



**Innovative Financing for Transport  
Schemes:  
A European reference resource**

**Briefing Paper 9  
Developer Contributions -  
Planning Obligations Section 106  
September 2015**





## Sustainable transport for North-West Europe's periphery

Sintropher is a five-year €23m transnational cooperation project with the aim of enhancing local and regional transport provision to, from and within five peripheral regions in North-West Europe.

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### INTERREG IVB



INTERREG IVB North-West Europe is a financial instrument of the European Union's Cohesion Policy. It funds projects which support transnational cooperation.



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Report produced by University College London

Lead Partner of Sintropher project



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## Background

This briefing paper is one of a series that together comprise a European reference resource for innovative approaches to financing transport schemes (capital costs) with particular reference to light rail and tram-based schemes in cities and regions. The approaches are also relevant to capital financing of transport schemes generally.

The resource is one of the Investments undertaken for the Sintropher project funded under the INTERREG IVB North West Europe Programme for transnational co-operation. The overall aim of Sintropher project is to develop sustainable, cost-effective solutions to improve connectivity to, from and within poorly connected regions in North-West Europe - to use innovative transport links to connect peripheral regions of NWE with the core European transport network of high-speed trains, via effective interchange hubs.

There has been a particular focus on tram-train systems which allow local trams to run on to national rail networks, pioneered in Germany, firstly in Karlsruhe and developed in Kassel, which allow urban tram systems to extend over national rail tracks to serve extensive city regions. The project has also looked at other innovative forms of tram systems such as single-track tramways, as well as high-quality transport interchanges that link such systems to major national or transnational rail or air hubs.

The project began in late 2009, with fourteen partner agencies in five EU Member States, and lead partner University College London (UCL): Valenciennes (France); the Fylde Coast (UK); West Flanders (Belgium); North Hesse (Germany); and Arnhem-Nijmegen (Netherlands). Participants included public transport operators, local authorities, regional transport agencies, and universities.

They have worked together on a series of feasibility evaluations, pilot investments and demonstration projects, as well as comparative analyses of EU best practice. The total budget is more than €23m, with funding part-financed by the EU's INTERREG IVB Programme.

A €1.5m project extension in 2014, covers follow-on work to capitalise on results from the initial project, and added a fifth objective: to test technologies for low cost transport links in different territorial contexts, plus integrated territorial corridor plans that help these links unlock wider economic and regeneration benefits; and better recognise these in business cases. This included two new partners (total now 16) and two extra demonstration regions (total now 7) in West Flanders Brugge-Zeebrugge (Belgium) and Saar-Moselle (a cross-border region France-Germany).

## Innovative financing for transport schemes - increasingly important

Results in the European demonstration regions, plus topics at Sintropher Conferences and Workshops indicate that new tram-based or tram-train proposals are usually technically feasible and can often offer a reasonably positive investment case - especially if the case goes wider than conventional cost-benefit analysis (CBA) to include realisation of territorial objectives and benefits, such as economic growth and social opportunities.

But implementation can be impeded by lack of available funding due to cuts in public expenditure following the European economic crisis of 2008 and subsequent recovery efforts by national governments. Regions that are weaker in population or economic terms have even more difficulty in justifying an investment case in terms of public expenditure, so innovative financing is of growing importance - and much can be learned from approaches in different European countries.

## Planning Obligations: Section 106

New development can place extra burdens on the existing infrastructure and resources in the area (such as volume of traffic). It can also deal with existing problems in an area (such as a lack of affordable housing) and allow opportunities to be realised (such as archaeological study). Councils may require developers to make some reasonable financial or practical contribution to the community to address these types of issues. Commonly known as 's106' agreements in the UK, or 'public gain' in North America, these planning obligations provide a means to make a development proposal contribute funding to offset the site-specific impact of development on public infrastructure. S106 agreements are often referred to as 'developer contributions', and can be combined with other funding schemes such as the Community Infrastructure Levy.

The common uses of s106 are to secure, specify, and deliver affordable housing, as well as to secure financial contributions to provide public infrastructure. However, these are not the only uses for s106. Obligations under s106 can also be used to restrict the development or use of land in any specified way, require specified operations and activities to be carried out in regards to the land, obligate land use types, and collect a sum or sums for the local authority or GLA. Thus, s106 allows planning authorities to regulate development within their local authority.

A planning obligation allows the local planning authority to impose conditions on the developer, and can specify restrictions definitely or indefinitely. Payments and timing of s106 arrangements can also be specified in the obligation. Non-compliance with the s106 agreements can be enforced by the local authority against the person that entered into the obligation and any subsequent owner. Enforcement can occur through an injunction. In the rare case of a breach of the obligation, the local authority can take direct action and recover expenses from the developer.

