

5 Securing Travel Plans

This section describes how an approved travel plan must be legally enshrined to secure the delivery of measures and outcomes contained within it. It also deals with mechanisms for delivering measures and outcomes in the event of default by the developer.

Using legal agreements for travel plans

TVS 13

A Full Travel Plan schedule within s106 agreements will be used to secure the implementation of Full Travel Plans which must be agreed prior to the signing of the agreement. The LHA will be a signatory to these agreements.

The Government has set out a national framework for the collection of financial contributions from developers that can be put towards meeting the objective of reducing vehicular trips. The policy context for this is set out in Section 1. Planning obligations will be used with due regard to their relevance to planning considerations and relationship to the development in question, and reasonable in terms of their necessity and in the scale and the size of the contribution.

Full Travel Plans when agreed will be secured through Section 106 agreements, using a schedule based on the LHA's standard template. A standard s106 template is used throughout Somerset and provided as Appendix 8 which provides for the operation and monitoring of the travel plan.

What the agreement should include:

- Approved travel plan as an appendix to a planning obligation schedule to aid the interpretation of the planning obligation set out in the deed
- Obligations for the developer to carry out the actions in the travel plan
- Financial commitments and contributions to cover the role of third parties in the travel plan (for example for the LHA to implement highways works, provide leaflets or personal travel planning services, or supervise the ongoing operation of the travel plan)

The preference will always be to use s106 agreements over unilateral undertakings.

Obligations remain operative in perpetuity in relation to negative restrictions and the obligation to maintain and monitor the travel plan. Where the implementation of measures is promised by the developer, financial security must be provided by the developer to ensure that the fundamental measures can still be implemented in the event of default by the developer.

TVS 14

Travel plans may be safeguarded with measures or funds (as bonds, ESCROW accounts or cash sums) to cover the achievement of travel plan outcomes in the event of default by the developer/land owner or occupier/leaseholder.

Use of planning conditions

Commitments made through a s106 agreement may also be supported by the use of planning conditions (Figure 5.1).

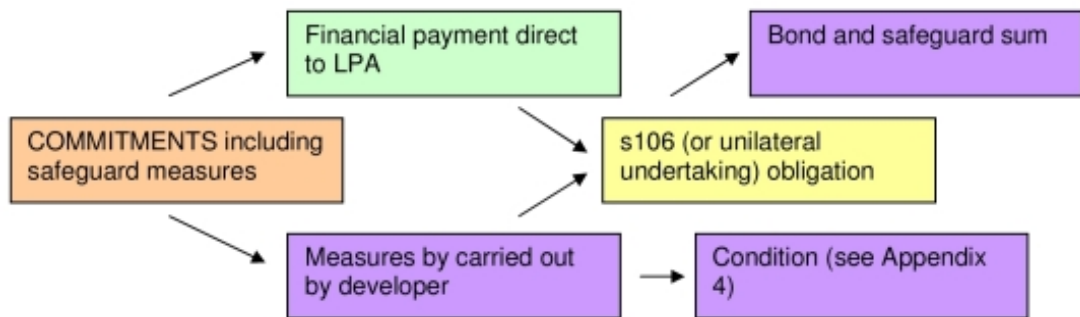


Figure 5.1 relationship between the different legal and financial mechanisms

Section 106 agreements are preferred over the sole use of conditions⁽²⁶⁾ for Full Travel Plans, although they may work side-by-side. Detailed conditions which refer to individual elements of a travel plan may be suitable for securing travel plan statements and measures-only travel statements, or specific elements from a Full Travel Plan that require approval at some future time. Further information about the use of conditions is given in Appendix 4.

Method of securing travel plan	Enforcement options
Planning condition	<p>Enforceable against any developer who implements that permission and any subsequent occupiers of the property.</p> <p>Breach of Condition Notice pursuant to Section 178A or Breach of Condition Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 issued by the Local Planning Authority</p>

Table 5.1 Use of conditions and enforcement options

26 A ‘Grampian’ condition is a planning condition that prevents the start of a development until off-site works have been completed on land not controlled by the applicant

“The complexity of most travel plans will mean that a planning obligation is the most effective means of securing its delivery.” DfT/DCLG (2009:9, Summary).

