

*Planning Obligations:  
Practice Guidance*

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# Planning Obligations: Practice Guide

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government (DCLG)

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DCLG Publications  
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Wetherby  
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or online via the DCLG website: [www.communities.gov.uk](http://www.communities.gov.uk)

ISBN 10: 1-85112-848-4  
13: 978-1-85112-848-8

July 2006

Product code 05 PLUS 03309a

# CONTENTS

Page

## **CHAPTER 1**

Introduction 3

## **CHAPTER 2**

Types of Contribution 6

## **CHAPTER 3**

A Plan-Led System 16

## **CHAPTER 4**

Improving Speed, Predictability, Transparency and Accountability 24

## **CHAPTER 5**

Formulae and Standard Charges 33

## **CHAPTER 6**

Standard Agreements and Undertakings 46

## **CHAPTER 7**

Use of Independent Third Parties 49

## **CHAPTER 8**

Public Involvement 54

## **CHAPTER 9**

Unilateral Undertakings 62

## **CHAPTER 10**

Implementing Planning Obligations 65

**BIBLIOGRAPHY AND RESOURCES** 72



# CHAPTER 1:

## INTRODUCTION

### The need for planning obligations practice guidance

- 1.1 Planning obligations (or “section 106 (s106) agreements”) are an established and valuable mechanism for securing planning matters arising from a development proposal. They are commonly used to bring development in line with the objectives of sustainable development as articulated through the relevant local, regional and national planning policies. They have, however, been criticised by some for delaying the planning process and for reducing its transparency, certainty and accountability.
- 1.2 ODPM issued revised guidance on planning obligations in July 2005 (Circular 5/05)<sup>1</sup> which sought to address some of these criticisms. In addition to the Circular, this practice guidance and its accompanying model s106 agreement have also been produced to give guidance to all parties involved in the planning obligations process. The model agreement was prepared by the Law Society’s Planning and Environmental Law Committee.

### Aim of this guidance

- 1.3 This guidance brings together a range of case study examples illustrating how local planning authorities (LPAs), developers and others are working together to deliver planning obligations effectively. The aim of the guidance is to provide LPAs and anyone carrying out development (here, “developers”) with practical tools and methods to help improve the development, negotiation and implementation of planning obligations. The guidance will also be of interest to others involved in the obligations process, such as solicitors and consultants.

### Status and limitations of the guidance

- 1.4 The use of any example is without prejudice to any decision the Secretary of State may wish to take in respect of any planning application coming before her as a consequence of a policy included as an example in this guidance.
- 1.5 Although LPAs, developers and others can benefit from the experiences of others in using planning obligations, it should be recognised that no two developments or applications are identical. Circumstances will vary on a site-by-site basis, over different areas and over time. As such the case study examples that are illustrated in this guide should be used to help inform policy and practice and should not be rigidly applied without regard to local and individual circumstances and contexts. Above all else, planning obligations should be in line with Circular 5/05.

<sup>1</sup> ODPM Circular 5/05 is available to download from the DCLG website [www.communities.gov.uk](http://www.communities.gov.uk)

- 1.6 Because the new planning system, established by the Planning & Compulsory Purchase Act 2004, is still in the early stages of implementation, there are few examples of new Supplementary Planning Documents (SPDs) and Development Plan Documents (DPDs) including planning obligations policies that have been adopted. As such, most of the examples of policies in this guidance relate to Supplementary Planning Guidance (SPG) under the old system. Despite this, in most cases the approach used and lessons learnt from the SPG will be transferable to the new-style documents. Where reference is made to old-style documents, any such reference should be taken to apply equally to the corresponding documents in the new system.

## Planning obligations and the Planning-gain Supplement

- 1.7 The Government has recently consulted on the introduction of a Planning-gain Supplement (PGS) as recommended in the Barker Review of Housing Supply<sup>2</sup>. The PGS would capture a modest portion of the land value uplift that results from the granting of planning permission. The PGS forms part of the Government's package of measures aimed at improving housing affordability.
- 1.8 As recommended by the Barker Review, the PGS consultation paper proposes that if a PGS was introduced, planning obligations would be scaled back to cover only those matters relating to the physical environment of the development site and affordable housing provision.
- 1.9 The introduction of a PGS, and any accompanying scaling back of Planning obligations, would not take place before 2008 at the earliest. In the meantime this guidance is intended to contribute towards improving delivery of planning obligations through the existing s106 regime.

## Structure and content of guidance

- 1.10 The structure and order of this guidance broadly follows that of Circular 5/05. Each chapter consists of:
- an outline of its aims;
  - relevant text from Circular 5/05 and any necessary policy amplification;
  - a range of case study examples; and
  - a checklist of good practice.
- 1.11 This guidance has the following chapters:
- **Chapter 2, Types of contribution:** Provides details of the range of planning obligation contribution types available and in what circumstances it is appropriate for them to be used;
  - **Chapter 3, A plan-led system:** Sets out how planning obligations policies should be integrated within the plan-led system;

<sup>2</sup> Planning-gain Supplement: a consultation (Dec 2005), HM Treasury, HM Revenue & Customs & ODPM

- **Chapter 4, Improving speed, predictability, transparency and accountability:** Suggests a range of resources and approaches to help make the obligations system more effective and efficient in areas such as organising and managing the process; skills and training; and communicating information;
- **Chapter 5, Formulae and standard charges:** Provides an understanding of the role and use of formulae and standard charges in quantifying necessary obligations and describes how relevant evidence on impacts and costs can be used to inform and develop them;
- **Chapter 6, Standard agreements and undertakings:** Highlights a range of resources that can be used to standardise aspects of the planning obligations, including the use of standard heads of terms and use of the model s106 agreement.
- **Chapter 7, Use of independent third parties:** Describes how independent third parties can be used to add value to the planning obligations process or to complement and/or supplement LPA and developer skills and resources.
- **Chapter 8, Public involvement:** Describes how the community and stakeholders can be involved in the development and implementation of obligations.
- **Chapter 9, Unilateral undertakings:** Sets out how the use of unilateral undertakings, in certain circumstances, can help speed up the obligations process.
- **Chapter 10, Implementing planning obligations:** Provides tools, methods and case study examples to improve the implementation of planning obligations following their agreement.

## Acknowledgements

This guidance, produced by the Department for Communities & Local Government (DCLG), is based on research led by Chris Watts and James Wells at the Halcrow Group and colleagues John Henneberry from the University of Sheffield, Steven Walker of Oxford Brookes University, Professor Rob Lane of the University of Westminster and Rob Waite from Wilbraham & Co. The guidance benefited from input and contributions from a number of different organisations from the ODPM's advisory group on planning obligations and from elsewhere.

In particular, we would like to thank all the LPAs who agreed to be included in the guidance as case study examples.

Thanks also go to the Law Society's Planning and Environmental Law Committee who provided substantial time and resources towards producing the s106 standard model agreement and its accompanying affordable housing drafting notes.



## CHAPTER 2:

# TYPES OF CONTRIBUTION

### Aims of this chapter:

- 2.1 This chapter aims to provide an understanding of the range of different forms of planning obligation contribution available to LPAs and developers and their suitability for use in different circumstances. The chapter draws on a number of case studies where different types of contribution are being used to improve the delivery of planning obligations.
- 2.2 This chapter will cover the following types of contribution:
- in-kind and financial contributions;
  - one-off payments and phased payments;
  - maintenance payments; and
  - pooled contributions

#### **What does Circular 5/05 say about different types of contribution?**

B17. Contributions may either be in kind or in the form of a financial contribution. In the case of financial contributions, payments can be made in the form of a lump sum or an endowment, or, if beneficial to all parties and not unduly complex, as phased payments over a period of time, related to defined dates, events and triggers. Policies on types of payment, including pooling and maintenance payments, should be set out in Local Development Frameworks. The local authority's generic policies on payment types should be contained in Development Plan Documents, and the details of their application in Supplementary Planning Documents.

### In-kind and financial contributions

- 2.3 Planning obligations can be provided by developers “in kind” (where the developer builds or provides directly the matters necessary to fulfil the obligation), by means of a financial payment, or in some cases a combination of both.
- 2.4 When developing or reviewing obligations policies LPAs should consider, for different categories of obligation (for example, open space, education, community facilities), whether they are best provided in kind by the developer, in the form of a financial payment, or as a combination of the two. When considering the most appropriate type of obligation, LPAs should consider their capacity and expertise to provide the infrastructure themselves or to have it undertaken by the developer or another party.

- 2.5 Although an LPA's planning obligations policy should state whether different types of contributions should generally be provided in kind or as a financial contribution, when considering individual applications LPAs should consider whether this is the most appropriate approach, or if there are circumstances specific to the proposed development where an alternative approach could be more effective. For example, the Local Development Framework (LDF) policy may state that in general terms a particular category of obligation should be provided in kind by the developer, but there may be circumstances for a particular development where an alternative provider is better placed to deliver the obligation and a financial payment would be more advantageous. Similarly, there may be circumstances where the policy suggests a financial payment, but the developer may possess particular skills or resources to provide the facility more effectively, or the LPA may lack the capacity to undertake the works themselves.
- 2.6 In terms of the provision of affordable housing, Planning Policy Guidance Note 3, Housing (PPG3) (March 2000) says that "there is a presumption that such housing should be provided as part of the proposed development of the site<sup>3</sup>". This approach is maintained in draft PPS3 (December 2005), which restates the presumption that affordable housing should be provided on the application site so that it contributes towards the creation of more mixed communities and avoids creating concentrations of deprivation<sup>4</sup>. Whilst LPAs are expected to plan on this basis, they may wish to set out in Local Development Documents (LDDs) the circumstances in which provision would not be required on the application site or in which a financial contribution would be acceptable in lieu.<sup>5</sup>
- 2.7 Table 3.1 below illustrates where the use of in-kind or financial contributions may be more or less appropriate for different kinds of obligation and circumstances.

<sup>3</sup> Paragraph 17, PPG3

<sup>4</sup> "Consultation Paper on a New Planning Policy Statement 3 (PPS3), Housing", (Dec 2005)

<sup>5</sup> Paragraph 28, PPG3

<b>Table 3.1: Choosing between in-kind and financial contributions</b>		
<b>Circumstance</b>	<b>In-kind contribution generally more appropriate?</b>	<b>Financial contribution generally more appropriate?</b>
Affordable housing is being provided through a planning obligation (see paragraph B14 of Circular 5/05).	✓	
The developer will provide considerable economies of scale and value for money by building or providing the obligation themselves.	✓	
There is a need to ensure that the development and the facilities provided through the obligation are particularly closely integrated in terms of design and construction.	✓	
The developer possesses the specialist and necessary skills to provide the infrastructure themselves.	✓	
An alternative organisation (such as the local authority or Primary Care Trust) is better placed to provide the infrastructure at similar or better value for money and at the desired standard of quality.		✓
The funding of a particular facility through obligations is being part-funded by a number of developers.		✓
The contribution is in the form of a maintenance payment and the body carrying out the maintenance is not the developer.		✓
The developer possesses the skills and expertise to provide part of the infrastructure themselves, but the remainder needs to be provided by an alternative organisation.	✓	✓

- 2.8 Developers fulfilling obligations in kind should not mean that the LPA has any less control over the quality, timing, functionality and delivery of the relevant infrastructure. If adequate monitoring and quality control procedures are put in place the LPA should be able to ensure that the infrastructure is delivered to time and to the desired quality standards regardless of who the provider is. In order to ensure that in-kind contributions are delivered to the desired standard, LPAs may wish to state in the relevant SPD and s106 agreement the environmental, safety and other standards that the contributions must meet. For example, for the delivery of affordable housing with the use of Social Housing Grant (SHG), the Housing Corporation and the LPA may stipulate the requirement that the housing provided conforms to the Housing Corporation's Scheme Development Standards.

#### Case study 2.1: Guidance note on in-kind and financial contribution policies for provision of open space, Waveney District Council

Waveney DC have published an open space guidance note to explain and amplify their Local Plan policy on open space obligations.

The guidance note states that for sites of 20 or more dwellings open space will need to be provided on site and in kind by the developer. For smaller and very high-density brownfield sites, the policy instead seeks financial contributions from developers. In cases of financial contributions the Council commits to spending these funds on open space provision within 5 years or returning the funds to the applicant, with interest.

In terms of quality/safety standards, where play areas are provided in kind the policy requires that the open space and any equipment provided conforms to minimum standards, which are set out in some detail in the appendix of the guidance.

The guidance also specifies that the type of open space to be provided on sites will be agreed on a site-by-site basis, and that discussion regarding type should be had with Facilities and Development Control officers at the earliest opportunity.

<http://www.waveney.gov.uk/NR/rdonlyres/23C404BA-1176-4EF5-B254-713A381365B5/0/spgopenspacemay04.pdf>  
[www.waveney.gov.uk/](http://www.waveney.gov.uk/)

## One-off and phased payments/contributions

- 2.9 Planning obligations in the form of financial contributions can be made by developers as a one-off contribution or as a series of payments phased over time, depending on the payment schedule negotiated. Where obligations are to be delivered in kind by the developer, the relevant facilities can be provided at one particular point in time, or there may be advantages in providing the relevant facilities in a phased manner over time to match stages of the development.
- 2.10 Where payments or the scale of the facilities are modest in relation to the size of the development and where the timetable for the delivery of the obligation is relatively short, the use of one-off payments or provision can make the discharging of obligations more straightforward and help keep administrative costs down.

- 2.11 Where payments or the scale of the facilities are significant relative to the size of the development and/or where the construction of the development is to be phased over a significant period of time, it may be more appropriate to consider the phasing of obligation payments or provisions.
- 2.12 Where payments and provisions are phased over a period of time the LPA should make clear at what stages in the development process these payments or in-kind obligations need to be delivered. For example, the LPA and developer may agree that certain obligations should be paid or provided after a percentage or number of residential units have been constructed. Any such index-linking should be made clear to the developer at the outset.
- 2.13 When obligations are being phased over a significant period of time, to ensure that their value continues to match the cost of provision, LPAs may wish to make use of relevant inflationary indices or cost guides/tables. Where indices are used SPDs should set out how any financial payments would be index-linked over time and to what index and which types of obligations they refer. Examples of indices/cost guides that LPAs may wish to use include:
- Department of Trade and Industry's (DTI's) Cost Indices as set out in the DTI's Monthly Bulletin of Indices and Quarterly Building Cost and Price Indices: [www.dti.gov.uk/construction/stats](http://www.dti.gov.uk/construction/stats);
  - Royal Institution of Chartered Surveyors (RICS) Building Cost Information Service (BCIS) "All in Tender" Index: [www.bcis.co.uk](http://www.bcis.co.uk); and
  - Spon's Architects' and Builders' annual Price Book, containing up to date construction price information: [www.ribabookshops.com/site/viewtitle.asp?sid=&pid=5658](http://www.ribabookshops.com/site/viewtitle.asp?sid=&pid=5658).
- 2.14 The use of phased payments over a period of time will require a longer-term relationship between the LPA and developer or their successors in title. As such the LPA and developer will need to have monitoring systems to alert parties to outstanding contributions<sup>6</sup>. Where the LPA has made a commitment to providing a facility in part or in full from a developer's financial contribution it should make clear in the relevant s106 agreement when this work will be carried out and if it is not carried out to the specified timescale how the unspent funds will be returned to the developer and with what interest added, if appropriate.

<sup>6</sup> See also chapter 10 "Implementing planning obligations" for further details on monitoring.

### Case Study 2.2: Use of phased obligation payments, London Borough of Barnet

The London Borough of Barnet's (LBB) development benefits toolkit sets out its policy on phased obligations payments. An independent study was undertaken to support the approach proposed in the toolkit and phased payments are permitted in line with the phasing of development implementation on major sites.

