

Local Development Framework Briefing Paper Developer Contributions



Devon County Council's advice to Local Planning Authorities.

This is one of a series of briefing papers prepared by Devon County Council to assist the preparation of Local Development Documents.

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Local Planning Authorities are requested to take the following matters into account in preparing their Local Development Frameworks and other documents:

- 1. To ensure that all new developments in Devon are served by adequate physical and social infrastructure and that such new development is carried out in a manner that secures appropriate contributions towards provision and the mitigation of its environmental impacts.***
(see Sections 2, 3 and 4)
- 2. Fully engage the infrastructure providers in a consultative process during the Plan preparation process, and that such discussions include an opportunity to address feasibility and viability issues where these arise.***
(see Sections 2, 3 and 4)
- 3. To provide, in Local Development Documents, a clear expression of the requirements to be put upon developers for new infrastructure and for the mitigating the impacts of proposed developments and redevelopments, including reference to the pooling and phasing of infrastructure contributions where appropriate.***
(see Sections 2, 3 and 4).

Partnership Working

Devon County Council is committed to working in partnership with District Councils and other agencies, in further developing a Devon wide consistent and transparent approach to the negotiation and implementation of Section 106 and Section 278 agreements with developers where appropriate through the preparation of Supplementary Planning Guidance on Planning Obligations.

(see Section 5)

1. Introduction

Developer contributions often make a vital contribution to the funding of necessary infrastructure and services that are required to facilitate development.

This Briefing Paper outlines; a) Devon County Council's responsibilities regarding those issues where developer contributions need to be sought; b) summarises the main elements of planning obligation legislation, c) the developer contribution issues that Devon County Council suggest should be taken into account by Local Planning Authorities in preparing their Local Development Documents. The purpose of the paper is to ensure that:

- (i) There is a consistent application across the County of the requirement for developers to make appropriate contribution to the mitigation of their development's impacts on infrastructure, services and the environment in accordance with the national objective of delivering Sustainable Developments and Communities.
- (ii) Local Development Framework documents indicate the detailed requirements to be made of developers in respect of specific land allocations or proposals.

Devon County Council responsibilities include a number of statutory and other responsibilities for the provision of services and facilities associated with both existing and new development. Such responsibilities include, adult services, children and young people services, environment, economy, culture (which includes such activities as highway network and travel, education, social, cultural, tourism and leisure services, climate change and greening Devon initiatives). Where new development is being proposed it will be necessary for Devon County Council (and other infrastructure providers) to secure contributions from developers to meet the physical and social infrastructure needs of their particular developments and the mitigation of its impacts. .

Devon Structure Plan Policy ST4 guides development to those areas where capacity exists and ensures that supporting infrastructure is provided as development proceeds. In particular it indicates that developers will be expected to contribute to or bear the full cost of, such new or improved infrastructure and facilities where it is appropriate for them to do so. There are a number of other Structure Plan Policies which have developer contributor implications such as the new community proposal at Cranbrook and Sherford, those relating to Biodiversity and earth science, archaeology, travel and transport etc.

The draft Regional Spatial Strategy Final Draft for the South West 2006 – 2026 (published June 2006) echoes the thrust of the Structure Plan policy in RSS Policy D - Infrastructure and SD4 – Sustainable Communities. Draft Policy D requires '*Local Authorities, working in partnership with GOSW, the SW RDA and other regional bodies, to ensure that development contributes to the cost of necessary infrastructure and environmental improvements and to bring forward supplementary planning documents to secure new arrangements for infrastructure funding from developers and other sources.*'

A summary of current planning obligation legislation is set out in Appendix 1

2. Vision

The Vision¹ is:

To ensure the physical infrastructure of Devon is maintained and enhanced to meet the needs of existing and planned development, and ensure that a coordinated approach to the necessary infrastructure serving new development achieve the following objectives:

- a) ***Take advantage of the existing infrastructure capacity in providing for development***
- b) ***Provide for new development only where existing infrastructure is adequate or where such infrastructure can be secured to service the proposed development.***

¹ The Devon County Structure Plan High Level Policy Aim 7

To achieve this vision there is a need to clarify Devon County Council's approaches and prerequisites to securing developer contributions having regard to recent Government advice, the implementation of other elements of the modernisation agenda for the overall Planning system and the County Council priorities and initiatives set out in its Devon Strategic Plan, Devon Community Strategy and other policy documents.

The overall aim should be to secure a consistent approach for negotiating and implementing Planning Obligations across the County, recognising the 2005 updated guidance from Government - in particular the possibility for the pooling of contributions towards shared infrastructure provision objectives and the need for transparency through the Local development Framework Documents. One element of achieving consistency ought to be the inclusion of all developments within the evaluation of the need for Planning Obligations – not just larger developments as tends to be the case now.

