the development and the income. This enables us (and you) to understand why it is not viable to meet all policy requirements and inform our judgement of whether the application should still be approved.

I'm not an expert, how does the public understand a viability appraisal?

The application should include an Executive Summary of the viability appraisal which summarises and simplifies the findings to make it more understandable. Behind this will be the detailed appraisal, we expect this to be made public unless there are exceptional reasons not to publish it.

Why is consideration of viability even allowed – shouldn't the applicant always have to deliver their obligations?

The [Local Plan](#) allows for consideration of viability as part of the application process (Strategic Policy 3.3 to 3.5). This is required by national policy. However, the viability appraisal is used to inform a planning judgement of whether the development should go ahead; the proposal should still be delivering benefits to Dartmoor and its communities, for example through affordable housing and/or environmental improvements. Applications will be refused where a viability appraisal is used to try and justify a development that brings no benefit to Dartmoor.

What happens if viability changes by the time the development takes place?

Sometimes the viability of a development can change after the permission has been granted. On larger schemes we will normally include an 'overage' which means if costs go up the developer can discuss this with us, equally if costs go down, or the homes are sold for more than set out in the viability appraisal the developer may be required to increase their planning contributions. Where these changes are significant this may go through a formal change to the permission.

Where do I find viability information, and how do I comment on viability appraisals or S106?

Where a viability appraisal is needed, this will be published online as part of the planning application. You can comment on this along with any other comments you might have on an application – the simplest way to do this is on our [website](#). We will sometimes have an applicant's viability appraisal checked by an independent expert, where we do, their report or feedback will be added to the application files once we have received it. The detail of a S106 is a legal process which takes place alongside an application being processed and decided – we normally expect the applicant to set out 'heads of terms' as part of their application so that there is an opportunity to understand and comment on what may be included in a S106 agreement if the application is granted.

How do I find out more?

If you need further advice or more guidance in relation to the above, please contact the Forward Planning Team. If you have questions regarding a specific application please speak to the case officer for that application.

How to get in contact:

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