

Section 106: Adding Value to the Process Budget & Resources Scrutiny Committee

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1. Planning Obligations and s106 Agreements – a brief recap
2. MK Tariff model
3. Community Infrastructure Levy (CIL)
4. CIL compliance
5. Overview of the current negotiation process and some examples
6. Current Service improvements
7. What else can we do?

Planning Obligations – a recap

- Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms.
- Planning obligations are sought under Section 106 of the Town and Country Planning Act 1990 (the Act).
- Should seek to mitigate the impact of development through planning conditions as the first option.
- S106 obligations can be monetary or non monetary obligations.

A s106 Agreement is...

- A legally binding document
- Either entered into with other parties, or can be unilateral
- Transferable with a change in land ownership
- Enforceable
- A Land Charge

1. Individual s106 agreements aligned to a '**framework agreement**'
2. Based on a programme of infrastructure delivery on **15,000 homes** in the **expansion areas** over **20 years**
3. Forward funded by and agreement with **Treasury** in the mid naughties
4. **£310m programme** (with receipts netting off against expenditure)

Community Infrastructure Levy

1. Government's **preferred approach** to infrastructure funding.
2. **Flat rate fee** aligned to an agreed infrastructure programme, with viability at the heart of the charge
3. Some **exceptions** to those who would pay (including new affordable housing)
4. Meaningful proportion to **town and parish councils** (with or without a Neighbourhood Plan)
5. **Still need s106 agreements** to secure other obligations and affordable housing
6. MKC need to consider it's latest position on this.

The **3 Rules** of Planning Obligations:

1. **Necessary** in planning terms
2. **Directly related** to the development
3. **Fairly and reasonably related in scale and kind** to the development

It is **unlawful** for planning obligations to be taken into account when determining a planning application for a development, if the obligation does not meet all of the above three tests

Negotiation Process: Key Principles

- Single ownership of the s106 process (Planning Officer).
- Process can (and should) start as early as possible.
- Services commissioned from Infrastructure & Obligations Team, and Legal Team.
- Starting position is the standard policy basis and s106 'calculation'.
- Onus is on consultees to respond with specific requirements justified against CIL criteria.

- Based on a suite of **Supplementary Planning Documents and Guidance** notes covering different infrastructure types: [Planning Hub](#) – look under SPDs.
- Monetary obligations based on a **formula** for each infrastructure type.
- New Policy document:
 - Mark 1 (rescinded)
 - Mark 2 (under development)

S106 Negotiation Process Map

S106 KEY PROCESS STEPS



1 Perform Initial S106 Calculation



2 Early Communication Letter & Calculator to Applicant



3 Complete Template to Request s106 Admin Support & Send to 's106 Consultations' Mailbox



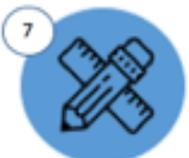
4 Use Consultee Directory to Initiate Consultation



5 Coordinate, Chase & Log (via I@W indexing) Consultee Responses & Evidence



6 Inform Planning Officer when all Responses are Received



7 Review Responses & Evidence. Accept or Re-negotiate



8 Complete HoT Section of S106 Proforma



9 Update Applicant of Scheme Requirements – Await Response



10 IF Applicant Challenges Scheme Requirements



11 'Simple' Challenge – Seek Verbal Support from Obligations

OR

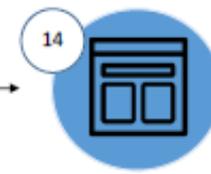


12 IF Complex Negotiation or Viability, then Commission Planning Obligations to Lead

S106 KEY PROCESS STEPS



13 WHEN applicant agrees scheme requirements



14 Complete Legal Instruction (with Heads of Terms appendix) to commission Legal



15 Legal process leading to creation of draft s106 Agreement



16 Review & comment on draft s106 Agreement



17 Legal process leading to creation of final s106 agreement



18 Legal process to seal Engrossments



19 Send Decision Notice & Feedback Form to applicant



Please note that in order monitor progress of the s106 applications, and also the impact of the redesigned process, a s106 Tracker has been designed. All roles involved in the process will have a responsibility to keep the tracker up to date