5.1 Procedure in the event of breach of Travel Plan commitments

Travel plan breaches fall into two main categories. They may be dealt with by a range of responses. This is summarised in Figure 5.2.

Breaches are triggered by the following circumstances, as outlined in Figure 5.2, below:

- a modal share target is missed - as verified by questionnaire survey data and as supported by automatic and/or manual counts
- an action has not been found or reported as being complete within three months of the due date (including the collection and reporting of survey data and any other follow-up or administrative actions)

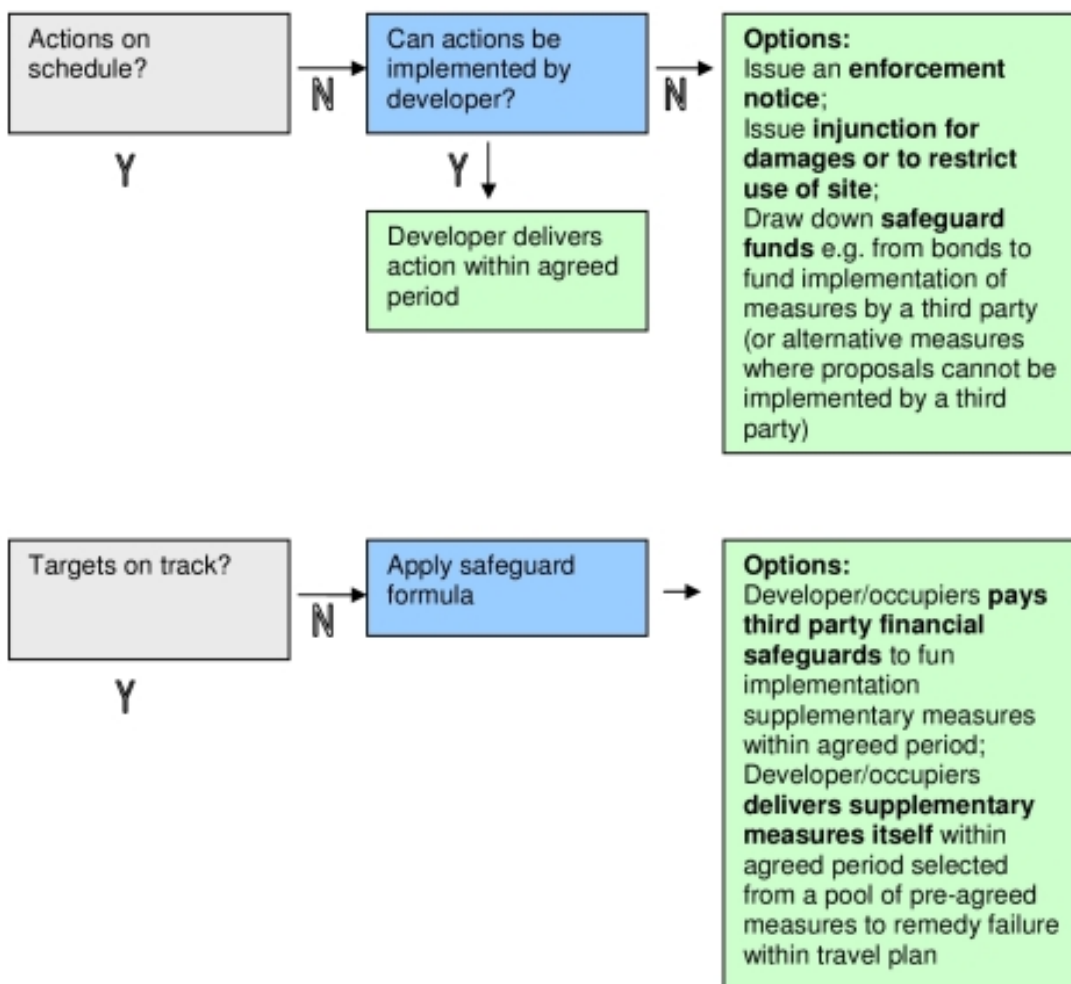


Figure 5.2 Flowchart to deal with travel plan breaches (dependent on method of securing travel plan)

If a breach is identified, the developer will be notified and required to meet with the LHA within 28 days of said notice. The LHA or its contractors will have the right to enter the development to implement any agreed measures or implement any alternative measures where the agreed measures cannot be implemented in pursuit of remedying the failures identified. The developer will not obstruct the involvement of any third parties in the delivery of travel plan measures.