For example, to provide flexibility for the developer in a scheme involving the demolition of 1,344 dwellings and the provision of 2,977 dwellings (1,977 for sale and 1,000 affordable) and 9,074 square metres of retail and community floor-space, LBB have permitted the use of phased payments for the relevant obligations. For contributions towards education, the developer will pay the LPA over £1.8m three months after completion of the 765th dwelling for sale, with similar payments payable three months after completion of the 1,572nd and 1,977th (final) dwelling for sale. Payments are linked to the Retail Price Index and, subject to caveats, unused payments will be returned to the developer after a specified period of time.

[www.barnet.gov.uk/](http://www.barnet.gov.uk/)

## Maintenance payments

### What does Circular 5/05 say about maintenance payments?

- B18. Where contributions are secured through planning obligations towards the provision of facilities which are predominantly for the benefit of the users of the associated development, it may be appropriate for the developer to make provision for subsequent maintenance (i.e. physical upkeep). Such provision may be required in perpetuity.
- B19. As a general rule, however, where an asset is intended for wider public use, the costs of subsequent maintenance and other recurrent expenditure associated with the developer's contributions should normally be borne by the body or authority in which the asset is to be vested. Where contributions to the initial support ("pump priming") of new facilities are necessary, these should reflect the time lag between the provision of the new facility and its inclusion in public sector funding streams or its ability to recover its own costs in the case of privately-run bus services, for example. Pump priming maintenance payments should be time-limited and not be required in perpetuity by planning obligations.
- B20. For all maintenance payments, local authorities and developers should agree the type of payments to be made, e.g. regular payments, or commuted sums, all with a clear audit trail.

- 2.15 As set out in Circular 5/05, where LPAs wish to seek maintenance payments through planning obligations to contribute towards the physical upkeep of infrastructure or facilities, they should set out their overall policy for doing so clearly in their DPDs. Details about the level of maintenance payments should be set out in the relevant SPD. The method used and level of maintenance payments the LPA is seeking should be demonstrated and justified, based on robust evidence of estimated costs and impacts. The LPA should also set out in policy the expected time period for such payments, as well as when they will be due, for example, on a monthly or yearly basis, at particular stages of the development process or in some cases in perpetuity (see Circular 5/05 paragraph B19 above).

- 2.16 In some cases the LPA and developer may feel that it is beneficial for the costs of maintaining a facility over time to be made as a one-off payment, or a “commuted sum”, even though such costs will arise over a specified period of time. The developer and LPA may feel that making such one-off payments has the benefit of giving greater certainty for future funding of the facility and saves costs by ensuring that the developer does not have to be tied into making relatively small payments over a period of time.

**Case Study 2.3: Pump-priming maintenance payments for a car club service through planning obligations, London Borough of Merton**

On a residential development in Plough Lane, Wimbledon, the London Borough of Merton and the developer have agreed through a s106 agreement to establish a car club for use by both residents of the development as well as non-residents. The developer has agreed to procure, set up and identify suitable accommodation on the site for the car club. The developer has also agreed to “pump-prime” or pay for the maintenance of the first five years of the car club by paying for the membership of residents of the development. The objective is that this pump-priming maintenance payment will enable the car club to be established and used by residents. Following the five-year period the car club will be self-financing.

- 2.17 Where a facility provided through a planning obligation is predominantly for the benefit of the users of the associated development (see Circular 5/05 paragraph B18 above), the LPA and developer may find it beneficial to set up a management company or community trust to maintain the facilities in perpetuity, rather than the developer retaining responsibility. The LPA will want to be assured that any such organisation has the necessary skills and resources to maintain the facilities over time. There may be the opportunity to enable members of the local community to take an active role in the maintenance of facilities themselves by setting up a community trust. Community trusts, managed and run by members of the community, can be a positive and active way of engaging the community in the running and maintenance of local facilities in perpetuity. The Countryside Agency’s report titled “*How communities can be involved in negotiating and managing benefits secured from development via planning obligations*”<sup>7</sup> discusses the role of community trusts in managing facilities delivered through planning obligations.

<sup>7</sup> Findlay, Wade, Elson, Moran and Elliot, “How communities can be involved in negotiating and managing benefits secured from development via planning obligations: A report for the Countryside Agency”, Development Trusts Association, July 2002.

### Case Study 2.4 Use of a community trust to manage and maintain facilities provided through planning obligations, Caterham Barracks Community Trust, Tandridge District Council

As part of a major redevelopment of a former MoD barracks site, a community trust was set up by a s106 agreement between Tandridge Council and developer Linden Homes. The role of the trust is to manage community activities and facilities on the site. The trust was established as a legal entity in its own right, managing assets. The trust board is made up of four “users”, three co-opted professionals, a resident, an employer, a parish councillor and a district council nominee.

The development is staggered over 8 years. The Trust was established at the outset of the development process, and has responsibility for managing community activities and the use and management/maintenance of community facilities provided through s106 when they are provided over the life of the works, and in perpetuity.

[www.tandridgedc.gov.uk](http://www.tandridgedc.gov.uk)

## Pooled contributions

### What does Circular 5/05 say about pooled contributions?

- B21. Where the combined impact of a number of developments creates the need for infrastructure, it may be reasonable for the associated developers’ contributions to be pooled, in order to allow the infrastructure to be secured in a fair and equitable way. Pooling can take place both between developments and between local authorities where there is a cross-authority impact. Local authorities should set out in advance the need for this joint supporting infrastructure and the likelihood of a contribution being required, demonstrating both the direct relationship between the development and the infrastructure and the fair and reasonable scale of the contribution being sought. There should be a clear audit trail between the contribution made and the infrastructure provided.
- B22. In some cases, individual developments will have some impact but not sufficient to justify the need for a discrete piece of infrastructure. In these instances, local planning authorities may wish to consider whether it is appropriate to seek contributions to specific future provision (in line with the requirements for demonstrating need as set out above). In these cases, spare capacity in existing infrastructure provision should not be credited to earlier developers.
- B23. In cases where an item of infrastructure necessitated by the cumulative impact of a series of developments is provided by a local authority or other body before all the developments have come forward, the later developers may still be required to contribute the relevant proportion of the costs. This practice can still meet the requirements of the Secretary of State’s policy tests if the need for the infrastructure and the proportionate contributions to be sought is set out in advance.
- B24. In the event that contributions are made towards specific infrastructure provision but the infrastructure is not provided within an agreed timeframe, arrangements should be made for contributions to be returned to developers.



- 2.18 Pooled contributions are planning obligations that are pooled together from more than one development, and/or across more than one LPA area in order to address impacts across developments and LPA boundaries. Pooled contributions can be a useful means for enabling development to take place that would otherwise be unacceptable in planning terms by grouping contributions together to address the cumulative impact arising from a number of developments.
- 2.19 When setting out policies on pooled contributions the LPA should use evidence, such as assessments of the impacts of the developments involved and estimated costs of mitigating them, to justify both the need for and level of pooled contributions.
- 2.20 Where contributions are pooled across a number of LPA areas, these LPAs and other relevant bodies (such as the relevant public infrastructure providers) will need to work closely together to agree the need for pooled contributions, the types and levels of contributions to be sought, and the mechanism(s) for using the contributions for the delivery of the necessary infrastructure. This will include the need for monitoring and financial systems to ensure that all contributions are tracked over time and information on their spending is readily available.

**Case Study 2.5: Pooled contributions for the provision of open space, City of Worcester Council**

The City of Worcester’s SPG for open space provision and contributions provides an example of good practice in the pooling of contributions, facilitating the speedy resolution of planning applications by providing developers with clear information regarding these obligations.

Contributions are sought from all developments of 10 or more dwellings, to enable the provision of equipped children’s play areas, playing pitches, allotments and casual/informal open areas. Where on-site provision is not appropriate, for example in smaller-scale developments where a full-size play area or pitch cannot be provided, financial contributions are sought. Such contributions will be used by the Council to acquire and lay out open space or enhance existing areas. Developers are able to make a financial payment, which they can calculate from the common contribution figures provided in the SPG, or can submit a unilateral undertaking. The common contribution figures are being regularly reviewed by the Council.

The standard formulae used for the assessment of contributions are evidence-based, taking account of the cost of land at market value and the cost of play equipment and leisure facilities. A zonal approach is taken to the application of contributions and a spreadsheet database has been set up to keep track of all contributions and how they are spent.

Good practice check list	
When developing and reviewing obligations policies LPAs should ensure they have a thorough understanding of the variety of different forms of contributions and the circumstances in which it would be appropriate to make use of them to improve delivery.	✓
When phasing obligation payments over time LPAs should establish and utilise monitoring systems to ensure payments are tracked and delivered and that funds are spent on the relevant infrastructure.	✓
LPAs should make use of relevant costs indices to help inform the cost of providing obligation payments over a significant period of time.	✓
LPAs should set out in the s106 agreement the timescale for any unspent financial contributions to be returned to the developer if the infrastructure is not brought forward and whether or not it will attract an interest payment.	✓
If establishing a management company or trust to manage and maintain relevant facilities over time, LPAs should consider and engage with the community to see if there is interest and willingness for such an organisation to be managed by the community.	✓

## CHAPTER 3:

# A PLAN-LED SYSTEM

### Aims of this chapter

- 3.1 This chapter aims to provide an understanding of the role of planning obligations policies within the plan-led system. A number of case study examples are used to illustrate how LPAs are currently using the plan-led system to deliver obligations effectively.

### The plan-led system

- 3.2 Planning Policy Statement 1 (PPS1), *Delivering Sustainable Communities*, sets out the Government's overarching policy on the delivery of sustainable development through the planning system. Planning Policy Statement 11 (PPS11) sets out policy on developing Regional Spatial Strategies (RSSs) whilst Planning Policy Statement 12 (PPS12) sets out policy on the preparation of LDFs. LPAs should formulate planning obligations policies in line with these policies.

**Policy amplification:** Discussion of a plan-led system must be set in the context of the revised version of the Secretary of State's policy tests laid out in Circular 5/05. This states that for a planning obligation to be acceptable it must, among other things, be "necessary to make the proposed development acceptable in planning terms". This means that it should be needed in order to bring the proposals into line with national, regional and local planning policy and other material planning considerations.

The policies laid out in planning policy documents are therefore crucial in determining what planning obligations can be sought. The plans are given legitimacy through the processes of community and stakeholder involvement and the Secretary of State's approval that are described in PPS11 and 12.

### What does Circular 5/05 say about planning obligations and the plan-led system?

- B25. In order to allow developers to predict as accurately as possible the likely contributions they will be asked to make through planning obligations and therefore anticipate the financial implications for development projects, local authorities should seek to include as much information as possible in their published documents in the Local Development Framework. In line with previous advice in Circular 1/97, local planning authorities should include in their new-style Development Plan Documents general policies about the principles and use of planning obligations – i.e. matters to be covered by planning obligations and factors to be taken into account when considering the scale and form of contributions or level of affordable housing provision – if these are not already covered in their “saved” policies under schedule 8 to the Planning and Compulsory Purchase Act 2004. These generic policies should cross-refer to the relevant topic-specific Development Plan Document policies which will be used in determining the planning obligations to be sought by local planning authorities.
- B26. More detailed policies applying the principles set out in the Development Plan Document (e.g. application to specific localities and likely quantum of contributions) ought then to be included in Supplementary Planning Documents. These more detailed policies might include matrices for predicting the size and types of obligations likely to be sought for specific sites; sub-plan areas; or windfall sites.
- B27. Where local authorities do not have existing high level policies specifically relating to planning obligations in their adopted local plan or Unitary Development Plan, they should set out the implications for planning obligations of the relevant topic-based Development Plan Document policies (e.g. transport or open space) in a Supplementary Planning Document, based on the policies in this Circular. This practice should only be followed in the transitional period before policies are in place in the relevant Development Plan Document, as set out above (and for that transitional period this practice is considered to accord with Planning Policy Statement 12 paragraph 4.40).
- B28. All local planning obligations policies should be in line with the guidance given in this document and should cover both allocated and windfall sites as well as setting out principles for general application. Where mitigation or compensation measures are required, planning obligations policies should be based on a clear and up to date assessment of the impacts likely to be created by development (including any disproportionate impacts on different sectors, groups or areas) and the nature and scale of the measures needed to address these impacts.
- B29. Where there are issues of strategic or regional importance that need to be addressed through planning obligations (for example, the need for pooled contributions towards major infrastructure in Growth Areas), it may be appropriate for these to be referred to in Regional Spatial Strategies, which will set a strategic framework to be interpreted at the local level through the Local Development Framework.
- B30. Local planning authorities take the lead in negotiating planning obligations with developers. However, it is important that all sectors and tiers of government or other public agencies with legitimate land-use planning interests are involved at an appropriate level and in a focused way in providing an evidence base and setting planning obligations policies. They should also be involved, where appropriate, in formulating site-specific planning obligations requirements. An integrated approach such as this will also ensure a coherent approach to the need for infrastructure created by a number of developments.

## The role of the Regional Spatial Strategy in setting planning obligations policies

- 3.3 Regional Planning Bodies (in London, the Mayor) are responsible for the revision, implementation and monitoring of RSSs (in London, a Spatial Development Strategy). The RSS sets out the broad development strategy for a fifteen to twenty year period. The RSS includes strategic policies and proposals, including infrastructure proposals and management policies, governing the future distribution of regionally or sub-regionally significant activities and development within the region.
- 3.4 The RSS also provides a spatial framework to inform the preparation of Regional Economic Strategies, Regional Housing Strategies, Local Development Documents, Local Transport Plans and regional and sub-regional strategies and programmes that have bearing on land-use activities.
- 3.5 All LDDs must be in general conformity with the relevant RSS. As such the revision or development of any planning obligations policies as set out in any LDD must also be in general conformity with the RSS. Paragraph B29 of Circular 5/05 therefore stresses the important role of the RSS in setting planning obligations policies at the regional and sub-regional level.

### Case study 3.1: Reference to planning obligations at the regional level, London Spatial Development Strategy, Greater London Authority

The London Plan sets out the Mayor's approach towards dealing with issues of strategic importance across London. The Plan sets out two specific policies that have implications for planning obligations in London Boroughs.

- Policy 6A.4 sets out the Mayor's priorities in the context of negotiations on development proposals for different types of planning obligations as well as his voluntary system for pooling obligations across authorities; and
- Policy 6A.5 sets out the Mayor's main policy on planning obligations including the need for boroughs to set out a clear framework for negotiations on planning obligations, the need for strategic priorities to be consistent across London, the Mayor's desire to reconcile strategic with more local impacts and the need for the pooling of contributions.

[www.london.gov.uk/mayor/strategies/sds/index.jsp](http://www.london.gov.uk/mayor/strategies/sds/index.jsp)

[www.london.gov.uk](http://www.london.gov.uk)

## The role of the Local Development Framework in setting planning obligations policies<sup>8</sup>

### The Local Development Scheme

- 3.6 The Local Development Scheme should make clear what types of planning obligations policies will be revised or produced when, and in what documents they will be included. By making this information available, LPAs should be able to give all stakeholders forewarning of when planning obligations policies will be reviewed or established, and a clear understanding of the opportunities they will have to input into the development of such policies.

<sup>8</sup> See PPS12 Local Development Frameworks, for a more detailed explanation of LDFs

## Statement of Community Involvement

- 3.7 In line with PPS12, the LPA's Statement of Community Involvement (SCI) should set out the standards to be achieved by the LPA when involving the community in the preparation, alteration and continuing review of LDDs and planning applications, including planning obligations policies and their role in individual applications<sup>9</sup>. The SCI should make it clear when and how stakeholders and members of the community can be involved in the revision and development of obligations policies.
- 3.8 Stakeholder groups that may have a particular interest in planning obligations policies include:
- the local community and its representatives;
  - local and national businesses and developers, and their representative bodies, such as the Home Builders Federation (HBF) and the British Property Federation (BPF);
  - Registered Social Landlords (RSLs); and
  - environmental and other interest groups.