All Local Development Documents should aim to give clear expression of the requirements to be put upon developers for meeting infrastructure and mitigation requirements of proposed developments and redevelopments, including reference to the pooling and phasing of infrastructure contributions where appropriate. It is essential therefore that all infrastructure providers are fully engaged in a consultative process during the Plan preparation process, and that such discussions include an opportunity to address feasibility and viability issues where these arise.

3. Issues to address

In order to ensure a coordinated and consistent approach to securing the necessary infrastructure to serve new development and that such developments make appropriate contribution to the mitigation of its impacts, the following issues need to be addressed.

- a) **Pooling of contributions towards shared infrastructure** – where the combined impact of individual developments creates a need for infrastructure ODPM Circular 05/2005 provides for the Local Planning Authority to secure contributions from developers which can then be pooled to allow the development to proceed in a fair and equitable way. In some cases these there may be a requirement of these negotiations to be cross boundary, e.g. east of Exeter.
- b) **Transparency through the LDF Process** – in terms of identifying the requirements for developer contributions in all levels of the LDF and the arrangements for securing and implementing contributions. The Core Strategy should address the principles and use of planning obligations, with other more detailed policies set out in Local Development Documents and Supplementary Planning Guidance.
- c) **Inclusion of all development within the evaluation of need of planning obligations** It will be necessary to determine the types of development where impacts of development necessitate some form of mitigation or positive contribution, such as floor space or residential units as a normal starting threshold (i.e. the expectations)
- d) **Determine priorities for planning benefits and resolve competing demands for developer contributions** for example
First Priority - mitigate the direct impacts of development
Second Priority – Comply with policy requirements
Third Priority – Seek relevant site contributions
- e) **Determine requirements and formulae and standing charges etc** for providing transparency and certainty in respect of those interests which are of particular responsibility or interest to the County Council, having regard to sustainability, climate change, quality of life and greening Devon issues, these include:
 1. Highway network and facilities (including security and safety)
 2. Public Transport Infrastructure and Parking / Intelligent Traffic Systems
 3. Children and young people services
 4. Adult Services/ Social Services and Day Care Social Community facilities

5. Libraries
 6. Archaeology
 7. Culture, Public Realm and Art
- f) **Use of Mediators/open book approach** should be addressed to ensure appropriate level of contribution having regard to the viability of the site .
- g) **Procedures for completing an obligation** with a view to considering approaches to establish Standard Agreements and mediation partnership approaches to assess viability and those costs of associated with the preparation; monitoring and implementation of the obligation should met by the developer.
- h) **Supplementary Planning Guidance** should ensure that the interests of the County Council are fully accommodated in any such guidance prepared by the Local Planning Authorities.

4. **Devon County Council Operating Procedures for seeking Developer Contributions**

The County Council usually seeks contributions from and agreements with developers through negotiation in partnership with the relevant District Council as the local planning authority. Broad agreement between the County and District Councils has been in place over the operation of procedures since the early 1990s and these now require some revision in the light of the new LDF system.

A Code of Practice specifically relating to the handling of education contributions (set out in Appendix 2) was agreed by the Devon Planning Officers Group, the County Council, together with the 8 District Council's and two National Park Authorities in Devon in the mid 1990's. This protocol sought to ensure a consistent approach to such obligations across the Devon. The County Council will be seeking to review the Code of Practice through the Devon Planning Officer Group later this year or early next year.

Records of the developer contributions and agreements secured

- District Council's as Local Planning Authorities keep records as part of the statutory Planning Register. In terms of the County Council's interests as a Local Highway and Transport Authority, and in respect of Children and Young Person services the contributions are tracked and reports are made annually to County's Development Control Committee
- Better partnership arrangements and coordination regarding the recording and implementation of these resources would be helpful, for example in terms of phasing and identification of trigger points for implementation.

5. **Partnership Working**

Devon County Council is committed to continuing to work in partnership with District Councils and other agencies, in further developing a Devon wide consistent and transparent approach to the negotiation and implementation of Section 106 and Section 278 agreements with developers through the preparation of Local Development Documents, Supplementary Planning Guidance on Planning Obligations, Operation Procedures and Codes of Practice, as well as through determination of individual planning applications.

Summary of current Planning Obligation Legislation

The reform of the planning obligation system has been the subject of a number of recent consultations by the Government including the possible introduction of a new “Optional Planning Charge” as an alternative to negotiated Planning Obligations and more recently a “Planning Gain Supplement” that might be raised against the increased value of land benefiting from development permissions in the context of Kate Barker’s “Review of Housing Supply” (March 2004). However, proposals will require changes to primary legislation and thus will not be implemented until 2008 at the earliest. Sections 46 & 47 of the Planning & Compulsory Purchase Act 2004 give the Secretary of State the power to make Regulations to replace Section 106 – powers which have not yet been taken. The introduction of either of these options would have significant implications to current procedures & practice and the content of this note.