Procedures if an action is missed

The procedures in the event of an action not being implemented may include:

- **Financial compensation through a bond or fund for a third party to implement the action.** Where the action cannot be delivered by a third party, the monies will be used to implement alternative measures to deliver the agreed outcomes. The compensation to cover measures not being implemented should not be confused with the financial safeguards to be drawn down in the event of targets not being met
- **Liquidated damages**
- **A restriction on the build-out or occupation of the development until the failure has been corrected**

Failure to report modal split data or the completion of actions is taken as an action being breached.

Procedures if a target is missed

The procedures in the event of a target being missed are may include (see Table 15):

- **Implementation by the developer or occupiers of extra agreed measures** to remedy failures in the travel plan to deliver its targets.
- **Implementation by a third party or occupiers of extra measures to deliver agreed outcomes using the financial safeguards** in the travel plan.
- **A restriction on the build-out or occupation of the development until the failure has been corrected**

The fulfilment of all measures in the initial action plan will not be taken as a justification to waive requirements to meet modal share targets; it is the responsibility of the developer to devise and implement an outcome-driven travel plan which is capable of meeting the modal share targets, and/or of being enhanced by further measures as set out in the list of safeguards.

Limitations on the way the development site can be used or developed further may be particularly effective in the case of large scale proposals where the development under a particular planning permission is to be phased over a period.

- Residential travel plans:

For residential developments, the preference will be to focus on the measures implemented, rather than the outcomes achieved, when applying safeguards in recognition of the external influences that might act upon travel choice in the domestic setting. This sentiment does not apply to workplace travel plans.

5.2 Measures deliverable by the developer and the LHA in the event of breach

Safeguards will be used as the preferred mechanism for securing delivery of the travel plan. An injunction⁽²⁷⁾ will only be used where the agreement to provide the agreed safeguards has been breached or there are no other alternatives.

Type of safeguard/responses in the event of travel plan failing to meet modal share targets (to be agreed during travel plan negotiations)	Implement-able by developer/ occupier?	Measures implement-able by LHA?
	If yes , developer can implement without payment to the LHA	If yes , then payment needed if LHA required to implement
Encouragement:		
Revisions to recruitment and terms and conditions of employees, e.g. Creation of a business travel hierarchy or parking restrictions	Occupier	No
More active marketing incorporating a shift of focus, e.g. A site-specific travel awareness campaign	Occupier	LHA
Additional training	Occupier	LHA
Additional financial incentives to individual staff/visitors/residents — (e.g. Contributions towards public transport tickets)	Occupier	LHA
Further promotional support for non-car modes of transport	Occupier	LHA
Additional financial support for public transport services	Payment to third party	LHA

27 Injunction proceeding pursuant to Section 106(5) of the Town and Country Planning Act 1990 issued by the County Council. Section 106 agreements are enforceable against the person who entered into the obligation and any person deriving title from that person.

Type of safeguard/responses in the event of travel plan failing to meet modal share targets (to be agreed during travel plan negotiations)	Implement-able by developer/ occupier? If yes , developer can implement without payment to the LHA	Measures implement-able by LHA? If yes , then payment needed if LHA required to implement
Additional infrastructure for walking, cycling and public transport	Occupier (on-site), otherwise payment to third party	LHA
Enforcement:		
Additional parking enforcement	Occupier	LHA (off-site)
Additional parking management on site including introduction of, or increases to, charges and access restrictions e.g. Signing and lining	Occupier	No
Additional parking management off-site including introduction of controlled parking zones	Third party	LHA (and LPA)
Access controls to keep vehicles on-site, e.g. Control of signals	Occupier and/or third party	LHA
Exemplification:		
Working with neighbouring developments and the surrounding area to develop their own travel plans to 'off-set' traffic from the new development	Occupier	LHA (in partnership)
Enablement:		
Traffic management, including information systems to maximise use of existing highway capacity	Payment to third party	LHA
Highway works that support travel by non-car modes	Payment to third party	LHA