## Local Development Documents (LDDs)

- 3.9 LDDs, which can be either Development Plan Documents (DPDs) or Supplementary Planning Documents (SPDs), should articulate the LPA's policies on planning obligations in accordance with national and regional policies, whilst taking into account local needs. Paragraphs B25 and B26 of Circular 5/05 describe the level of policy detail that should be included in DPDs and SPDs. All DPDs, including policies on obligations, must be subject to rigorous procedures of community involvement, consultation and independent examination. Details of obligations policies set out in SPDs are not subject to independent examination but should be subjected to rigorous procedures of community involvement.
- 3.10 LPAs should use the core strategy to outline their high-level planning obligations policies which contribute towards their spatial vision and policies to deliver their community strategy and bring about sustainable communities. Core strategies will generally cover the following issues relating to planning obligations:
- the circumstances in which planning obligations will be sought (applying the policy tests of Circular 5/05);
  - the range of infrastructure, facilities and services for which contributions are likely to be sought for different types of development (cross-referring to other topic-based policies in the LDF); and
  - the types of contribution that will be sought e.g. whether pooled or phased contributions will be used and when maintenance payments will be sought.

<sup>9</sup> See chapter 9 on "Public Involvement" for more on how the community should be involved in obligations policy and practice.

### Other Development Plan Documents (DPDs)

- 3.11 Other DPDs might be used by an LPA to clarify the way in which planning obligations policy is to be applied. For example, an LPA's Area Action Plan may take a specific and more detailed approach towards requiring and delivering planning obligations in particular geographical areas. If so the Plan should describe and justify the type and level of contributions that will be sought in the defined area.
- 3.12 Similarly, LPAs may also wish to take a specific approach towards obligations policy for particular sites. If so LPAs should set out in some detail, in any site-specific allocation DPDs, the basis, level and types of obligations on particular sites that depart from the LPA general policy.
- 3.13 LPAs may wish to use a generic development control DPD to outline how they intend to deal with sites where developers cannot comply with planning obligations because of limited financial viability.
- 3.14 In some cases, especially where the impacts of developments are likely to be felt across more than one LPA area, LPAs may wish to consider the development of joint LDDs. For example, these may set out the agreed joint LPA approach towards seeking planning obligations for a specific local development area or site that will have a cross-LPA impact on infrastructure.

### Supplementary Planning Documents (SPDs)

- 3.15 LPAs are encouraged to use SPDs to expand on the principles and high-level planning obligations policies in DPDs. SPDs will normally go into greater depth about the likely level and type of obligations that will be sought, either across the LPA or within a particular geographical area.
- 3.16 LPAs wishing to employ standard charges and/or formulae<sup>10</sup> or matrices to calculate the level of contributions for different developments are encouraged to include the detail and methods for doing so in an SPD. Because of changing circumstances there may be a need to update and revise detailed aspects of the application of planning obligations policies and as such the material is more suitable for the SPD.
- 3.17 Publishing the detailed application of planning obligations policies and the methods for estimating contributions for different types of developments should make it possible for most applicants to estimate the likely cost of the planning obligations they will face in relation to their proposed development. Such transparency should help to inform developers about the costs of contributions when considering purchasing land, and help simplify and speed up the negotiation and agreement of obligations.

<sup>10</sup> See chapter 5 "Formulae and Standard Charges"

### Case Study 3.2: SPD on planning obligations, Bristol City Council

In October 2005 Bristol City Council adopted an SPD on planning obligations titled SPD4, Achieving Positive Planning through the use of Planning Obligations. The SPD sets out the Council's policies on planning obligations and supplements saved policies in the adopted Local Plan. The SPD includes:

- the status of the SPD and its use in the decision-making process;
- an outline of the national and local policy context;
- the Council's policy concerning on-site or off-site provision of obligations;
- the types of obligations that the Council will seek as well as the relevant threshold triggers;
- the protocol for drafting agreements and the recovery of costs for doing so;
- details of formulae and standard charges to enable applicants to estimate their likely contribution;
- contact point for individual types of obligations; and
- details of the results of a sustainability appraisal of the SPD on all aspects and types of planning obligations.

[www.bristol-city.gov.uk/ccm/content/Environment-Planning/Planning/planning-policy-documents/planning-policy-documents.en?page=2](http://www.bristol-city.gov.uk/ccm/content/Environment-Planning/Planning/planning-policy-documents/planning-policy-documents.en?page=2)

[www.bristol-city.gov.uk](http://www.bristol-city.gov.uk)

### Case Study 3.3: SPG policies – Ryhope & Tunstall Periphery Planning Guidance (RTPPG), City of Sunderland

Planning obligations policies in the City of Sunderland RTPPG provide an example of good practice in the preparation of Supplementary Planning Guidance (SPG), and many of the lessons could be transferred to an SPD under the new system. The SPG was produced as the LPA's key mechanism and driver to deliver a major urban expansion to the City, identified and allocated in the adopted 1998 Unitary Development Plan, and to remove significant traffic from the villages of Ryhope and Tunstall via a new southern radial road.

The RTPPG went through a robust consultation process involving stakeholders, the community and landowners. It includes a matrix, based on an assessment of needs and costs, intended to provide a predictable and transparent assessment of financial contributions for developers. This was also tested through public consultation.

Each plot of land identified for development in the 1999 RTPPG is tied to the provision of a section of the new radial road. Other financial payments are sought for education places, play equipment, tree planting, landscaping and leisure facilities.

Since the introduction of the RTPPG sections of the road and two housing sites have been completed, whilst the major hospital redevelopment site has received outline planning permission. Some £10m contributions have been secured through s106 agreements based on the RTPPG.

[www.sunderland.gov.uk/Public/Editable/Themes/Environment/BD-Control/](http://www.sunderland.gov.uk/Public/Editable/Themes/Environment/BD-Control/)  
[www.sunderland.gov.uk/](http://www.sunderland.gov.uk/)



## Informing planning obligations policies

- 3.18 It is important that all planning obligations policies are informed by a sound and robust evidence base, for example an up-to-date assessment of the need for, impacts on and costs of necessary infrastructure related to development. LPAs should be proactive in sourcing robust data, surveys and studies that can help provide the necessary evidence base. For example, this may involve an audit of the existing evidence base currently informing policy, identifying where gaps exist or when information needs updating and a strategy for undertaking this work reflecting the resources available. LPAs are also encouraged to set out procedures for reviewing and updating need and cost assessments over time to ensure that the evidence base is kept up-to-date.

### Case study 3.4: Cambridge City/South Cambridgeshire District Councils' Area Transport Plans (ATPs)

The ATPs provide quantitative need and impact information to help inform the Councils' planning obligations policy. They set out a list of transport-related schemes necessitated by new development to be funded through planning obligations and the estimated cost of each scheme. These include bus priority programmes and improvements to roads and cycle links.

The plans are supported by need and cost assessments and are based on the housing and commercial allocations and sustainable transport proposals contained in current and emerging local plans. They were prepared jointly by the City, District, and County Councils and went through a two-stage consultation process.

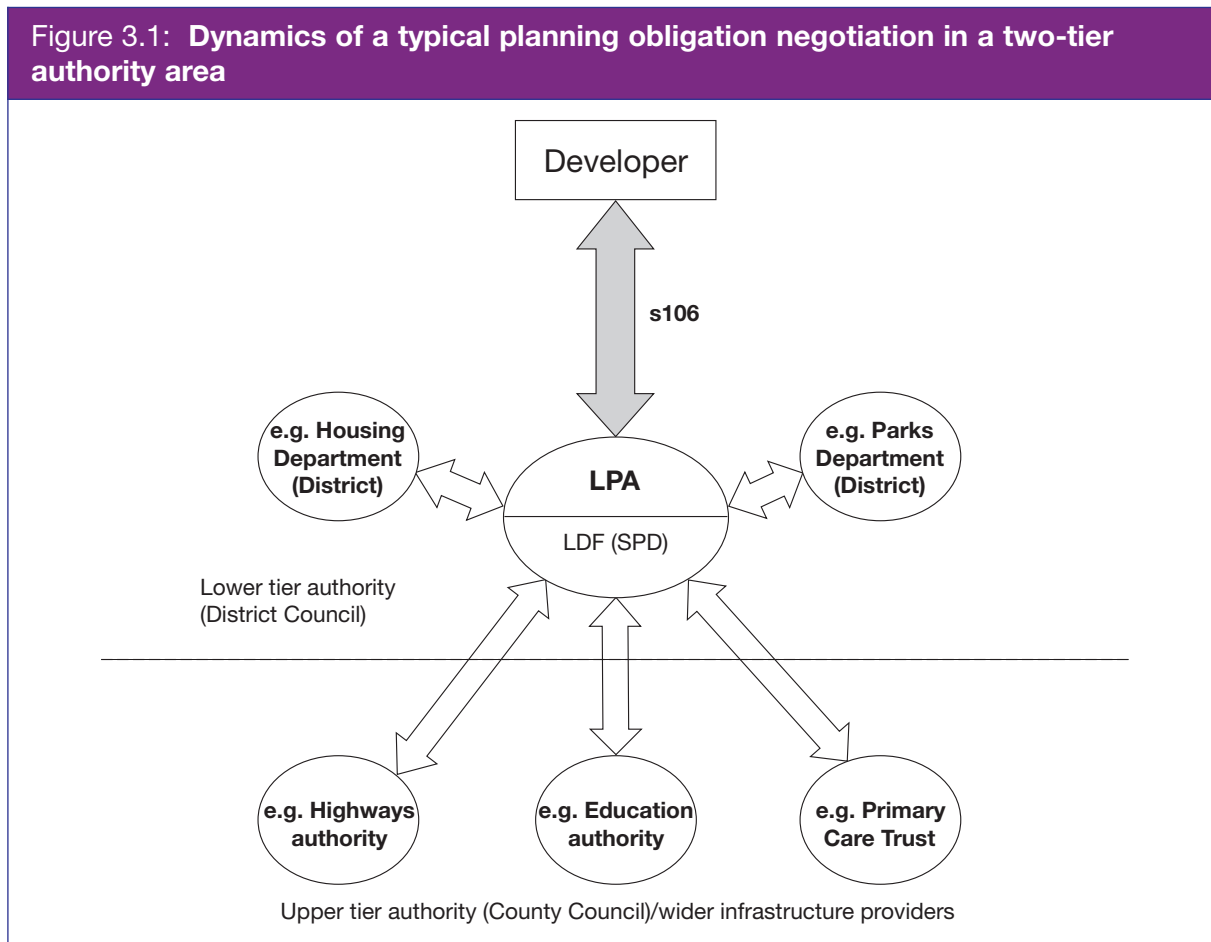
The Southern Corridor ATP (SCATP) was produced in 2000 as Supplementary Planning Guidance to the Cambridge Local Plan (1996) and updated in 2002. It is one of four Plans produced to help the transport network accommodate all the allocated development. The SCATP seeks to secure developer contributions towards necessary transport infrastructure. It includes trip rate estimates for a range of different uses. Any development generating 50 or more additional trips (all modes, net of any trips generated by a previous/recent use) will be affected by the policy. If a developer wishes to query the trip rates they are encouraged to do so via pre-application discussions. Planning obligations are pooled to fund identified schemes and are monitored via a database and reported to the Environment Scrutiny Committee.

[www.cambridge.gov.uk/ccm/content/policy-and-projects/southern-corridor-area-transport-plan-2002.en](http://www.cambridge.gov.uk/ccm/content/policy-and-projects/southern-corridor-area-transport-plan-2002.en)

[www.cambridge.gov.uk/](http://www.cambridge.gov.uk/)

- 3.19 Paragraph B30 of Circular 5/05 emphasises that LPAs should involve all the relevant public sector infrastructure providers when formulating planning obligations policies since much of the infrastructure necessary to support development is delivered by bodies other than the LPA. Such organisations should be engaged at a very early stage of the process, in order to inform the development of policies for different infrastructure types. These providers might include:
- relevant departments within local authorities (including neighbouring ones), such as housing, highways, education or health; and
  - relevant infrastructure and affordable housing providers. For example Network Rail, the Highways Agency, the local Primary Care Trust, the Housing Corporation, English Partnerships or the Environment Agency.

3.20 Figure 3.1 illustrates the dynamics of a typical planning obligations process in a two-tier authority area. The same dynamics are likely to apply at both the plan-making and negotiation stage.



Good practice check list	
The LPA sets out clearly in its Local Development Scheme which planning obligations policy documents will be revised and/or developed and when, and what opportunities there will be for involvement and input into policy development. The LPA is proactive in making the scheme freely available and promoting it to all relevant and interested parties and invites comments on its proposed approach.	✓
The LPA identifies within its SCI which groups in particular should be targeted in the revision and development of planning obligations policies, and establishes a strategy and means for engaging with them.	✓
The LPA proactively assesses whether the impact of development within their boundary or neighbouring authorities is likely to have significant impact on cross-authority infrastructure and if so engages constructively with the relevant LPAs to agree a joint approach towards planning obligations policies.	✓
Developers and other stakeholders make themselves fully aware of the plan-led policy process and the opportunities to contribute to policy formulation and engage constructively in the process.	✓
The LPA informs the development of obligations with a robust and up-to-date evidence base of the impacts of development.	✓

## CHAPTER 4:

# IMPROVING SPEED, PREDICTABILITY, TRANSPARENCY AND ACCOUNTABILITY

### Aim of the chapter

- 4.1 Planning obligations have been criticised for causing delays to the planning system and being opaque and difficult to understand. The aim of this chapter is to describe how LPAs and developers can improve the process of negotiating planning obligations through the communication of information and the effective use and management of teams dealing with planning obligations. A number of case studies are provided to illustrate approaches that are being taken by LPAs and developers to speed up and improve the delivery of planning obligations.

#### What does Circular 5/05 say?

B31. It is important that the negotiation of planning obligations does not unnecessarily delay the planning process, thereby holding up development. It is therefore essential that all parties proceed as quickly as possible towards the resolution of obligations in parallel to planning applications (including through pre-application discussions where appropriate) and in a spirit of early warning and co-operation, with deadlines and working practices agreed in advance as far as possible...

B32. Local authorities may wish to consider the development of codes of practice in negotiating planning obligations, so as to make clear the level of service a developer can expect, and in order to increase public confidence in the planning obligations system.

### Making use of pre-application discussions

- 4.2 For both applicants and LPAs it may be beneficial for obligations to be covered in pre-application discussions where these take place. Pre-application discussions can be an early opportunity to clarify the LPA's planning obligations policies in relation to the proposed development and for the applicant to raise any questions, concerns or information that may be relevant to negotiating an agreement. Investing time and resources at the pre-application stage can save time and resources in the medium and longer term and help speed up the delivery of planning obligations.
- 4.3 LPAs should make available sufficient information on their planning obligations policies to enable applicants to understand clearly what type and level of planning obligations the LPA is likely to seek from them. At the same time applicants should ensure that they inform themselves of the LPA's policies and how they apply to their proposal. If this is the case, pre-application discussions should only involve issues specific to the development that may need clarification or discussion.