The current "planning obligations" legislation allows Local Planning Authorities to enter into agreement with the owners of the land to enter into either unilaterally or by agreement with the local planning authority is set out in Section 106 of the Town and County Planning Act. District Councils as the determining local planning authority for most planning applications are primarily the responsible authorities for entering into such agreements. The agreements enable planning authorities to request a restriction or to regulate the development or the use of that land either permanently or during such a period as may be stated in the agreements and can require financial contributions from developers towards the cost of or alternative provision of the appropriate infrastructure.

Current Government Policy on Planning Obligations is set out in ODPM *Circular 05/2005*. This replaced Circular 01/1997 and reiterates the tests of reasonableness (necessity tests) that must be adhered to. To be regarded as reasonable, planning obligations must:

- be necessary (this is generally taken to mean that without the planning obligation there would be sufficient reason to refuse planning permission for the development);
- be relevant to planning and to the development and/or use of the land to which they relate;
- relate directly to the proposed development and not to other planning-related issues in the area;
- be fairly and reasonably related in scale and kind to the proposed development;
- be reasonable in all other respects.

Guidance is also given that developers should not be expected to pay for or contribute towards facilities which are needed solely to resolve existing deficiencies. The Circular recognises that in some instances it may not be feasible or viable for a development to meet all the requirements set out in national, regional or local planning policies and that there will need to be a process whereby the Local Planning Authority and other public sector agencies decide the balance of contributions made by developers and public sector infrastructure providers through a process of negotiation..

The Circular suggests that policies on types of payment including pooling, phasing and maintenance payments should be set out in Local Development Frameworks including detail in Supplementary Planning Documents. It encourages the establishment of Codes of Practice in negotiating Planning Obligations; the employment of formulae and standard charges where appropriate; the use of standardised Agreements; Undertakings; the use of independent third party mediators; & enhanced public transparency of the process.

The DCLG's *'Planning Obligations: Practice Guide' (July 2006)* sets out case study examples illustrating how planning authorities, developers and others are working together to deliver obligations effectively. The policy and other requirements that need to be addressed in the plan-led system are set out in Chapter 3 of the Practice Guide.

Also of **relevance is the Audit Commission's report** of August 2006 "Securing Community Benefits through Planning Powers" which has a number of key findings and recommendations for Councils so to secure greater community benefits through planning obligations:

- a) Need for a **detailed policy** on planning obligations – that reduces the potential for developers to exploit the council, gives developers certainty and ensures a more systematic approach
- b) **Corporate Buy In** – Chief Executives, leaders, portfolio holderes all understand that the importance of planning obligations and give adequate resources to planning services
- c) Create a **systematic process** to planning obligations based on the 6 key building blocks:
 1. Designing Policy
 2. Testing policy's impact on development viability (i.e. is it reasonable)
 3. Systematic process to negotiating, delivery and monitoring planning obligations (e.g. use of model clauses, effective process management)
 4. Community Involvement
 5. Publicising policies and processes and the outcomes of deliver
 6. Monitor outcomes and manage risks
- d) Using planning obligations means **thinking ahead** – beyond the time at which a planning agreement is signed.

Highway Authorities have similar powers (under Section 278 of the Highways Act 1980) to enter into agreements with developers over the construction of roads which are to be adopted as highways.

DEVON PLANNING OFFICERS GROUP **CODE OF PRACTICE - EDUCATIONAL INFRASTRUCTURE**

[as amended by the Working Party 15 October 2001].

1. POLICY CONTEXT

- Relevant Devon County and/or District Council's corporate policies.
- Circular 1/97 "Planning Obligations"
- PPG 1 - General Policies and Principles
- PPG 3 - Housing
- PPG 11 - Regional Planning Guidance
- PPG 12 - Development Plans
- Regional Planning Guidance for the South West
- Devon Structure Plan [First Review] - [Policy S6].
- District Wide Local Plans x 8 - Policies.