Table 5.2 Role of the LHA and developer in implementing safeguards. Modified from (p118-119) DfT/DCLG (2009)

All Full Travel Plans should contain funding for safeguard measures to cover the breaches outlined in section 5 above. Measures will normally be bonded, safeguarding funding for implementation of measures in the event of default.

Funding of safeguards in relation to breaches of modal share targets

Targets must have separate safeguard sums attached to them. The safeguard sum itself will normally need to be bonded or made available to the LHA in advance (as an ESCROW account and subsequently refunded if no breaches occur).

There is an understanding that LPAs will pass on safeguard monies collected from the developer for the LHA to hold where implementation of the safeguard measures involves the County Council.

The two methods for developers to provide safeguard sums are set out below.

Disbursement model: payment is taken upfront and either used or returned:

- If targets are missed, a disbursement fund (e.g. an Escrow Account) will be drawn upon at a rate and amount (using modal share and vehicle traffic generation data) which reflects the degree to which targets are missed (e.g. Appendix 12). Money to cover the safeguards will normally be paid prior to the commencement of the build.

Obligation model: where money is paid (or drawn down) only where a breach of the agreement occurs:

- An obligation which is placed on the developer (through a direct payment or bond) or end-users (e.g. through a management levy) in the event of default. On multi-occupier sites, individual companies may be obliged to deliver measures through the s106 agreement should it be found that their operations are contributing towards a failure to meet the modal share targets set out in the travel plan.

5.3 Role of the Highway Authority

Aside from direct obligations entered into by the highways authority, the success or failure of the travel plan should not hinge upon direct input or management of the developer or occupiers in the delivery of their travel plan commitments. It will be expected that the travel plan will operate effectively independently of any LHA involvement, for the purposes of enforcing the travel plan. The travel plan should not have to rely on the external input of the local authority in order to be sustained.

Failure to reach agreement with the LHA in a timely manner should not exclude the developer or occupiers from taking sensible steps to implement measures that are likely to form part of that travel plan, in accordance with any draft travel plans that might exist or related travel plan obligations or conditions that could otherwise be implemented as set out in this document.

Appropriate time should be allowed for the advance approval of the travel plan of travel plan measures ahead of the milestones set out in the travel plan or condition/legal agreement. This means developers should plan well in advance when submitting documents for approval and liaise with the LHA over the likely timescales involved.

The LHA will in as far as it is able work with those unfamiliar with Travel Plan matters to provide advice and support for the Travel Plan to be fulfilled, as commensurate with services provided by the Travel Plan Fee.

5.4 Further Issues to Consider

It is intended that actions and targets in travel plans will be reasonably achievable; the granting of a planning consent with unachievable goals is not helpful to any parties. It is the intention of the LHA to work in partnership with developers, occupiers and communities to ensure the delivery of the measures and outcomes in travel plans.

Safeguards are only intended to be used as a last resort, however, they form an essential part of the travel plan in the event of the process of delivery for the travel plan breaking down. Moreover, they should be seen as incentives for the travel plan to succeed.

The options and statements set out in this guidance do not preclude the LHA or the LPA from applying any alternative legal remedy that is deemed appropriate in the specific circumstances of a particular development.

If, during the course of implementing a travel plan, there is a disagreement between the LHA and the person or body responsible for implementing the travel plan over whether actions have been implemented or targets reached, or whether a travel plan has reached the appropriate quality, then an independent arbitrator will be appointed. This arbitrator must be competent in legal terms, be a professional with knowledge of travel planning and be agreeable by both parties. The opinion, including the allocation of costs, expressed by the arbitrator will be binding on both parties.

Under no circumstances shall the ignorance of the developer, owner or occupier of the development site regarding the agreed Travel Plan requirements be considered as a mitigating factor such that such requirements are waived.