## Informing stakeholders of planning obligations policies and procedures

- 4.4 In order for the negotiation of planning obligations to be effective it is important that developers and other stakeholders involved in the process can access the necessary information to ensure a clear and consistent understanding of the policies, process and practice of the planning obligations system. In particular all stakeholders involved in planning obligations should have a clear understanding of:
- the LPA's policies on planning obligations and opportunities for engagement with the LPA over draft policies;
  - respective roles and responsibilities and what each party is able or expected to contribute at various stages of the process; and
  - the process for negotiating and agreeing planning obligations including the order and timing of different stages and deadlines.
- 4.5 All of the information on an LPA's planning obligations policies should be set out in the relevant documents of their LDF<sup>11</sup>. However, other documents can also be helpful in communicating essential information on the planning obligations process to stakeholders. Table 4.1 below describes a range of different types of publications and information resources that LPAs may wish to produce to help inform stakeholders of planning obligations policies and procedures.

**Table 4.1: Publications and resources that can help communicate and inform stakeholders about planning obligations policies and practice**

- DPD on obligations policy (required): sets out the high-level planning obligations policy of the LPA;<sup>12</sup>
- SPDs on planning obligations policy (recommended): set out specific details of the LPA's policy and the detailed application of the principles set out in the DPD;
- the Law Society's model s106 agreement;<sup>13</sup>
- tailored applicant and/or stakeholder guides on obligations: e.g. a guide providing user-friendly advice, contact details and other information covering aspects of planning obligation work, such as procedures for completing an obligation (including process maps) and answers to frequently asked questions; and
- code of practice for negotiating planning obligations: a publication setting out the LPA's working practices and the level of service a developer can expect, covering topics such as procedures for s106 agreements considered by Planning Committees, monitoring and enforcement.

<sup>11,12</sup> See Chapter 3 "A plan-led system"

<sup>13</sup> See Chapter 6 "Standard Agreements" for more about the Law Society's model s106 agreement.

## Tailored applicant and/or stakeholder guides on planning obligations

- 4.6 In some cases LPAs may wish to complement or amplify information provided in their LDF documents with additional user-friendly guides focused on a particular aspect of planning obligations, or tailored for a particular stakeholder group. For example, an LPA may wish to produce and make freely available a guide specifically tailored for applicants that takes them through the planning obligations process step by step, or a guide focused on members of the community setting out the process and what opportunities they have to make an input. Some LPAs have produced this kind of information in an SPD format.

### Case Study 4.1: Tailored applicant/stakeholder guide on the planning obligations process, Carrick District Council

Carrick District Council have produced a user-friendly booklet targeted predominantly at applicants, but also informative for other stakeholders. The booklet, entitled “Your Guide to understanding and completing section 106 planning obligations”, is available in hard copy or to download from the Council website and covers issues such as:

- an explanation of planning obligations and their objectives;
- an outline of the general ambitions and vision of the authority;
- an explanation of who may enter into an obligation;
- how planning obligations are secured and enforced;
- the role of land charges and obligations;
- the authority’s procedure for completing a s106 agreement; and
- contact information.

*“Your Guide to understanding and completing s106 planning obligations”*

[www.carrick.gov.uk](http://www.carrick.gov.uk)

### Case Study 4.2: **Web-based information sources on planning obligations, Norfolk County Council**

Norfolk County Council provides a dedicated section on its website with a range of information about planning obligations in the county. The website includes a copy of the County Council's Planning Obligations Standards 2005, which provides:

- an explanation of planning obligations and the policy background;
- cross-reference to the County Council's Planning Obligations Leaflet which in turn provides a comprehensive contact list of different district and county council officials involved in planning obligations, including those working in specific areas such as education, highways, archaeology etc;
- a general description of what types of obligations can be sought at the county and district council level;
- a detailed description of different types of obligations the county council will seek to enable applicants to assess applicability and estimate the likely costs of these obligations;
- a description of how the county council's system for planning obligations works and how applicants can make an enquiry by contacting the council's planning obligations dedicated co-ordinator; and
- a description of what the council will seek for different types of obligations

[http://www.norfolk.gov.uk/consumption/idcplg?IdcService=SS\\_GET\\_PAGE&nodeId=3120](http://www.norfolk.gov.uk/consumption/idcplg?IdcService=SS_GET_PAGE&nodeId=3120)  
[www.norfolk.gov.uk/](http://www.norfolk.gov.uk/)

### Case Study 4.3: **SPG guide for developers on providing for affordable housing contributions, Hertsmere Borough Council**

Hertsmere Borough Council have adopted the SPG *The Provision of Affordable Housing – A Guide for Developers*. The SPG was produced to help guide housing developers in the interpretation and application of the council's affordable housing planning obligations policies set out in its Local Plan.

The SPG sets out:

- the policy framework for planning obligations and the council's affordable housing contributions;
- relevant research on evidence of affordable housing need;
- the role of Registered Social Landlords;
- the role of housing finance including public subsidy;
- the types of affordable housing sought;
- information on the housing tenure, mix, type and standards; and
- different methods of provision and methods of control.

[www.hertsmere.gov.uk/publications/spgafford.pdf](http://www.hertsmere.gov.uk/publications/spgafford.pdf)  
[www.hertsmere.gov.uk](http://www.hertsmere.gov.uk)

## Using process maps to illustrate obligations

- 4.7 Process maps can be a helpful visual tool for explaining the process of negotiating and agreeing obligations in an easy to understand manner. Such maps can illustrate clearly the relevant stages in the obligations process, and what activities will take place and when and at what point different stakeholders have an opportunity to get involved.

## Setting service standards for obligations

- 4.8 Just as LPAs should set out what applicants and other stakeholders should provide and contribute towards the process of negotiating and agreeing obligations, the LPA should also set out clearly what its responsibilities are. These should include setting out the level of service that applicants should be able to expect. For example the LPA may wish to produce a code of practice or service charter setting out service level targets and the standard of service applicants can expect at different stages in the process.

### Case Study 4.4: Service Charter for Development Control, Mid Sussex District Council

The Development Control Department of Mid Sussex District Council publishes and makes available details of its Service Charter which sets out the standard of service delivery they aim to provide for their planning services, including the processing of planning obligations. Some of these commitments are to:

- reply to letters within 10 days or acknowledge them within 3 days explaining the reason for delay;
- respond to requests for pre-application advice by letter, on-site meeting, off-site meeting or telephone within 10 days;
- make available copies of planning applications for inspection in the office within 2 days of registration;
- have regard to all representations received on planning applications within the time periods available;
- notify interested parties of the planning decision if their representation is accompanied by a stamped addressed envelope;
- monitor a 10% sample of implemented permissions;
- return all telephone calls by the end of the following day; and
- make any further necessary responses to telephone calls within 10 days.

The council provide a summary leaflet in hard copy and via their website setting out these standards as well as making the full report available from the Environment Directorate on request. The leaflet also provides a clear demarcation map of the three district planning teams, setting out the wards that are included within them, and contact phone numbers for each team.

[www.midsussex.gov.uk/Nimoi/sites/msdcpublic/resources/dc%20service%20charter.pdf](http://www.midsussex.gov.uk/Nimoi/sites/msdcpublic/resources/dc%20service%20charter.pdf)  
[www.midsussex.gov.uk/](http://www.midsussex.gov.uk/)

## Resourcing obligations policy and practice

- 4.9 Developing and reviewing planning obligations policies and negotiating, agreeing and implementing individual obligations involves a wide range of activities, requiring a variety of different competences and skills, some of them of a specialised nature. It is important that participants involved in the process possess the necessary skills to enable them to carry out their role effectively.
- 4.10 The types of skills needed within LPAs to develop planning obligations policies and secure individual agreements include:
- negotiation skills: ability to actively and constructively engage, discuss and negotiate with developers to reach agreement on planning obligations;
  - project management skills: ability to effectively project manage the planning obligations process from beginning to end to ensure that work-streams, meetings and deliverables are delivered to the relevant milestones and that project deadlines are met;
  - co-ordination skills: ability to co-ordinate a range of different participants from a variety of different areas of work and organisations to fit the specifics of the development proposal; for example, co-ordinating the activities and input of the applicants and/or consultants acting on their behalf, local authority officers such as housing, transport and education officers and development control officers, members of the community, external consultants such as valuers and analysts, Government Office officials etc;
  - communication skills: ability to communicate the LPA's policy and expectations on obligations to a wide range of stakeholders and different audiences, and also to engage and communicate with relevant stakeholders when managing certain aspects of obligations;
  - technical skills: for certain circumstances and areas of the planning obligations process there is a need for more technical and specialised skills. For example, when addressing developer viability issues in policy formulation and where relevant on applications there is a need for a thorough understanding of the role of viability in the economics of a development. In other cases there may be the need for certain analytical skills in the technical development and implementation of formulae and standard charges for obligations; and
  - legal skills: for drafting and finalising the s106 agreement and for advising on the application of planning obligations policy to individual agreements and policies.
- 4.11 It is not necessary for all of these skills to be provided in-house within the LPA. For example, it may be appropriate in some cases to make use of the skills of officers from other authorities or external third party experts to carry out activities of a specialised and ad-hoc nature that could not justify investing in these skills in-house.<sup>14</sup>

<sup>14</sup> See Chapter 7 for more on Use of Independent Third Parties



4.12 Not all LPAs will already have these skills in place when negotiating planning obligations. In order to improve the skills base for dealing with planning obligations, LPAs may wish to consider some of the following:

- carrying out a skills audit of their planning obligations activities to assess what skills are required, what the skills of current employees are, and where skills gaps exist. Recommendations can then be made on how existing skills can be better utilised, and for setting up a strategy for addressing any skills gaps through reorganisation, training, experience or use of external third party experts;
- working in partnership with local developers to provide training opportunities for local planning officers to gain a better understanding of the development process, including the economics and dynamic nature of development. For example, this could take the form of joint meetings, job shadowing and the use of secondments. This can also act as an opportunity for the developer to learn more about the perspective of the LPA and the need for and role of obligations;
- assessing where the use of external experts can add value, identifying organisations who are capable of carrying out such work, and ensuring that they can be called on, sometimes at relatively short notice, to undertake such work; and
- providing training to improve Planning Committee members' understanding of the LPA's obligations policy and their role and responsibilities in implementing them.

## Structuring LPA capacity

4.13 Some LPAs have chosen to provide a specialist s106 officer who deals solely with the development and application of the LPA's obligations policies. A specialist officer can bring their day-to-day experience of negotiating and agreeing obligations to focus on the development of different aspects of planning obligations policy. A dedicated officer can also be more able to ensure that the LPA's obligations policies are applied accurately and consistently across the full range of developments.

### Case Study 4.5: Use of a specialised and dedicated s106 officer, London Borough of Islington

The London Borough of Islington has for a number of years had a dedicated s106 planning officer. This officer specialises in planning obligations, negotiates the agreements, tracks them through the legal process, monitors them and implements the associated improvements. This has resulted in a consistent and knowledgeable approach to the negotiations, which has helped the efficient negotiation and implementation of planning obligation benefits for the Council as well as providing information and support for developers throughout the process.

By understanding the requirements and demands from developers, the officer is able to fully explain the planning obligations sought and the process undergone, adding greater transparency and certainty to the process.

[http://www.islington.gov.uk/Environment/Planning/PlanningPolicy/Planning\\_Obligations/](http://www.islington.gov.uk/Environment/Planning/PlanningPolicy/Planning_Obligations/)  
[www.islington.gov.uk](http://www.islington.gov.uk)

- 4.14 In some cases LPAs have found the adoption of a ‘One-Stop-Shop’ approach to obligations helpful in improving delivery. A One-Stop-Shop approach can involve having a single point of contact responsible for dealing with applicants and others in regards to an LPA’s obligations policy and/or their application to individual developments. This approach can make it easier for all the relevant stakeholders to have a single contact point at any stage for advice on general planning obligations policy and/or directly related to the proposal. The customer interface might be a single planning officer (a specialised s106 officer) or a cross-authority team, including legal services.

## **The project management approach**

- 4.15 Some LPAs take a project management approach towards negotiating and agreeing planning obligations in order better to manage the process, and ensure that milestones and deadlines for processing are achieved. This may involve drawing up a detailed project timetable at the outset of each application, and setting out the different activities that need to take place over the various stages by the parties and dates of the process to ensure the obligations are agreed on time.

## **Clarifying the role of conditions and obligations**

- 4.16 Both Circulars 11/95 on the use of conditions and Circular 5/05 on obligations set out that permission cannot be granted subject to a condition that the developer enters into a planning obligation. Some LPAs have used negatively worded (“Grampian”) planning conditions stating that development may not commence until certain provisions have been made, for which a planning obligation will be necessary. LPAs intending to adopt this approach will need to be very careful to ensure that any condition imposed is in line with the tests for conditions set out in Circular 11/95, in particular that it is sufficiently precise. LPAs may wish to seek further legal guidance on this point.
- 4.17 The Planning Officers Society published a “best practice advice note on the use of conditions in place of s106 agreements” in March 2005. This is available at: [www.planningofficers.org.uk/article.cp/articleid/42](http://www.planningofficers.org.uk/article.cp/articleid/42)

Good practice check list	
The LPA makes use of the full range of information resources to ensure that information on planning obligations policies and practices is provided in a readily accessible format and targeted at the different stakeholder groups for greatest affect.	✓
All stakeholders inform themselves of the LPA's planning obligations policies and are clear about their role and responsibilities.	✓
The LPA makes effective use of tools such as process maps to illustrate the process of negotiating and agreeing obligations to stakeholders.	✓
The LPA makes effective use of the range of different media and publication formats available to it to communicate its policies to the relevant stakeholder groups.	✓
The LPA sets out clearly the level and quality of service stakeholders should expect from it in the processing of planning obligations.	✓
All stakeholders involved in planning obligations are fully aware of each other's roles and responsibilities and communicate effectively.	✓
The LPA covers planning obligations in pre-application discussions where offered, or very early in discussions of planning applications.	✓
The LPA sets up periodic review meetings with developers to assess and improve LPA performance on planning obligations.	✓
The LPA carries out a skills audit of its planning obligations activities and allocates resources and/or activities to fill any skills gaps or build on any areas of weakness.	✓
The LPA and developers work in partnership to promote training opportunities for staff.	✓
The LPA makes use of independent third parties in planning obligations negotiations where LPA skills are not available.	✓
The LPA offers training opportunities for Planning Committee members in the role and handling of planning obligations.	✓
The LPA takes a project management approach towards negotiations, with agreed deadlines and milestones	✓

## CHAPTER 5:

# FORMULAE AND STANDARD CHARGES

### Aims of this chapter:

- 5.1 This chapter aims to provide an understanding of the purpose and use of formulae and standard charges in helping to calculate the level of planning obligations and illustrates how some LPAs and developers are using them to improve the delivery of obligations.

#### What does Circular 5/05 say about formulae and standard charges?

Paragraphs B33 to B35 of the Circular state:

- B33. Formulae and standard charges are quantitative indications of the level of contribution likely to be sought by a local planning authority, through a planning obligation, towards the provision of infrastructure that is necessitated by a new development. Local authorities are encouraged to employ formulae and standard charges where appropriate, as part of their framework for negotiating and securing planning obligations. These can help speed up negotiations, and ensure predictability, by indicating the likely size and type of some contributions in advance. They can also promote transparency by making indicative figures public and assist in accountability in the spending of monies. Such charges operate under the current system of legislation (i.e. site-specific negotiation) and as such are distinct from the optional planning charge proposed by the Government in November 2003.
- B34. It is for local planning authorities to decide which matters, if any, to address through standard charges and formulae. However, where they propose to rely on standard charges and formulae local planning authorities should publish their levels in advance in a public document (see paragraph B26). The publication of information about standard charges should include information about any charges to be applied for preparing and completing the planning obligation agreement itself.
- B35. Standard charges and formulae applied to each development should reflect the actual impacts of the development or a proportionate contribution to an affordable housing element and should comply with the general tests in this Circular on the scope of obligations. Their main purpose is to give greater certainty to developers and increase the speed of negotiations. Standard charges and formulae should not be applied in blanket form regardless of actual impacts, but there needs to be a consistent approach to their application. Whether local authorities seek a standard charge will depend upon the nature of the proposed development.”

