



Fact Sheet

The s106 Planning Agreement for Exception Sites

1. A planning permission for a development on an exception site is always conditional on the applicant signing a s106 Planning Agreement. It is called a *s106 Agreement* because the circumstances in which such an agreement can be used and enforced are contained in s106 of the Town and Country Planning Act 1990.
2. It is used in relation to exception sites to ensure that the purpose (affordable housing, in perpetuity to meet local needs) for which the applicant stated that the land would be used is followed through and enforced.
3. Many people are familiar with s106 planning agreements used to secure other planning gain benefits, but those attached to planning permission for exception sites are not quite the same as they seek to secure “exceptional” benefits.
4. An exception site contains only affordable houses and these must be available in perpetuity for rent or for shared ownership sale to local people.
5. A definition of the “local connection” required is normally included in the agreement and will stipulate the type of connection and the length of residence which will qualify.
6. A list of neighbouring villages from which applications for housing can be sought is always included to allow for occasions on which there are no applicants from within the village where the development is located. A further safety net normally allows the catchment area to spread to the entire district. This is designed firstly to ensure that houses are never left empty and secondly to reassure lenders as to the security against which they provide loan finance.
7. The agreement often stipulates the type, size and tenure of the dwellings. This detail will have been included in the planning application support document and will relate to the identified needs in the parish.
8. The “in perpetuity” requirement is met, for the rented houses, by the exemption from the right to acquire for houses in settlements with a population of fewer than 3,000 people. For shared ownership houses in this size of settlement, the owner can “staircase” to only 80% of the equity. (With the Rural Housing Trust model of grant-free shared ownership, houses are sold on fixed equity leases NOT the HC standard lease. Because there is no grant applied to the shared ownership houses, they are not subject to the right to staircase.)

(RHT's solicitor is available to explain this to any RSL's solicitor if necessary. RHTD's model lease and Deed of Trust is available for reference.)

9. There should be no provision for a mortgagee in possession or a receiver to sell any of the houses free from the restrictions of the s106 agreement. This would undermine the "in perpetuity" requirement. Large RSLs find no difficulty with this because the residual borrowing is such a minute part of their overall borrowing facilities.
10. Permitted development rights are removed to ensure that extensions and other alterations that might enhance the value of the houses would be subject to planning applications in the normal way.
11. The parties to the s106 agreement are anyone with a freehold or leasehold interest in the land. The terms of the agreement pass with the land.
12. It is not usually possible for a Parish Council to be a party to the agreement because they have no legal interest in the land. However, developers of exception sites should always consult the Parish Council over the terms of the Agreement before signing.