Planning Officer



Infrastructure & Obligations (I&O) Team



s106 Administrator



Applicant



Legal

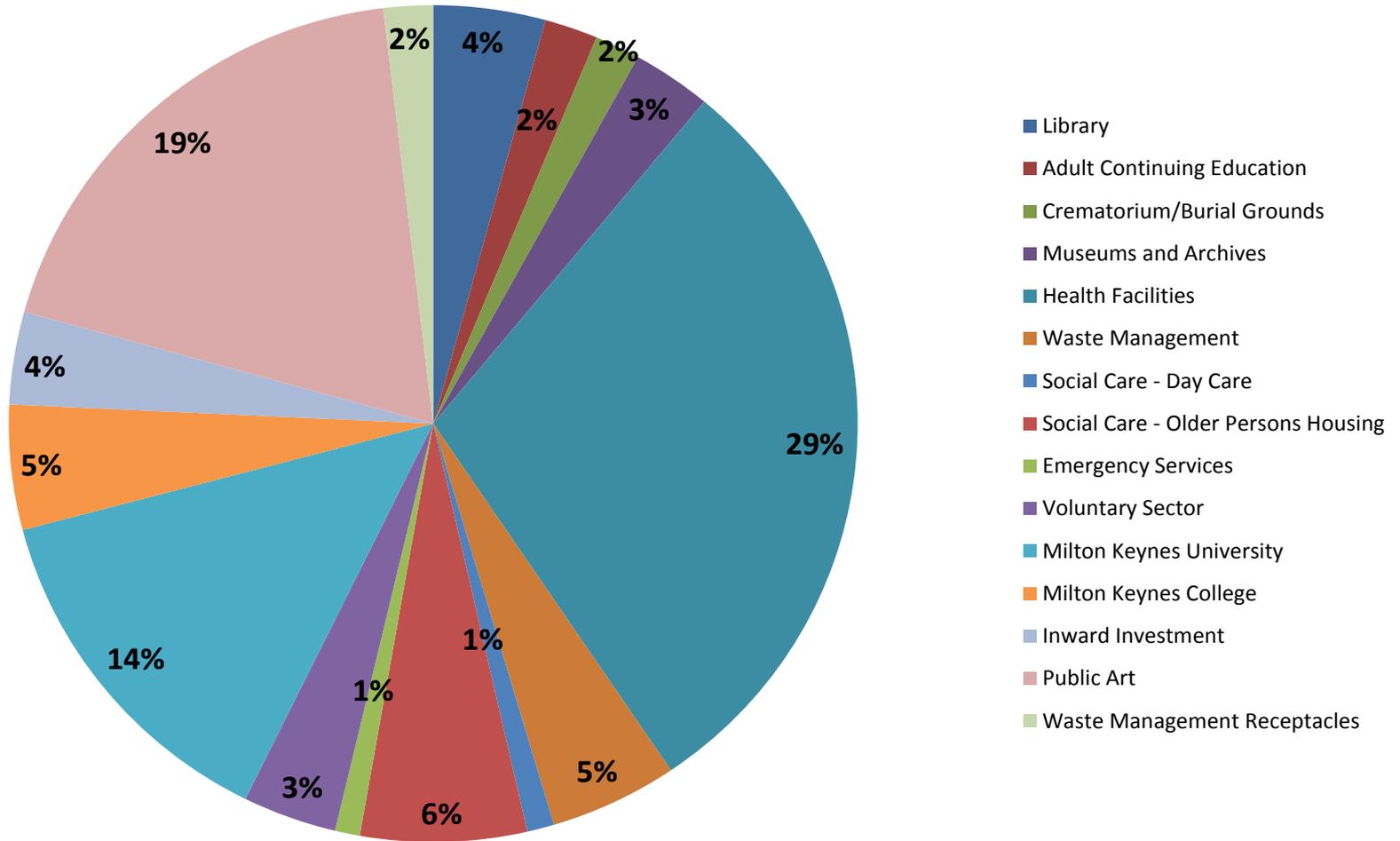
Standard 100 home calculation

Social Infrastructure	£531,589
Education	£970,205

+ Affordable Housing
+ Any other site specific requirements

Total	£2,420,780
Total per Dwelling	£24,208

Social Infrastructure breakdown:



Assessing CIL compliance

Item	Value	Purpose	Consultee Evidence	CIL Compliance assessment
Education – Secondary	£3m	To be used towards the provision of educational facilities addressing the requirements of children between the ages of 11 and 16, at XXX School.	Pupil yield is 3% per year group at secondary, plus those from the primary year groups moving through the system. The Education Sufficiency and Access Strategic Lead confirms the contribution is in line with this yield and that provision of places would be planned for at XXX School .	<p>Necessary: New secondary school places will be necessary to serve pupils who will live on the development.</p> <p>Directly related: Additional capacity to serve this development will be modelled in to provision at the nearest secondary campuses.</p> <p>Scale & kind: The scale of the financial contribution towards this is in line with the provision of those places.</p>

Service Improvements to date

- Planning, programming and delivering infrastructure requirements and projects (through s106 receipts):
 - Growth Delivery Board - Housing Delivery Action Plan
 - Infrastructure Sub Board – coordination, challenge and recommendation of priorities.
 - Implement monitoring and management fee structure.
- Improving visibility of s106 process and legal agreements:
 - Internal Audit and monitoring process review.
 - Exacom implementation (internal and public facing management and information system).
 - Presentations to Parish Assembly and Town Council Clerks.
- Training:
 - Planning staff and internal service areas.

- Over to you:
 - What can we learn from Committee Members specific experiences?
 - What tools/ information would Members find useful?
 - Where else in the process can we look to investigate 'value added' opportunities?