### What are formulae and standard charges?

- 5.2 Formulae and standard charges are a means of making quantitative estimates of the level of contributions that is likely to be sought for a particular type of planning obligation from an individual development, based on the LPA's policies. They can be a transparent and consistent way of securing planning obligations across a range of development types and circumstances and help to increase accountability, speed, and certainty of the process. Formulae and

standard charges can be used to determine the level of contribution whether provided in-kind, as a financial contribution or a combination of the two.

- 5.3 Formulae and standard charges should not be applied rigidly in all circumstances without regard to the context of an individual application and site. Even in LPAs where standard charges and formulae are used extensively there will be a need to discuss and negotiate unique aspects of the individual application with the applicant.

### Formulae

- 5.4 Formulae use a measure of the scale of the development – the number of “developer units” (DU); the impact of a single development unit – the “impact multiplier” (IM); and the cost of mitigating the impact of each unit – the “cost multiplier” (CM) to estimate the level of developer contributions.
- 5.5 Formulae are a flexible means of estimating contributions by allowing the level of contributions to vary with the scale of development, and allowing assumptions about impacts and costs to be updated over time.
- 5.6 Table 5.1 below illustrates the structure of a typical formula for estimating developer contributions for a particular type of infrastructure provision (for example transport, education or open space provision).

Table 5.1: Typical structure of a formula to estimate developer contributions
<p><math>DC = DU \times IM \times CM</math></p> <p>Where:</p> <p>DC = Developer Contribution</p> <p>DU = Development Units (common measure for per unit impact, e.g. bedrooms/floor-space/dwellings)</p> <p>IM = Impact Multiplier (impact per “development unit”, e.g. generation of x additional car journeys, y additional school places)</p> <p>CM = Cost Multiplier (for financial contributions) (£ cost per additional “unit” of provision. e.g. £z per new school place)</p> <p>NB To model the amount of in-kind contribution the cost multiplier can be ignored or be set to one.</p>

### Standard charges

- 5.7 A standard charge is a shorthand way of expressing and calculating developer contributions, and can be particularly useful where a number of similar units are being developed, with similar impacts. Standard charges are simply the IM and CM elements of the above formula multiplied together to show the cost of mitigating the impact of a development unit (DU). This can then be multiplied by the number of DUs to estimate the overall level of contribution for a particular development. Because standard charges are expressed in absolute values, they need to be kept updated and reviewed over time to ensure they reflect existing costs of provision. The updating of such charges, however,

shouldn't be so frequent as to introduce uncertainty in regards to the likely costs the applicant will face. Table 5.2 below sets out the structure of a typical standard charge. Like formulae, standard charges can cover either one aspect of a development's impacts or a range, if different impact mitigation costs are added together, to form an aggregate standard charge per DU.

**Table 5.2: Typical structure of a standard charge to estimate developer contributions**

$$DC = DU \times SC$$

Where:

DC = Developer Contribution

DU = Development Units (common measure for per unit impact) (e.g. bedrooms/floorspace/dwellings)

SC = Standard Charge (i.e. IM X CM – the cost of mitigating impact(s) of one unit of development)

- 5.8 Although standard charges can be a helpful shorthand way of simplifying the estimation of contributions, it is important that developers and others are able to understand how they have been derived, and how they are justified. Information on the detail of standard charges should be set out in the relevant SPD justifying how they have been derived (for example in reference to the impact and cost evidence/data), and setting out their component parts.
- 5.9 Some LPAs make use of formulae and standard charges to estimate developer contributions for some categories of infrastructure whilst taking a more flexible and less structured approach to other categories of contributions. Other LPAs use a package of formulae and standard charges to estimate the full range of planning obligations and enable developers to estimate the level of all contributions to arrive at an estimate for their entire development.

## Developing formulae and standard charges

- 5.10 In order to develop formulae or standard charges as a means for estimating developer contributions, an assessment of the impacts of development needs to be carried out, followed by a decision on the applicability or scope of the measure, and finally an assessment of the resulting costs of mitigating these impacts.

### Impact assessment

- 5.11 Impact assessments are necessary to estimate the likely impact on the local environment and infrastructure of providing an additional DU. For example, an impact assessment may estimate that an additional DU is likely to give rise to X number of additional car-journeys, accommodation for Y number of additional primary or secondary school places or the need for Z number of square metres of additional open space. This factor is known as the IM because it quantifies the impact of an additional DU. Case study 5.1 below gives an example of the estimation of an IM for the number of car trips generated by different types of development, and case study 5.2 shows examples of impact multipliers for education.

### Case Study 5.1: Impact Multipliers, Reading Borough Council

Reading Borough Council commissioned consultants to estimate the average daily number of car trips likely to be generated (or “impact multiplier”) by different types of developments.

Development Type (no. of bedrooms)/floor-space	Average Daily No. of car Trips
Residential – Large Private Housing (4+ bedrooms)/over 100m <sup>2</sup>	12.23
Residential – Average Private Housing (3 bedrooms)/over 75m <sup>2</sup>	9.14
Small Private dwelling (1 + 2 bedroom)/up to 75m <sup>2</sup>	4.57
Office Employment/per 100m <sup>2</sup>	21.5
Leisure/per 100m <sup>2</sup>	76.6
Retail (non-food)/per 100m <sup>2</sup>	28.8

[www.reading.gov.uk/environmentandplanning/planning/localplanningpolicy/General.asp?id=SX9452-A7814B78](http://www.reading.gov.uk/environmentandplanning/planning/localplanningpolicy/General.asp?id=SX9452-A7814B78)  
[www.reading.gov.uk](http://www.reading.gov.uk)

Source: Combination of NTS data and TRICS 5.2 Multimodel Trips Survey Data.

### Case Study 5.2: Impact multipliers and assessment of impacts, Northamptonshire County Council

Northamptonshire County Council produced an SPG on Planning Obligations and Local Education Authority School Provision for the County Structure Plan. Using evidence derived from the ONS Census they have estimated the number of pupils for primary, secondary, and sixth form education that are likely to be generated from each additional house that is built as follows (i.e. the impact multiplier):

It was estimated from census statistics that each house gives rise to:

0.239 primary school children

0.175 secondary school children

0.030 sixth form children

On this basis an impact assessment may estimated that the impact of a 14 2-bed + house development would give rise to:

$(14 \times 0.239) = 3.346$  additional primary school places

+  $(14 \times 0.175) = 2.45$  additional secondary school places

+  $(14 \times 0.030) = 0.42$  additional six form children places

When working out pupil generation rates the assumption was made that an insignificant number of pupils would be generated from certain types of residential development (see below). Therefore no or reduced financial contribution is sought from developments or parts of developments comprising:

- one-bedroom dwelling or flats;
- sheltered or elderly housing;
- student accommodation;
- other specialist housing where it can be demonstrated that the accommodation will not be occupied by children; and
- 2-bedroom flats or apartments will attract a 20% contribution.

[www.northamptonshire.gov.uk/Environment/SPG/educSPG.htm](http://www.northamptonshire.gov.uk/Environment/SPG/educSPG.htm)

[www.northamptonshire.gov.uk](http://www.northamptonshire.gov.uk)



5.12 Table 5.3 below illustrates some examples of DUs and IMs for different types of developments and obligations.

**Table 5.3: Examples of different types of Development Units and Impact Multipliers**

Development type	Example of development unit (DU)	Impact Multiplier (IM) School places per development unit	Impact Multiplier (IM) Open space (sq metres) per development unit	Impact Multiplier (IM) Additional trips generated per development unit
Commercial (office)	Square metre of floorspace	N/A	IM	IM
Commercial (industrial)	Square metre of floorspace	N/A	IM	IM
Residential (non special needs)	Bedroom	IM	IM	IM
Residential (mixed – including special needs)	000's head of population	[Depends on age of household profile]	IM	IM

**Scope of application of formula/standard charge**

5.13 Where relevant, LPAs may specify site-size thresholds for developments where planning obligations are applicable, or different categories of development units that result in different estimated impacts. This reflects circumstances where some types of DUs may result in different levels of additional impact on the infrastructure being considered. For example, in designing measures to mitigate the impact of residential development on additional school facilities, LPAs may decide to exclude one-bed dwellings, sheltered housing, student accommodation and other specialist accommodation because they do not give rise to additional demands on schools.

5.14 Often LPAs will develop formulae and standard charges to estimate contributions for developments taking place anywhere within their LPA area. In some circumstances, however, they may see the need for a tailored approach for a particular development area that has specific infrastructure needs and where impacts and costs are likely to be significantly different. In such cases the LPA may wish to undertake a separate assessment of the impact of the development in a particular area on essential infrastructure at a more local level.

### Case Study 5.3: Impact assessment for a specific area, Ashford Borough Council

Ashford Borough Council in combination with a number of other stakeholder organisations jointly commissioned a comprehensive assessment of the impacts on transport infrastructure arising from the development of the South Ashford area, as allocated in its Local Plan. These impacts included an assessment of the likely need for new bus services, cycle and pedestrian links, the need for green travel plans, minor non-trunk road improvements, an M20 Junction 10 Interim improvement scheme, and long term M20 junction 10 improvements and how these measures could support the new development in the Local Plan.

The study derived a comprehensive sustainable transport strategy that informed the development of the Ashford Borough Council SPG *Providing for transport needs arising from the South of Ashford Transport Study*. The SPG set out the relevant generic “units” of development, impact multipliers and cost multipliers necessary to determine transport contributions for different developments within the South Ashford area through the use of formulae and standard charges.

[www.ashford.gov.uk/planning/ashford\\_local\\_plan.asp](http://www.ashford.gov.uk/planning/ashford_local_plan.asp)

[www.ashford.gov.uk](http://www.ashford.gov.uk)

## Cost assessment

- 5.15 Following the impact assessment and any decisions on scope, a cost assessment needs to be undertaken to determine the relevant cost of providing for the mitigation of the impact of one unit of impact, e.g. the cost of providing for an additional school place, area of open space, community facilities etc. This cost factor is known as the cost multiplier (CM). Case study 5.4 below gives an example of the development of a CM.

**Case Study 5.4: Example of standard charge, library services, Milton Keynes District Council**

In its draft SPG on Social Infrastructure Planning Obligations Milton Keynes Council has derived a formula for estimating the level of developer financial contribution required for the provision of library services. Contributions are sought on all different types of residential development, but vary depending on size (with larger dwellings generating a higher contribution).

In its 2004 “Library Position Statement and Standards Report” Milton Keynes Council sets out the current standard of library service to its district as well as the challenges the library service in its borough faces in terms of responding to significant planned growth for the city.

The council draws on the Department of Culture Media and Sports (DCMS) Public Library Service Standards (PLSS) such as the need for at least 23 sq.m of net library floor space per 1,000 population to help estimate the impact, and therefore the requirement, of library contributions. Taking into account the need for backroom support, facilities and plant the council assumed that there was a net to gross ratio of 75%. So additional gross library space was estimated at:  $(23/0.75)*1 = 30.66$  sq.m per 1,000 population.

The developer unit (DU) used was the number of additional occupants arising from the development. The Council used its Housing Needs Assessment to estimate the average number of occupants for each dwelling size. These were:

- Studio – 1.22
- One bedroom – 1.36
- Two bedroom – 2.08
- Three bedroom – 2.85
- Four or more bedrooms – 3.38

The Impact Multiplier (IM) per DU or occupant was estimated at  $30.66/1000, = 0.03066$  sq.m of requirement.

The council have estimated that the total number of additional dwellings likely to be built between 2004-2016 is 31,163. So this will give rise to an estimated  $31,163 \times 2.29$  (assumed average number of residents per dwelling) = 71,363 additional occupants. On the basis of the need for 0.03066 sq.m of gross library floor space per occupant, there is a total estimated need for  $71,363 \times 0.03066 = 2,188$  sq.m of additional library space.

The Council carried out a detailed internal assessment of the cost of extending existing libraries and building new libraries to accommodate this need. The Council estimated the cost of additional library provision at £7.07 million. So the cost multiplier (CM) per DU was estimated at  $£7.07m/2185 = £3,236$  per additional library sq.m.

Therefore the developer contribution for a particular site would be:

$$= DU \times IM \times CM$$

$$= \text{number of additional dwellings arising from development} \times 0.03066 \times £99.07$$

For example, for a five 2 bedroom dwelling development:

$$DU = 2.08 \times 5 = 10.4 \text{ occupants}$$

$$IM = 0.03066 \text{ sq.m per occupant}$$

$$CM = £3,236 \text{ per dwelling}$$

$$DC = (10.4 \times 0.03066) \times £3,236 = £1,032$$

<http://www.mkweb.co.uk/mkcouncil/>

- 5.16 It is important that those involved in producing impact or costs assessments have the necessary expertise, knowledge and skills for carrying out these specialised analyses. Where such resources are not available within the LPA, it may be appropriate to commission external organisations/consultants to carry out this work. LPAs should also involve any relevant public service infrastructure providers where necessary to help inform the development of formulae and standard charges.

## Evidence sources for informing formulae and standard charges

- 5.17 There is a variety of sources of information on costs to help LPAs to quantify the impact of development on different types of infrastructure. LPAs often derive their information for estimating the cost of additional development from the providers of the relevant infrastructure. In some cases these sources can be within the authority or are within external organisations such as the relevant Government departments or their sponsored agency. Often LPAs will wish to consider the cost factors provided from these sources in conjunction with any relevant factors particular to their own local area. In cases where costs vary considerably from location to location it may be best to rely on local cost information; in other cases costs of provision will be similar across the entire LPA area.
- 5.18 Table 5.4 below sets out some external sources of costs and impacts that may be helpful in informing cost and impact assessments and any resulting formulae and standard charges. Case study 5.5 gives some specific examples relevant to education.

**Table 5.4: Examples of sources of cost and impact information for producing formulae and standard charges:**

Below are some evidence sources that LPAs may wish to access to help inform the costs and impacts of new development on different types of infrastructure:

**Education:** Many authorities rely on cost multiplier information on the capital costs of providing new schools provided by the Department for Education and Skills (DfES)

*[www.teachernet.gov.uk/management/resourcesfinanceandbuilding/schoolbuildings/designguidance](http://www.teachernet.gov.uk/management/resourcesfinanceandbuilding/schoolbuildings/designguidance) [www.teachernet.gov.uk](http://www.teachernet.gov.uk)*

**Libraries:** The Department of Culture, Media and Sport produce a number of resources on the costs and impacts of developments on library services.

*[www.culture.gov.uk/libraries\\_and\\_communities](http://www.culture.gov.uk/libraries_and_communities)*

**Open space and the environment:** Sport England have resources and evidence for the provision of playing grounds, and sporting facilities.