### Financial Mechanism

#### How it works

The planning obligation is a formal document, a deed, which states that it is an obligation for planning purposes, identifies the relevant land, the person entering the obligation and their interest and the relevant local authority that would enforce the obligation. The obligation can be a unitary obligation or multi party agreement.

The legal test questions for when a s106 agreement can be entered into are as follows:

- Is it necessary to make the development acceptable in planning terms, or is the development not putting enough strain on infrastructure to merit it?
- Is the s106 obligation directly related to mitigating the impact of the development?
- Is the obligation fairly and reasonably related in scale and kind to the development?

#### What developments are subject to s106

Certain developments meet s106 target criteria more than others. Developments that contain all new dwellings built on previously undeveloped sites mean a need for new infrastructure, thus should be targeted for s106 contributions. Dwelling gains resulting from redevelopment, or large amounts of housing increases, mean an increased strain on existing infrastructure, necessitating upgrades and thus requiring s106 funding. Conversions, or part conversions, will create additional independent residential units which will require separate residential facilities.

Some development opportunities will not require s106 contributions. Replacement dwellings (one-for-one) will be using existing infrastructure at an existing capacity. Extensions and annexes within the footprint of a main property for dependent relatives, very sheltered housing schemes, bedsit accommodation with shared facilities, and Rural Exception Sites (affordable housing in villages where speculative housing would not be allowed) are examples of developments that would also be exempt from s106.

### **Viability**

As part of the pre-application discussion, developers should engage in open dialogue regarding any viability issues which they foresee with their project and to engage in a thorough review of those viability aspects.

Developers then submit a planning application, and will be considered for both planning permission and the amount owed for s106 contributions. In certain circumstances, a scheme in question could incur exceptional development costs, which will impact on the financial viability of a scheme. However, costs such as site clearance/decontamination should not be automatically assumed as exceptional costs. The local authority will seek detailed information before accepting these values and, where necessary, seek verification; this will be done by a certified professional surveyor and should be at the developer's expense.

Developers should consider the costs and effects of the local authority's planning requirements prior to securing land for development, and therefore be aware of the potential fees or feasibility issues associated with the development and possible public infrastructure funding through s106.

For more details on S106, as per the UK Town and Country Planning Act 1990, please follow the link:

<http://www.legislation.gov.uk/ukpga/1990/8/section/106>

### **Application timetable**

Once an application is lodged from a developer, a decision will be made on the basis of the information submitted. All s106 requirements will be stated upon the conditional approval of the development.

### **Public Involvement**

Members of the public have the opportunity to make representations to the planning authority for each planning application, in order to ensure that adequate public infrastructure is met for the community. Representations often include suggestions by members of the public for projects which may mitigate the impact of a new development on an area.

### **Attractiveness**

- Bespoke funding opportunity for site-specific infrastructure needs
- Negotiations for funding amount means that the public has the opportunity to benefit, while meeting the wants of developers and maintaining interest in the area
- Amounts of S106 are ultimately decided by local authorities, making it highly specific to the needs and size of both the local area and the new development
- Contributions provide direct funding for public infrastructure specific to the area
- Fair system for developments, where most developments are expected to contribute to local infrastructure

## Risks

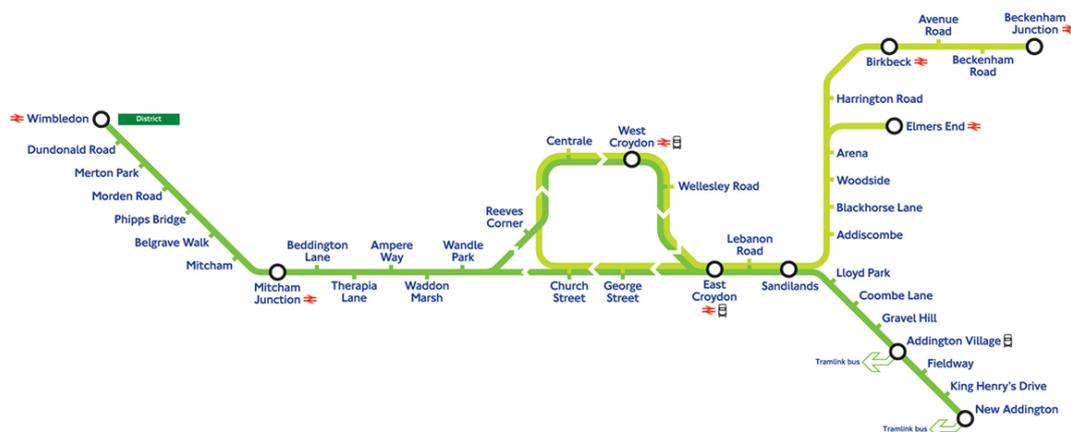
- Lower level of transparency compared to Community Infrastructure Levy; highly subjective determination of amount to be contributed, and thus less regulated
- Less concrete funding amounts
- Slower negotiation process with developers
- Dependent on local authority for pricing and enforcement; many councils still do not have a way of providing a neutral evaluation of contributions owed
- Favoritism of developers and contractors could impact amounts of S106 required
- May discourage development in areas that ask for S106, in favour of development in areas that are less strict about imposing public obligations
- Requires an overseer authority PLUS multiple neutral professional surveyors in order to obtain an impartial appraisal