2. GENERAL PRINCIPLES

- 2.1 Developers may initially wish to discuss their proposals with any relevant service agencies to ensure that any requirements to be contained in any planning permission and associated Section 106 Obligation are identified. However, in the case of education infrastructure requirements, negotiations will be conducted jointly by the National Park/City/District/Borough Council and the County Council with the developer.
- 2.2 Obligations will only be sought for infrastructure needed as a direct consequence of proposed new development, where it is possible to identify proposals to remedy the deficiency.
- 2.3 The extent of what is required will be fairly and reasonably related in scale and kind to the proposed development (with reference to the appropriate policy text as set out in 1. above) and will have due regard to what is reasonable in terms of the viability of the project.
- 2.4 Developers will be advised by the Local Planning Authority (LPA), at the earliest possible stage, of the need for, and costs and requirements of, a Planning Obligation, to enable this to be incorporated within their land negotiations.
- 2.5 All information on agreed Obligations will be kept on the LPA Statutory Planning Register and copies of the agreements will be available to all interested parties. Separate records will be kept by both the County Council and the LPA. Monitoring of records is a joint responsibility.
- 2.6 Where developers raise concerns with the LPA in respect of the viability of schemes at any stage in the planning process, due to requirements including one or more proposed Obligations, they will be requested by the LPA to submit full financial details and valuations. This will then be assessed and the LPA will review the obligations sought.
- 2.7 In addition to references to the specific piece of land, and the amount and timing of any contributions towards infrastructure costs, the Planning Obligation will also specify that monies received must be used for the purpose so specified within an agreed period from receipt of all the monies. If not so applied, within the terms of the Agreement, the monies shall become repayable on demand. A clause will also be included providing details in respect of the actual payments requested being "index-linked" and, in the event of any delay in the payment, interest shall become payable, as specified in the agreement.

3. METHOD OF ASSESSMENT

- 3.1 In respect of contributions towards educational infrastructure, these will be sought in proportion to the number of family residential units being built or created through changes of use, subject always to the particular circumstances of each proposal, such as spare capacity in existing educational facilities and the type of development proposed.
- 3.2 In the absence of up to date Local Plan information, in order that the LPA can handle discussions with developers the Education Directorate will provide updates of school capacities costs, annually

[through the School Organisation Plan]. Assessments will be carried out in conjunction with the County Council and may be required for both primary and secondary education impact.

- 3.3 When considering outline planning applications, where no details of the number or size of dwellings are committed, a Section 106 Obligation will indicate that a payment towards the provision of education facilities may be required and the amount will be assessed on the basis of the subsequent details (Reserved Matters).
- 3.4 When considering Reserved Matters applications, where the associated outline permission has no such Section 106 Obligation under the terms 3.3 above, assessment cannot be required.
- 3.5 Assessment for full applications will be required, unless the application proposes minor amendments to a pre-policy permission (e.g. revised layout, new house designs, etc). However, amendments, which change the number of dwellings will, result in a reassessment on the basis of the changes proposed.
- 3.6 For applications seeking to renew planning permissions, or the submission of Section 73 applications; assessments will be required where there has been a material change of circumstances.
- 3.7 In formulating assessments for appropriate developments, the total number of family dwellings will be used for calculations.

4. TYPES OF DEVELOPMENT WHICH WILL NOT ATTRACT ASSESSMENT

- 4.1 Development which falls below thresholds which may be set out in the District Local Plan, (or where capacity exists at local educational facilities).
- 4.2 Specialist residential development - e.g. mobility/elderly care accommodation.
- 4.3 Residential development of less than 5 dwellings (or 0.1ha on outline submissions) will not normally attract assessment. However, individual phases of a proposal resulting in a development of 5 or more dwellings will be subject to evaluation against the Local Plan Policy.

5. PHASING OF/TRIGGER FOR PAYMENTS

- 5.1 An agreed payment will normally be required upon occupation of the first 50% of the development. Full payment will be made at a pre-specified stage before completion.

6. PLANNING OBLIGATIONS

- 6.1 Agreements between the parties will be entered into under the provisions of the Town and Country Planning Act 1990, Section 106.
- 6.2 The developer will be responsible for paying the LPA's and County Council's legal fees (and surveyor's fee if necessary) in connection with the preparation and completion of the Section 106 Agreement.

7. SCALE OF FINANCIAL CONTRIBUTIONS

- 7.1 Where assessment is required and contributions are requested they will be calculated as a proportionate contribution towards the cost of the facilities necessary to enable the development to proceed.

The following table provides a guide only, based on the approved DFEE formula for predicting the generation of pupil numbers from new housing accommodation and the actual costs expressed in Devon for providing additional educational facilities.

(figures quoted correct as at April 2004 but will be subject of regular review)

	per family dwelling
Primary school extension/ancillary works	£1,157.50
Secondary school extension/ancillary works	£694.50

New primary school provision on non-educational land *	£2,300-2,500
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~~*NB – Excludes land acquisition costs, a contribution towards which may also be required and the subject of separate negotiation. No comparable indicative figure is given for the provision of new secondary schools on new sites. This provision is likely to be infrequent in occurrence in the County and be related to new housing developments of such a scale, and possibly the provision of other comprehensive community facilities, so as to make it impossible, in the absence of full consideration of the particular local circumstances, to provide an indicative range of costs per family dwelling.~~

7.2 The County Council will provide more detailed costings of any facility, if available, prior to the development commencing. If this detailed cost is lower than that contained in the above guidance, this cost will become applicable for payment.

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sc/draft model code of practice

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