*[www.sportengland.org/index/get\\_resources/resource\\_ps.htm](http://www.sportengland.org/index/get_resources/resource_ps.htm)  
[www.sportengland.org](http://www.sportengland.org)*

**Affordable and Key Worker Housing:** The Housing Corporation  
*[www.housingcorp.gov.uk](http://www.housingcorp.gov.uk)*

**Transport and Travel Schemes:** The Department for Transport (DfT) has a comprehensive range of resources for informing the development of transport plans, and to help with the estimation of the impacts and costs of development on transport infrastructure. *[www.dft.gov.uk](http://www.dft.gov.uk)*

DfT's National Travel Survey contains information to help inform estimates of impacts on travel and journeys, *[www.natcen.ac.uk/nts/findings.html](http://www.natcen.ac.uk/nts/findings.html)*

### Case Study 5.5: Briefing on evidence sources for informing the impact of new development, Greater London Authority

The GLA's Data Management and Analysis Group (DMAG) have produced a briefing, Child Yield (DMAG 2005/25), discussing the different types of data sources that are available to LPAs to estimate the likely "child yield" or the impact of new dwellings on the local authority's education services. The briefing discusses the use of the 2001 Census, its limitations and its role in estimating child yields. The report compares the results for estimated child yields from:

- (i) the 1991 Labour Force Survey:  
[www.statistics.gov.uk/STATBASE/Source.asp?vlnk=358&More=Y](http://www.statistics.gov.uk/STATBASE/Source.asp?vlnk=358&More=Y)  
[www.statistics.gov.uk/](http://www.statistics.gov.uk/);
- (ii) the 2002 London Household Survey;
- (iii) the 2004 Wandsworth New Housing Survey:  
[www.wandsworth.gov.uk/Home/EnvironmentandTransport/PlanningService/Information/housing.htm](http://www.wandsworth.gov.uk/Home/EnvironmentandTransport/PlanningService/Information/housing.htm)  
[www.wandsworth.gov.uk/](http://www.wandsworth.gov.uk/); and
- (iv) the 2004 Oxfordshire New Housing Survey as evidence sources that can help inform LPAs estimates of child yield.  
[www.oxfordshire.gov.uk/](http://www.oxfordshire.gov.uk/)

For copy of the DMAG briefing see link below:

[www.london.gov.uk/gla/publications/factsandfigures/factsfigures/population.jsp](http://www.london.gov.uk/gla/publications/factsandfigures/factsfigures/population.jsp)  
[www.gla.gov.uk](http://www.gla.gov.uk).

- 5.19 Once the DUs, IMs and CMs have been estimated these factors can be fed into formulae or used to produce a standard charge to estimate the level of contribution that will be sought for different types of obligations.

#### Case Study 5.6: Developer contribution derived from formula, Portsmouth City Council

In their draft SPD on open space contributions Portsmouth City Council have derived and made available a formula for the estimation of obligations towards the capital costs of open space. For developments of 1 to 49 units an off-site contribution is sought, whilst for developments of 50 or more units on-site provision is sought. The only units and schemes excluded from the obligation are developments for very sheltered accommodation for the frail elderly.

Their policy sets the following formulae for the estimation of on-site provision of open space contributions:

Developer Units (DU) = number of eligible persons arising from the development

Dwelling Size    Average Household Size

Studio    1 person

1 bedroom    1.39 persons

2 bedroom    1.85 persons

3 bedroom    2.46 persons

4 bedroom or more    2.84 persons

Impact Multiplier (IM) = 1ha of open space per 1,000 residents (or 10m<sup>2</sup> per 1 resident)

Cost Multiplier (CM) = £475 per resident

#### **On-site provision = DU x IM**

Worked Example of need for open space resulting from development for on-site provision:

A proposed development is composed of 34 one-bed units, 12 two-bed units and 8 three-bed units. To calculate the potential number of residents, the number of each type of dwelling is multiplied by the average household size for that type i.e.

$$(34 \times 1.39) + (12 \times 1.85) + (8 \times 2.46) = 47.26 + 22.2 + 19.68 = 89.14 \text{ residents}$$

That 54-unit development is expected to accommodate 89 residents. To calculate the area of open space to be provided, the number of prospective residents is multiplied by 10m<sup>2</sup>, i.e:

$$89 \times 10 = 890\text{m}^2 \text{ of openspace}$$

#### **Off-site contribution = DU x CM**

Worked Example of contribution for open space for off-site provision:

A proposed development is composed of 14 one-bed units and 6 two-bed units. To calculate the potential number of resident, the number of each type of dwelling is multiplied by the average household size for that type i.e.

$$(14 \times 1.39) + (6 \times 1.85) = 19.46 + 11.1 = 30.56 \text{ residents}$$

That 20-unit development is expected to accommodate 31 residents. To calculate the financial contribution from the developer, that requirement is multiplied by £475, i.e.:

$$31 \times £475 = £14,725$$

[www.portsmouth.gov.uk/living/5525.html](http://www.portsmouth.gov.uk/living/5525.html)

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Case Study 5.7: Developer contribution derived from a standard charge, East Sussex**

East Sussex County Council sets out comprehensive formulae and standard charges in its online publication *A new approach to development contributions*. Part 4 of the publication, “Calculation of development contributions”, describes how needs will be assessed, sets thresholds, details likely costs and provides worked examples to assist with estimating the costs of contributions from development towards the provision of infrastructure and facilities for which the Council is responsible.

For example, Part 4 sets standard contributions towards primary school provision based on a 2003/04 DfES primary school building cost multiplier per pupil place. These contribution costs relate to the numbers of additional primary school pupils expected to arise from the development of houses and flats with two or more bedrooms (one bedroom flats are disregarded on the basis they are unlikely to generate significant numbers of children) and are subject to a threshold of 15 dwellings. The Council recently published updated contribution costs. Having regard to the DfES information for 2005/06, the standard contributions towards primary school provision were increased, with effect from April 2005, to £2,484 per house and £273 per flat with two or more bedrooms.

For example:

DU = 1 house, or two or more bedroom flat

SC = £2,484 per house, or £373 per two or more bedroom flat

So, for a 10 house, 5 1bed flat and 15 two or more bedroom development:

DC = (10 X £2,484) + (15 X £373)

= £26,705

[www.eastsussex.gov.uk/environment/planning/development/newapproach/downloads.htm](http://www.eastsussex.gov.uk/environment/planning/development/newapproach/downloads.htm)

- 5.20 It is important that the evidence informing the formulae and standard charges remains accurate and relevant to the estimation of costs and impacts over time. Such evidence should be reviewed and updated when appropriate to ensure contributions fairly and accurately reflect their current impact. In terms of the frequency of updating costs and impacts, they should be updated sufficiently frequently to ensure they are relevant over time, but not so often that the certainty of the level of obligations is compromised.
- 5.21 Although many formulae and standard charges can be developed by the LPA themselves, there will be circumstances where it would add value to work with a number of different LPAs to help with their development, for example, for small LPAs with limited expertise and resources, where there is a two-tier authority structure (e.g. county and district councils), or where the impacts of developments go beyond the LPA boundary. In such cases it may be beneficial to take a joint approach towards developing certain formulae and standard charges, pooling resources and expertise.

Good practice check list	
LPAs should make available all assumptions and sources of evidence used to determine formulae and standard charges in the relevant LDF document. Use of thresholds and policies about the eligibility of different types of developments and units should be explained and justified.	✓
LPAs should ensure that the type and level of contribution sought through standard charges is in line with all of the Secretary of State's policy tests.	✓
LPAs should regularly review the use of formulae and standard charges, and ensure that all inputs and evidence used are updated with changing circumstances and costs.	✓



# CHAPTER 6:

## STANDARD AGREEMENTS AND UNDERTAKINGS

### Aims and Objectives:

- 6.1 The process of preparing the documentation associated with s106 agreements has been criticised for demanding considerable resources from developers, LPAs and other parties to the agreements and for causing delays to the processing of planning applications. The aim of this chapter is to provide developers, LPAs and others with ways in which the standardisation of documents can be used to reduce costs and speed up the planning obligations process, if kept up-to-date and in line with current planning policies.

#### What does Circular 5/05 say about standard agreements and undertakings?

B36 Local planning authorities are encouraged to use and publish standard heads of terms, agreements/undertakings or model clauses wherever possible in the interest of speed. A standard agreement, which local planning authorities are encouraged to use, will be included alongside the forthcoming good practice guidance. There will be specific circumstances which will require particular changes in the drafting of the agreement. It is intended that any difficult clauses or terms in the standard document should be raised by developers in the course of pre-application discussion or negotiation with the local planning authority.

### What documents can be standardised?

- 6.2 A number of planning obligation-related documents can be standardised to help improve efficiency. These include:
- standard heads of terms;
  - the s106 agreement or unilateral undertaking;
  - model clauses for s106 agreements; and
  - standard forms for the provision of key information.
- 6.3 Wherever possible, standard documents should be included within the LDF, allowing them to be tested in public in line with the Statement of Community Involvement (SCI).

### Standard heads of terms

- 6.4 “Heads of terms” is a document setting out the terms of a s106 agreement as agreed in principle between the parties in the course of negotiations. Heads of terms demonstrate serious intent, but do not compel the parties to agree to those terms, or even to reach agreement.

- 6.5 Many LPAs find that summarising the planning obligations they are likely to seek in the form of standard heads of terms serves as a useful way of conveying the main intentions of the parties to the agreement.

## The DCLG/Law Society model agreement

- 6.6 The use of model agreements or undertakings that are recognised by all parties can save considerable time and legal and other resources for developers, LPAs and other parties to the agreement. As mentioned in paragraph B36 of Circular 5/05, in association with the DCLG, the Law Society's Planning and Environmental Law Committee has produced a model s106 agreement that all LPAs are encouraged to use for drafting individual agreements. The agreement should not be seen to imply that planning obligations should cover the full range of types of obligations set out. Rather the agreement should be seen as a template from which LPAs and developers can select relevant sections to meet the LPA's obligations policy and the circumstances of the application and context. There will also be specific circumstances which will require particular changes in the drafting of the agreement. The model agreement is available to download from the DCLG website<sup>15</sup>. The agreement is available in Word format to enable it to be edited and customised by all LPAs to take into account individual LPA policies and circumstances.
- 6.7 Due to the diversity and complexity of affordable housing obligations the Law Society have also produced "affordable housing drafting notes" in Annex A of the model agreement. These notes set out the suggested range of issues that may need to be included in agreements as well as drafting principles and observations to assist the with drawing up of clauses for affordable housing provision.

## Model clauses

- 6.8 Many LPAs find it helpful to produce and use model clauses related to specific types of planning obligations that can be tailored and inserted into individual s106 agreements where appropriate.

<sup>15</sup> [www.communities.gov.uk](http://www.communities.gov.uk)

**Case Study 6.1: Model Clauses for use in section 106 agreements**

Westminster Council have developed and published on their website a number of different “templates of model wordings” that can be inserted into their “skeleton agreements” for section 106 agreements covering different planning obligation issues. The different types of clauses include:

- residential land use swap (City Council and applicant only);
- residential land use swap (City Council, applicant and others);
- affordable housing;
- definition of “index linking”;
- conservation area consent – timing of demolition/construction;
- CCTV – Council providing CCTV;
- highways works – Council to carry out;
- highway dedication; and
- other miscellaneous standard provisions.

**Other standardised forms and documentation**

6.9 Some LPAs have found that the standardisation of other documentation can improve efficiency, reducing costs and time. These can include the standardisation of various forms for obtaining information from the applicant, LPA colleagues and other stakeholders involved in the process.

Good practice check list	
LPAs should produce publicly available standard heads of terms that can be used as a basis for negotiations.	✓
LPAs and developers should use the Law Society standard s106 agreement.	✓
LPAs should produce other documentation in a standard form where it will lead to savings in resources and time.	✓
LPAs should keep all standardised obligation documents under review and ensure that they are kept up-to-date where necessary to keep in line with changing policy and circumstances.	✓

## CHAPTER 7:

# USE OF INDEPENDENT THIRD PARTIES

### Aims of this chapter

- 7.1 This chapter aims to provide an understanding of the role of independent third parties in the planning obligations process and the range of circumstances where they may add value. Case study examples are used to illustrate how LPAs are currently making use of third parties to help speed up and improve practice.

#### What does Circular 5/05 say about the use of third parties?

- B37. Local planning authorities and developers may wish to consider using independent expert mediators to help in the process of negotiating the detail of planning obligations for complex or major applications, or to help to facilitate in dispute resolution where disputes are unduly delaying negotiations. Use of mediation can reduce the cost and length of the planning process.
- B38. In addition there may be circumstances in which factual information needs to be validated before negotiations can continue. In these cases the parties may wish to agree to involve an independent third party with relevant expertise (e.g. valuation) to help progress the negotiation. In cases where a dispute relates to the viability of a proposal the independent third party might have access to financial information provided by the developer on a strictly confidential basis.
- B39. In some instances it may also be appropriate for third party expert advice, for example, needs and cost assessments commissioned from consultants, to be used in the drawing up of planning obligations policies, as well as in the consideration of individual applications.
- B40. The role of independent third parties is to facilitate or contribute to the negotiation process, not to arbitrate. Responsibility for agreeing the outcome of a planning obligation negotiation remains with the parties involved, and responsibility for the final determination of the application remains with the local planning authority.

### Planning obligations and the role of independent third parties

- 7.2 Independent third parties can play a valuable role in mediating agreement on planning obligations. Although there will always be circumstances where no amount of mediation may lead to a solution and planning permission may have to be refused, third parties can provide a valuable means of mediating an agreement to the satisfaction of all parties involved.
- 7.3 Third parties can also make a valuable contribution towards establishing the evidence base for informing obligations policies and practice. Information provided by independent third parties can have the added advantage of being perceived as objective or independent to all stakeholders involved whether it be informing the development of planning obligations policies or informing an individual planning decision.

- 7.4 When independent third parties are used for individual applications, it should be made clear to all parties what their role is in relation to the application and made clear that any decision on a planning application remains entirely with the LPA.

## Forms of third party advice

### Mediation

- 7.5 Wherever possible parties should endeavour to come to an agreement on planning obligations between themselves. However, in exceptional cases there may be circumstances where the parties involved feel that the use of an independent mediator could bring about resolution of the planning obligations agreement and/or speed up the process towards agreeing obligations.
- 7.6 For mediation to be effective all parties need to be supportive of its use and consider that there is scope for it to be useful in their particular case. They should also agree on the choice of mediator. The role of a mediator is to help identify the needs and concerns of all parties, clarify the issues and help explore with the parties solutions where agreement could be found. The role is largely to improve communication between the parties so that they can work out a solution themselves and to provide an impartial perspective and where possible facilitate an agreed outcome for all. The mediator must be impartial, having no stake and not being affected by the outcome of the agreement and must have no direct connection with any party.
- 7.7 Where mediation is to be used it should be undertaken as early as possible in the process, preferably at the pre-application stage. Mediation at this early stage can be useful in dispersing any concerns the parties may have, to clarify the process and to avoid delaying the processing of applications.
- 7.8 It should be made clear to all parties that mediation is voluntary and non-binding. Mediation can only help facilitate or contribute to a proposed agreement. Any final decision will continue to rest with the LPA (see paragraph B40 of Circular 5/05).

#### Case Study 7.1: Mediation and planning obligations

The Planning Inspectorate (PINS) in conjunction with CEDR (The Centre for Effective Dispute Resolution) are running a pilot study to measure the effectiveness of mediation to resolve planning disputes with four volunteer planning authorities – North Wiltshire, Wealden, Westminster and Winchester.

[www.cedr.co.uk/index.php?location=/news/archive/20050718.htm](http://www.cedr.co.uk/index.php?location=/news/archive/20050718.htm)  
[www.cedr.co.uk/](http://www.cedr.co.uk/)

## Providing evidence to inform obligation policies

- 7.9 In some cases, perhaps due to a lack of capacity or specialist skills and experience, an LPA may feel that it would be worthwhile employing the services of third parties to help inform the preparation, alteration and review of planning obligations policies.
- 7.10 Such input can range from providing data and statistics to inform in-house analyses right up to commissioning large-scale independent research studies. For example, LPAs may wish to commission research into the impacts of different types of development on necessary infrastructure and the costs of mitigating these impacts to help inform policy decisions. Such independent evidence can be used to inform the level and types of obligations the LPA wishes to seek in its policies.
- 7.11 Evidence provided from third party organisations can also be helpful in informing other aspects of planning obligations policy such as justifying the “reasonableness” of obligations. For example, an LPA may wish to commission external research to assess the impact on developer viability of different policy options for contributions towards a particular form of obligation on a variety of different types of sites throughout the LPA area. The results from the study could help inform the LPA’s decision on which policy option to seek, and to justify and demonstrate where such a policy is likely to be “reasonable” for development. When carrying out and informing such studies, LPAs and/or the third party should involve and seek the input of developers to enable them to provide their perspective and knowledge.