## Track Record

There have been four attempts by previous UK Governments to secure a portion of the value uplifts of developments resulting from planning permission. These attempts are the 1947 Development Charge, the 1967 Betterment Levy, the 1973 Development Gains Tax, and the Development Land Tax in 1976. However, none of these have been sufficiently effective, and consequently failed by being counter-productive and discouraging development. It is presumed that the major factor contributing to the failure of previous attempts were the high rates at which they were levied. Rates ranged from 100 per cent in the case of the Development Charge, 110 per cent for the Betterment Levy, 52 to 82 per cent for the Development Gains Tax, and 80 per cent for the Development Land Tax. In order to overcome the failures of past attempts, the government must ensure that a scheme to capture development gains—such as planning obligations—are robust and effective.

## S106 Case Study: Croydon TramLink

London Tramlink network map



© Transport for London, 2008 V1b.

## Financial Specifications

### Amount(s)

£200 million total project cost, £75 million from S106

### Targeted Groups

Private Developers

### Timeline

Delivered May 2000

## Why the mechanism was chosen in London

- Tramlink offered the prospect of a revitalised public transport system and a credible alternative to transport by car
- Reduced congestion, which is a huge issue within London
- An opportunity to regenerate the area, providing reliable, quiet, efficient and accessible to all.
- Would improve the environment and the amenities of the locality

## Financial Specifications of Case Study

Line/Project	Status	Costs	Alternative Finances Used In Tandem	Timeline
<b>Croydon TramLink</b> - <b>28 km of track</b> - <b>39 stops</b>	Completed	£200 million	Central government funding	Operational since May 2000

Tramlink is operated by Tramtrack Croydon Ltd under a Concession Agreement with TfL. The system, which is highly accessible to disabled people, provides orbital links between Wimbledon in the west and Beckenham and Elmers End and New Addington in the east. The transport scheme was implemented in May 2000. The scheme was approved in order to bring benefits to travellers and to help solve traffic congestion issues which have affected South London.

### How it Works

Tramlink was built under a government Private Finance Initiative scheme, in which the government agreed to a portion of the funds while other funds were sourced from S106 contributions. Total costs of the project were £200, with £125 million provided by the government and £75 million from S106 gains.

The commercial risks and responsibilities is absorbed by the private sector, which pays for the line through S106. Government funding makes up the shortfall, contributing the rest of the finances, as per the S106 agreement. The major proportion of the total construction cost would still be provided by the private

sector. No subsidy will be provided by Transport for London or Croydon Council for the operation of the system, which will be operated by the private sector.

The operating concession to the private sector is for 99 years, demonstrating a strong commitment to giving the public an efficient long-term transport system, operated without subsidy. With this concession, a S106 agreement will provide funding for the construction of the line, as well as a stipulation as to the terms of operations (e.g. no subsidies provided).

### **Transferring Funds from S106 Contributions**

Tramlink's S106 contract specifies that any funding obtained for Tramlink has been negotiated specifically for this purpose, and thus cannot be transferred to another scheme. Money from a Section 106 payment for more general purposes is unlikely to be as forthcoming, as Tramlink provides a strategic transport link within an area that is attempting to encourage development; as such, developers will wish to contribute to that link in order to increase people and activity within the area.

### **Benefits**

- S106 eases the burden on public capital by maximising the private sector contribution to the scheme at a time when there are many competing demands for new transport projects
- It will also reap the benefits of private sector enterprise and expertise.
- Such active co-operation will allow the promoters to call upon considerable worldwide expertise in the introduction and operation of modern light railway systems
- In tandem with CIL, makes a strong funding initiative
- Provided a bespoke funding need for the line, providing the shortfall necessary

### **Drawbacks**

- Did not provide a lot of funding compared to the public funding contributions
- In an area as underdeveloped as Croydon, S106 may not gain as much S106 funding due to the uncertain nature of future development and need within the area
- NB: Given that London wishes to specify Croydon as an Opportunity Area (as per the 2009 London Plan Consultation), this is highly unlikely
- However, other municipalities are cautioned to take this into account
- If utilized for a large-scale scheme, municipalities must make sure that other options for S106 (such as affordable housing) is planned or stipulated beyond the single-project S106 contribution
- Potential discouragement of developments that do not wish to locate within the area due to price/amenities plus added S106 costs
- May dissuade developers from choosing certain locations over others

### **Assessment**

#### **Success of Financial Mechanism**

S106 is an excellent supplementary form of funding public infrastructure investments. Smaller schemes are fully fundable through S106, as well as upkeep fees that can be negotiated by the public sector. However, for larger schemes such as Tramlink, S106 should be seen as a contributing financial factor, but not as a solution for funding. As seen with Tramlink, the scheme required additional input from the public purse.