### Case Study 7.2: Use of third party experts to help draw up SPG and planning obligations policies, Westminster City Council

The Paddington Special Policy Area (PSPA) covers a large area of land which is in multiple ownership and which is also experiencing substantial redevelopment pressures. To guide future development in the PSPA, SPG has been prepared, taking into account robust needs and cost assessment work. This has been based upon the findings of key studies undertaken by two independent development and property consultancies due to the limited availability of local authority resources and expertise. One of the consultancy’s terms of reference was to ‘review the impacts of the potential PSPA developments on Council and other services to inform the overall development of the Council’s negotiating position on the various mitigation and benefits that can be sought from developers’.

The independent studies included first an analysis of the property market and second an assessment of the social and community impacts of development. They helped inform the SPG, which provided a clear and consistent basis for the consideration of future redevelopment applications within the PSPA. They also provided a justification for the planning obligations sought, including the level of contributions proposed to meet public transport infrastructure requirements and to address the impact of road traffic through highway improvements.

[www.westminster.gov.uk/](http://www.westminster.gov.uk/)

## Providing evidence to inform applications

- 7.12 Particularly for major and complex applications, the LPA may feel that it lacks the capacity, expertise and/or skills to deal adequately with the planning obligations aspects of the application and that using the services of a third

party would add value. For example, there may be issues specific to the development that would benefit from the input of experts outside the LPA, the LPA may have limited experience in dealing with particular types of developments and as such may wish to complement their work with input from third parties, or the size of the application is such that there is insufficient in-house resources to adequately deal with it.

**Case Study 7.3: Use of a third party to advise, mediate and validate the production of an SPG specific to a planning application, Welwyn Hatfield District Council**

Following the closure of Hatfield Aerodrome, the review of the Local Plan established the principle of mixed-use development at the site. Following the submission of an initial outline planning application, a separate SPG for the site was produced by independent planning and transportation consultants in what was effectively a combined expert advice/mediation/validation role to facilitate SPG production. The consultants were working jointly for the District, the County Council and developers following disagreements between the parties over the mix of uses that should be provided on the site.

The SPG was prepared, with the active support of the developers, taking account of robust needs assessment work, including a Traffic Impact Assessment to inform transport contributions, and effective public consultation, including meetings with the local community to identify and confirm community needs. The SPG included s106 agreement heads of terms. The recommendations of the independent consultants were accepted, and will be taken into account by future developers when detailed applications are submitted for each phase of the development.

[www.welhat.gov.uk/](http://www.welhat.gov.uk/)

## Assessing the need for, and seeking third party independent advice

- 7.13 When planning the revision and development of planning obligations policies LPAs should assess what skills and evidence they need to inform such policies. They should take into account available resources and identify any areas where they may need the services of third parties.
- 7.14 If LPAs see a need for third parties at an early stage they should identify what organisations are appropriate and available to provide these services and undertake the necessary tendering processes to procure their help. In addition to this planned work, LPAs may also wish to establish a third party contact list or panel of experts that they would be able to call upon on a more ad hoc basis and sometimes at relatively short notice in order to procure their services for the process of policy development.
- 7.15 For planning applications the LPA may also consider establishing a contact list of third party experts and/or mediators that could be called on at relatively short notice to help resolve obligations disputes and move applications forward.
- 7.16 Examples of organisations that may be able to provide or suggest appropriate third parties and given in table 7.1 below.

**Table 7.1: Third party organisations to inform obligations policy and practice include:**

- development, property, planning and valuation consultancies;
- appropriate higher and further education and research establishments;
- other stakeholder organisations such as environmental groups, and specialist sector representative groups;
- Mediation UK: umbrella organisation for community mediation and dispute resolution in Britain: [www.mediationuk.org.uk](http://www.mediationuk.org.uk); and
- Centre for Dispute Resolution (CEDR): independent not-for-profit organisation that offers a mediation service: [www.cedrsolve.com](http://www.cedrsolve.com).

## Contractual issues and third parties

7.17 When dealing with applications, LPAs should aim to secure the developers' agreement on the use of independent expert advice, and agree the third party terms and conditions in advance of such work commencing, including:

- the outputs or deliverables to be produced;
- dates for the submission of outputs or deliverables;
- the total cost of employing them; and
- establishing how their services will be paid for and by whom.

Good practice check list	
The LPA assess the skills and expertise they need for revising and developing obligations policies and identify whether and where there is a need for the services of independent third parties.	✓
The LPA identifies and draws up a list of third party organisations who are capable and likely to be available to provide planned services or services to be carried out on a more ad hoc basis or at short notice.	✓
The LPA procures and contracts third party organisations at an early stage to provide evidence towards the plan-making process, and ensure that the outputs of such work are of the required standard and input into the process at the right time.	✓
Where mediation services are likely to add value the LPA are willing and agree with the applicant to engage the services of a mediator to seek a resolution to ongoing negotiations.	✓



# CHAPTER 8:

## PUBLIC INVOLVEMENT

### Aims

- 8.1 This chapter aims to provide an understanding of the importance and role of public or community involvement in the development, negotiation and implementation of planning obligations and to illustrate how LPAs are currently engaging and involving the public in obligations policy and practice.

### The importance and role of community involvement in planning obligations

- 8.2 Community involvement is one of the key principles at the heart of delivering sustainable development<sup>16</sup>. In the context of planning obligations, the community (i.e. business, residents, voluntary sector and other stakeholder bodies), should be involved wherever possible and appropriate in the setting of planning obligations policies and the negotiation of planning obligations for individual applications. They should be given access to all necessary information to help inform their involvement.
- 8.3 Often members of the community will have concerns about the impact of new development on their quality of life and community. Planning obligations can go some way towards addressing these concerns by mitigating the impacts of new development and otherwise ensuring development is acceptable in planning terms. It is also important to reassure and demonstrate to members of the community that obligations are being used solely for the purpose of making developments acceptable, and to dispel any concerns that planning permission is being “bought or sold”. As such it is particularly important that the public are given a role where appropriate in the development, adoption and implementation of planning obligations and that the process is carried out in an open, transparent and accountable manner.
- 8.4 Involving the community in planning obligations policy and practice should lead to outcomes that better reflect the views and aspirations of the community and improve decisions by drawing in local knowledge and perspectives.

#### What does Circular 5/05 say about public involvement?

B41. The process of setting planning obligations policies and negotiating planning obligations should be conducted as openly, fairly and reasonably as possible and members of the public should be given every reasonable assistance in locating and examining proposed and agreed planning obligations which are of interest to them.

<sup>16</sup> See Planning Policy Statement 1 (PPS1), Delivering Sustainable Development, ODPM (2005)

## Involving the community in planning obligations policy development

- 8.5 When considering the involvement of the community in the development of planning obligations policy, LPAs should refer to advice set out in chapter 3 of this guidance, “A Plan-Led System”, on the development and implementation of planning obligations policy.
- 8.6 LPAs should ensure that planning obligations policies are consistent with chapter 3 of ODPM Planning Policy Statement 12 (PPS12) *Local Development Frameworks*<sup>17</sup> and the associated publication *Community Involvement in Planning*<sup>18</sup>, which set out (i) the importance of greater community involvement in planning; (ii) the principles underpinning the Government’s approach; and (iii) how the planning reform programme will strengthen community involvement.

### What does PPS12 say about community involvement in local development frameworks?

PPS12 says:

The Government’s principles for community involvement are:

- i. community involvement that is appropriate to the level of planning. Arrangements need to be built on a clear understanding of the needs of the community and to be fit for purpose;
- ii. front loading of involvement. There should be opportunities for early community involvement and a sense of ownership of local policy decisions;
- iii. using methods of involvement which are relevant to the communities concerned;
- iv. clearly articulated opportunities for continuing involvement as part of a continuous programme, not a one-off event;
- v. transparency and accessibility; and
- vi. planning for involvement. Community involvement should be planned into the process for the preparation and revision of local development documents.

- 8.7 LPAs should seek to involve members of the community throughout the development and revision of planning obligations policies. The Statement of Community Involvement (SCI) is the main document that sets out the standards to be achieved by the LPA in involving the community in policies and applications<sup>19</sup>. In seeking to involve the community, the LPA may wish to make full use of any existing community groups and representative organisations, including its Local Strategic Partnership.

<sup>17</sup> Planning Policy Statement 12 (PPS12), *Local Development Frameworks*, ODPM (2004)

<sup>18</sup> *Community Involvement in Planning: The Government’s Objectives*, ODPM (2004)

<sup>19</sup> See chapter 3, “A Plan-Led System”, for more on the role of the SCI.

### Case Study 8.1: Customer Guide on Planning Obligations, Royal Borough of Windsor and Maidenhead

The Royal Borough of Windsor and Maidenhead produce a range of “customer guides” explaining various aspects of their planning service to members of the public. In particular they have produced a specific customer guide on planning obligations.

The guide explains, in plain English, what the main features of planning obligations are and the policy tests, and gives an example of an actual development and the types of planning obligations that were agreed. The guide also provides information on obtaining a copy of the ODPM planning obligations Circular and contact details for further information from the Borough.

[http://www.rbwm.gov.uk/environment\\_planning/dc\\_customer-guides.htm](http://www.rbwm.gov.uk/environment_planning/dc_customer-guides.htm)

<http://www.rbwm.gov.uk>

## Involving the public in planning applications with obligations

- 8.8 Where the development and revision of an LPA’s planning obligations policies in the respective LDDs has properly involved the community, there should be more limited need for community involvement in individual applications as the outcomes should already reflect the community’s views. However, there may still be circumstances where public involvement in decisions over individual planning obligations is necessary. For example where a development has unique and/or significant impacts on an area and where the community is in a position to draw attention to material considerations that may have been overlooked by the LPA.
- 8.9 LPAs should ensure that the public are able to have access to appropriate information concerning planning obligations proposed or likely to be agreed so they can take a view as to the likely net impact the development is likely to have on their community. To improve the transparency of the negotiation and agreement of obligations, Circular 5/05 sets out how details of any planning obligations should be recorded in both Parts I and II of the authority’s planning register (see box below), and made available for inspection by members of the public.

### What does Circular 5/05 say about the public disclosure of planning obligations relevant to planning applications?

B42. The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2002 (Statutory Instrument 2002 no.828), which came into effect on 1 July 2002, requires details of planning obligations to be recorded in both Parts I and II of the local planning authority's planning register:

- Part I must include details of any planning obligation (including unilateral undertakings) entered into or proposed in respect of an application for planning permission or application for the approval of reserved matters, and of any other relevant planning obligation or agreement in respect of the land which is the subject of the application.
- Part II must include details of any planning obligation (including unilateral undertakings) entered into in connection with a planning decision by a local planning authority or the Secretary of State, and of any other planning obligation or agreement taken into account when making the decision, together with particulars of any modification or discharge of any such obligation or agreement.

B43. With respect to the requirement to include details of planning obligations in Part I of the register, it is recognised that the terms and content of agreements can change frequently during negotiations and that having to update the register every time there is a change could be unduly onerous for authorities. Individual authorities are best placed to judge when to update the register, bearing in mind its purpose in ensuring the transparency of the process, but as a guide, local planning authorities should expect to record agreed heads of terms at the start of the process, followed by any significant changes to draft agreements.

- 8.10 In the case of major planning obligations and/or where the impacts of a development may have a particular impact on members of the community, LPAs may wish to consider involving the public at the pre-application stage to seek their views and involvement. Any such involvement should be integrated within any consultation strategy to discuss all aspects of the proposed development with the community.
- 8.11 In some cases it may be beneficial for developers making applications to undertake their own consultation with the public at an early pre-application stage to seek the views of the community and to discuss any concerns they may have about possible impacts of the development and how they are proposing to mitigate these through the use of planning obligations. Before undertaking consultation the developer should be fully aware of the LPA's policies on planning obligations and involve the LPA and any other relevant bodies in any such community meetings and communications.
- 8.12 For applications where the planning obligations involved are substantial and/or of significant interest to the community the LPA may find it appropriate to undertake community consultation following the application and before any decision on the application is considered. For such developments the LPA may also like to consider consulting the community on how obligations will be provided to mitigate the impacts of the development.

### Case Study 8.2: Community involvement in a planning application and an associated s106 agreement, Swindon Borough Council and Bryant Homes

An outline planning application was submitted by developers in July 2002 to develop the Southern Development Area (SDA) of the Borough, which included the building of around 4,500 dwellings, employment and retail uses, open space provision, a park and ride facility, roads, sewers and ancillary facilities. The proposal was not acceptable at that stage to the Council.

Prior to the applicant submitting a revised application the developer undertook an extensive programme of public consultation to help influence the creation of the master plan for the site. This included:

- a series of presentations with key stakeholder groups and members of the public over a series of dates and venues;
- the production and distribution of a number of newsletters to keep people informed;
- a series of exhibitions in a number of different venues and dates;
- a series of stakeholder workshops, chaired by an independent facilitator, to give local groups and organisations a chance to talk to the developers; and
- the creation of an SDA community forum consisting of 12 to 20 members drawn from a wide range of groups and interests.

A key focus of the workshops was to ensure that stakeholders, statutory bodies and the public clearly understood the whole application process, including in relation to the potential negotiation of a section 106 agreement.

The developer established a dedicated website, [www.swindonsda.co.uk](http://www.swindonsda.co.uk), to make publicly available all aspects of the proposal including documents related to the consultation, such as the stakeholder report (a transcript of the stakeholder workshop) and a report outlining the results from the exhibitions.

Following this pre-application consultation the developer incorporated the results into its application for planning permission, including addressing issues of planning obligations.

[www.swindonsda.co.uk](http://www.swindonsda.co.uk)

### Case Study 8.3: Involving the public in planning obligations for a large-scale development, Broadland District Council, St Michael's Hospital, Aylsham

Broadland District Council's Local Strategic Partnership (LSP), "Broadland Community Partnership", is an alliance involving people from the public, business, voluntary and community sectors. The LSP produced its Community Plan setting out what local people would like quality of life to be like in their area in 10 years' time. Focusing on nine key themes the Plan sets out a vision for the future as well as action that needs to be undertaken to secure this vision. One of the actions was to ensure that the LSP was actively involved in the redevelopment plans for the St Michael's Hospital site in Aylsham.

The Broadland Primary Care Trust, Aylsham Care Trust and Anglia Housing Association were seeking planning permission to redevelop the existing and listed hospital site into a mixed-use development. The applicants were offering to provide obligations towards library provision, a financial contribution towards fire hydrants, on-site open and play space with a commuted sum for maintenance, a managed community centre, financial contributions towards highways and affordable housing with a local lettings policy.

The LPA was keen for the site to be developed along the lines of the proposal and used research it undertook with residents in the district and the local ward to assess the priorities of local residents. The identified priorities of the residents influenced the final agreed level and mix of planning obligations that were proposed and accepted by the Council.

[www.broadland.gov.uk/](http://www.broadland.gov.uk/)

- 8.13 To give members of the community sufficient time to consider relevant documents before LPAs take key decisions, the ODPM policy paper *Access to Information in Local Government*<sup>20</sup> requires LPAs to provide "at least five clear days between reports being made publicly available and a decision being made". In the context of planning obligations, documentation related to the application of interest and of relevance to the public, including any agreed "heads of terms", should be made publicly available at least five days before the relevant planning committee meeting.

#### What does Circular 5/05 say about availability of planning obligations heads of terms and public disclosure?

B44. Where applications involving planning obligations are considered by a planning committee, agreed heads of terms for obligations should be included in committee papers and open to public inspection.