Tramlink is an excellent example of what can be achieved under S106 public obligations. It means that private and public sectors can work together to take forward projects which were originally unfeasible through relying on the taxpayer or public funding alone. The Tramlink project will help to generate further

S106 funding for the centres around the tram route, by making them more attractive places to live and work.

### Public Perception

The users of the trams were generally very satisfied, as they might well be bearing in mind the massive cost subsidy on their fares. But they also thought the trams were more comfortable and more reliable than buses.

### Future Prospects and Transnational Relevance

- Speeding up the negotiation process of S106 could make it more applicable and desirable for developers to enter into
- Combinations of S106 and CIL schemes (or equivalents) are encouraged, as this can provide a more concrete sum of public funds for projects

Section 106 is an important means of ensuring that a portion of land value uplift returns to the public purse, in order to maintain and operate the area being developed. Without this, a local authority is expected to fund the necessary increases in public infrastructure, even though they are not gaining anything from the profits of developers. This method of financing infrastructure is versatile, and is able to be customised through negotiations in order to meet both the wants of the developers and the needs of the public authorities.

It is important to note that S106 works very well for completely funding small scheme infrastructure. However, larger schemes such as major transport links will more than likely require other funding in addition to S106. This is where combinations with funding schemes such as CIL or PPPs will be beneficial.

## Transnational relevance: Europe-wide

Funding of major transport schemes is an issue faced by many cities and regions across the North West Europe Programme area and indeed more widely across Europe. Traditionally, in most countries tram-based links have been financed by public funding from national or regional government authorities, sourced from either taxation or borrowing or a combination. (In regimes where there is a national or regional transport infrastructure authority, operating profits may also assist).

But as with Sintropher partners, implementation of such schemes is facing a lack of available funding due to cuts in public expenditure following the European economic crisis of 2008 and subsequent efforts by national (or regional/city) governments, to recover. So innovative financing is of growing importance, and much can be learned from approaches in different European countries.

The financing approaches and city/region case examples on the reference resource are context-specific and reflect:

- the geographical context: the physical scale of the scheme and scale of capital cost. Obviously a major scheme with high capital cost of, say, €50m + may be beyond the resources of a single city or regional authority, and require a national contribution in a “cocktail” approach. The investment case will usually be stronger in a major dense metropolitan area than smaller regions with lower population and (possibly) lower or weaker economic activity.
- the organisational context: which level of government and/or relevant transport authority or agency is the primary initiator of the scheme - national, regional, or city - will influence the financing opportunities and options available.
- the legal context: the nature and extent of the powers and responsibilities of the initiating authority, and the processes/procedures, to actually pursue any of the financing approaches.

- But even though the various approaches and case examples are context-specific, their transnational relevance is strong:
- the approaches offer a stimulus and possibilities for wider thinking by cities and regions in other European countries, about how to assemble capital financing for transport schemes,
- in all countries, the reality of capital finance for transport infrastructure means that a “cocktail” approach is often the most practical way forward - and the approach of mixed public-private sector finance is an increasingly pragmatic basis
- some or all of the various approaches might be potentially adaptable within the particular organisational and governance regime of another country, using similar powers or processes
- the approaches offer possibilities for lobbying by city and regional authorities, in order to secure from national government the powers and competences to utilise new approaches (as has happened in the UK - for example local authorities have in recent years acquired powers to implement tax increment financing (TIF) although subject to safeguards over risk and borrowing; similarly, powers to enact a community infrastructure levy (CIL) on developments in their area, subject to local consultations and examination of viability and fairness for private developers.

The reference resource should be seen from this perspective, as a means to promote knowledge transfer and learning across different NWE countries and regions.

## Further information

This paper was produced by UCL Bartlett School of Planning (Sintropher team members Charles King, Giacomo Vecia, Imogen Thompson) using desk research and expert comment. The paper reflects the views of the authors and should not be taken to be the formal view of UCL or Sintropher project.

The European reference resource can be accessed on the following:

Sintropher project website

<http://www.sintropher.eu/publications>

POLIS website

<http://www.polisnetwork.eu/sintropher> or <http://www.polisnetwork.eu/res/resources>

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# Partners

Sintropher is coordinated by



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Co-funded by the INTERREG IVB programme for North-West Europe



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