- 8.14 Following the LPA's decision on a planning application, and the signing of any s106 agreement, LPAs should ensure that all agreed planning obligations are registered as local land charges. Members of the public and any interested party should be able to inspect the local land charges register to see what outstanding obligations relate to the development. LPAs should also ensure that the local land charge register is kept up to date so that any obligations that are discharged over time are removed from the register.

<sup>20</sup> *Access to Information in Local Government: A Policy Paper on the current and future framework governing access to information for Local Authorities in England*, ODPM, Sept 2002

### What does Circular 5/05 say about planning obligations and local land charges?

B45. Planning obligations must also be registered as local land charges.

- 8.15 Following the signing of the s106 agreement members of the community may have an interest in when and how the relevant planning obligations are being implemented. LPAs may wish to consider how they can inform members of the public of progress on the take-up, provision and implementation of obligations, whether they are provided by the developer in kind or through a financial contribution.

### Case Study 8.4: Outline specification for providing on-line information on s106 Agreements, Planning and Regulatory Services Online (PARSOL)

PARSOL is a project led by Wandsworth Borough Council and funded by the ODPM to develop a range of standards, toolkits, specifications, schemas, systems and software to assist local authorities in building effective and transparent online planning and regulatory systems.

In many cases LPAs provide online information about the status of planning applications but do not provide information on the status of planning obligations. So often the provision of information on s106 agreements will be a case of adding to or extending the existing online planning application system to include information on the status of s106 agreements. To assist LPAs in doing this PARSOL have produced an outline IT specification that suggests a standardised XML schema so that data follow a consistent and appropriate format across different databases.

A copy of the PARSOL specification can be downloaded from the link below:

[http://www.parsol.gov.uk/products/1\\_2/Enforcement\\_Conditions-S106\\_Specification.pdf](http://www.parsol.gov.uk/products/1_2/Enforcement_Conditions-S106_Specification.pdf)

To help inform LPAs about online provision of planning information PARSOL have published generic information from the Information Commissioner on publishing planning registers on the internet. See the link below for this advice:

[www.parsol.gov.uk/products/1\\_2/information\\_commissioner%27s\\_advice\\_on\\_planning\\_registers.pdf](http://www.parsol.gov.uk/products/1_2/information_commissioner%27s_advice_on_planning_registers.pdf)  
[www.parsol.gov.uk/](http://www.parsol.gov.uk/)

### Case Study 8.5: Online planning register with details of planning obligations, London Borough of Tower Hamlets

The London Borough of Tower Hamlets' online Planning Records Service provides a service for members of the public to access details of all planning applications received by the council since 2000. The planning register gives details of individual applications, including their submitted forms, drawings and, where available, their decision notices.

Members of the public can also submit online comments on individual applications via a mailbox facility.

The Council also provides online access to a live list of the Council's outstanding s106 agreements, including the application number, location, type of obligation, heads of terms, total financial obligations received, and total remaining in account, and the current position. For more detail on planning obligations for individual applications members of the public can search the online planning register which gives details of documents such as application forms, committee reports and correspondence, as well as the actual signed s106 agreement.

[www.towerhamlets.gov.uk/data/planning/data/planning-register/index.cfm](http://www.towerhamlets.gov.uk/data/planning/data/planning-register/index.cfm)  
[www.towerhamlets.gov.uk/](http://www.towerhamlets.gov.uk/)

## Planning obligations and the Freedom of Information Act (FOI)

- 8.16 As requests may be received for information relating to individual s106 agreements which has not been made publicly available, LPAs should ensure that they are fully aware of their responsibilities under the Freedom of Information Act 2000 and Environmental Information Regulations 2004.
- 8.17 Commercially sensitive information relating to planning obligations that is provided in confidence by applicants may be exempt from the FOI Act. However, any requests for such information under the act will be subject to a "public interest" test, and may be disclosed if the release of such information is deemed to be in the public interest.

Good practice check list	
The LPA seek the views of the community and involves them in the review and development of planning obligations policies at all relevant stages of the policy-making process.	✓
The LPA utilises a range of media to ensure that documentation relevant to planning obligations is accessible to members of the public and provided well in advance of any decision.	✓
For applications involving major planning obligations or where there is a significant public interest the developer and/or LPA carry out a specific consultation process with members of the public at the pre-application stage.	✓



## **CHAPTER 9:**

# **UNILATERAL UNDERTAKINGS**

### **Aims of this chapter**

- 9.1 This chapter aims to provide an understanding of the role of unilateral undertakings in planning obligations. Case study examples are used to illustrate how unilateral undertakings are being used by developers and LPAs to speed up and improve the delivery of obligations.

### **The role and use of unilateral undertakings**

- 9.2 In a limited number of cases, where only the applicant needs to be bound by a planning obligation and not the LPA, instead of agreeing obligations through the standard process of discussion (negotiation and agreement) it may be acceptable and advantageous for the developer to make a unilateral offer or “unilateral undertaking” to an LPA to settle obligations relevant to their planning application.
- 9.3 Resolving planning obligations through unilateral undertakings can significantly speed up the processing of finalisation and as such the time taken for planning permission to be granted, as well as reducing costs and saving resources for both the LPA and applicant. For such undertakings to be acceptable to the LPA the applicant will need to ensure they comply with the LPA’s policies on planning obligations.

### **Encouraging the use of unilateral undertakings**

- 9.4 LPAs may wish to encourage developers to use unilateral undertakings by setting out within their LDF documentation the advantages of doing so and the types of circumstances where it would be appropriate. LPA policies should set out in as much detail as possible the process applicants are expected to follow for providing unilateral undertakings.

### What does Circular 5/05 say about unilateral undertakings?

- B46. In most cases, it is expected that local planning authorities and developers will finalise planning obligations by agreement. However, where there is difficulty reaching a negotiated agreement, a developer may offer unilaterally to enter into a planning obligation.
- B47. Further, there may be circumstances where local planning authorities may wish to encourage developers to submit unilateral undertakings with their planning application (if possible based on a standard document) in the interest of speed. These circumstances may arise where: a) only the developer needs to be bound by the agreement with no reciprocal commitments by the local planning authority (so long as the authority by whom the obligation is enforceable is identified within the deed); and b) it is possible to ascertain the likely requirements in advance, due to the presence of detailed policies, particularly those based on formulae and standard charges or following pre-application discussions.
- B48. Unilateral undertakings, like other planning obligations, are usually drafted so that they come into effect at a time when planning permission is granted and provide that, unless the developer implements the permission (by carrying out a material operation as defined in section 56(4) of the 1990 Act), he is under no obligation to comply with the relevant obligations.
- B49. Unilateral undertakings are commonly used at planning appeals or call-ins where there are planning objections that only a planning obligation can resolve. Where a unilateral undertaking is offered, it will be referred to the local planning authority to seek their views. Undertakings should be consistent with the policies set out in this Circular and when completed should be submitted with the appeal or call-in.

- 9.5 If encouraging unilateral undertakings, LPAs should ensure that their policies on planning obligations are sufficiently clear and detailed to enable applicants to be able to calculate the level, type and provision of obligations applicable for their particular proposed development. This may include providing formulae and standard charges<sup>21</sup>. Because unilateral undertakings can only bind the activities of the developer, they are more relevant for the provision of in-kind contributions as opposed to financial contributions which can also require a commitment or undertaking by the LPA (for example, spending the funds to provide some specified infrastructure within a certain timescale).
- 9.6 LPAs should also produce, and make freely available, standardised documentation to enable applicants to submit unilateral undertakings, including making available the Law Society's model agreement.<sup>22</sup>

<sup>21</sup> See Chapter 5 "Formulae and Standard Charges"

<sup>22</sup> See Chapter 6 "Standard Agreements and Undertakings"

**Case Study 9.1: Use of detailed LPA policies on planning obligations to enable applicants to calculate obligations and submit unilateral undertakings, Milton Keynes Council**

The Milton Keynes Council’s SPG on planning obligations for Central Milton Keynes (CMK) sets out in some detail the main needs for infrastructure and facilities resulting from expected development in CMK.

The SPG sets out the Council’s vision for CMK, and gives detailed information on the types and levels of contributions that will be sought from various types of developments over specified thresholds. For example, the SPG includes a detailed spreadsheet demonstrating and justifying the standard charge contributions for education provision for relevant developments to enable applicants to calculate contributions. Other formulae and standard charges are provided to enable developers to calculate contributions across the LPA’s full range of obligations and in some cases submit unilateral undertakings.

The SPG could be used by applicants to inform the preparation of unilateral undertakings submitted with planning applications for residential development.

[www.mkweb.co.uk/local%5Fplan%5Freview/DisplayArticle.asp?ID=16961](http://www.mkweb.co.uk/local%5Fplan%5Freview/DisplayArticle.asp?ID=16961)  
[www.mkweb.co.uk](http://www.mkweb.co.uk)

Good practice check list	
The LPA explicitly encourages the use of unilateral undertakings in their LDF, setting out in detail in what circumstances they are appropriate; the level of likely obligations (e.g. through formulae and standard charges); the process involved (perhaps through a code of practice); and the advantages in pursuing this route.	✓
Applicants take full advantage of LDF policies and pre-application discussions to ensure they have all necessary information to provide a unilateral undertaking where one would be possible.	✓
LPAs make available and developers make use of the LPA’s version of the Law Society model agreement and other helpful standard documentation when formulating a unilateral undertaking.	✓

## CHAPTER 10:

# IMPLEMENTING OBLIGATIONS

### Aims of the chapter

10.1 In order to ensure that agreed planning obligations are implemented effectively and contribute towards sustainable development, it is essential that LPAs put systems in place to be able to monitor the timely and efficient delivery of obligations, and any enforcement action where necessary. This chapter aims to provide a range of tools, methods and case studies for helping LPAs to set up and improve their systems for implementing planning obligations and for developers to gain reassurance that their contributions are used appropriately.

#### What does Circular 5/05 say about implementation?

B50. Once planning obligations have been agreed, it is important that they are implemented or enforced in an efficient and transparent way, in order to ensure that contributions are spent on their intended purpose and that the associated development contributes to the sustainability of the area. This will require monitoring by local planning authorities, which in turn may involve joint-working by different parts of the authority. The use of standardised systems is recommended, for example, IT databases, in order to ensure that information on the implementation of planning obligations is readily available to the local authority, developer and members of the public.

### Managing the implementation of obligations

- 10.2 Following the finalisation of a planning obligation there are often a range of different activities that need to be undertaken by a variety of different parties, to different timetables, sometimes extending over a number of years. Some of these tasks include:
- ensuring receipt of financial contributions at appropriate times;
  - ensuring the in-kind delivery of obligations by the developer to the required standard and timetable;
  - ensuring that the necessary infrastructure that the LPA or another public body has agreed to provide (wholly or in part, funded by contributions) is delivered to the required standard and timetable;
  - monitoring adherence to restrictions imposed through planning obligations, e.g. occupancy/parking;
  - managing applications for the modification or discharge of agreements; and
  - any necessary enforcement action.
- 10.3 There are a number of different approaches and tools available to LPAs to enable them to manage the process of implementing planning obligations. Choosing the most effective approach will often depend on the volume and type of obligations that an LPA typically has to deal with.

- 10.4 Some LPAs have found it beneficial to manage the implementation of obligations through the use of dedicated s106 officers. A specialist s106 officer is able to focus all his/her attention on the implementation of obligations and more able to develop, maintain and be proficient with obligations monitoring systems. A specialised s106 officer who has the responsibility for all types of obligation across the LPA and other public bodies is often more able to ensure that obligations policies are applied and enforced consistently across all developments. In other cases LPAs have combined the role of dealing with the implementation of obligations with a wider planning enforcement role.
- 10.5 Some LPAs take a project management approach to the processing of planning obligations where for individual applications the timetable and work stages are clearly set out and triggers are established to provide early warnings of approaching work. This approach can help to ensure that the LPA and all the relevant public bodies deliver their obligations, and that any underperformance in the timetable or standards are addressed at an early stage and resolved.
- 10.6 In some cases managing the implementation of planning obligations may require joint work between LPAs and County Councils or other infrastructure providers where infrastructure and facilities are provided by one body and the financial contribution is held by the other. In these cases LPAs need to ensure that they coordinate and communicate well with the necessary partner organisations to ensure that contributions are made at the right time and as agreed.

## Monitoring the implementation of planning obligations

- 10.7 In order to manage the implementation of planning obligations effectively over time it is essential that LPAs develop and have in place efficient monitoring systems. Some LPAs have chosen to establish a stand-alone specialised s106 monitoring IT system created specifically to deal with monitoring s106 agreements. Other LPAs have developed an additional module or extension to the authority's main IT system. For LPAs with relatively few s106 agreements, or due to limited resources or an urgent need to establish a monitoring system, a stand-alone monitoring system can be sufficient and beneficial. In the longer term and for most LPAs a monitoring system that is integrated with the LPA's main management systems will bring additional advantages by eliminating the duplication of documents, enabling all areas of the authority to access relevant and appropriate information and reducing costs through economies of scale. Preferably the monitoring system should also be able to link directly with the LPA's on-line planning register to provide, from a single data source, additional information on planning obligations for members of the public.<sup>23</sup>
- 10.8 The kinds of tasks an effective obligations monitoring system should be able to support include:
- responding to enquiries about the current status of obligations;
  - providing information on the type and amounts of agreed obligations compared to what has been implemented and what still needs to be implemented;

<sup>23</sup> See Chapter 8 "Public Involvement"

- input of new details about obligations where changes occur over time;
- input of information by staff from different areas of the authority;
- access to contact details for all stakeholders involved;
- storage of all documents related to the development/application and obligation to be accessed;
- sending alerts to relevant staff regarding any upcoming deadlines, events, commitments etc; and
- generation of reports to provide updates for various different audiences on obligations.

10.9 When developing and reviewing monitoring systems it may be helpful for LPAs to involve developers and other stakeholders, especially if they are going to be customers or need to access certain areas of the system. LPAs should also ensure that they have sufficient resources in place to operate and manage the system over time to ensure information is kept up-to-date and that staff are provided with the necessary skills to manage it effectively.

#### Case Study 10.1: In-house database to assist with the implementation of planning obligations, Colchester Borough Council

In response to concerns that inadequate monitoring of planning obligations was creating problems with implementation and obligations payments were not being taken up, Colchester BC set up an in-house and low-cost database to monitor obligations.

Some of the features of the system include:

- a built-in library to enable all s106 agreements to be readily searched;
- the ability to access all correspondence related to the obligations;
- a mail merge facility to automatically generate letters to the relevant stakeholder(s);
- mechanisms to ensure and demonstrate that different types of obligation payments are automatically “ring-fenced” and spent only on what they were intended for;
- the ability to demonstrate to developers, the community and others at any time what any obligations contributions have been spend on; and
- the generation of standard reports to provide details on the type, amount and other details about planning obligations.

See link below from the Planning Advisory Service summarising Colchester’s approach:

<http://www.idea-knowledge.gov.uk/idk/aio/1205877>  
[www.colchester.gov.uk/](http://www.colchester.gov.uk/)

### Case Study 10.2: Use of database to coordinate and monitor planning obligations, London Borough of Camden

In the past the London Borough of Camden set up an Access database to monitor and manage planning obligations across the Borough. Although the database helped with the management and implementation of obligations, this stand-alone database approach had a number of limitations, including:

- all data had to be entered manually whilst much of it was already held elsewhere on other management systems;
- the system did not link with other databases and was not capable of future integration with other systems, e.g. building control, GIS, Legal Services etc;
- it was not possible to link the database to an electronic copy of the signed s106 agreement;
- a limited range of reports and queries was available through the Access interface; and
- data needed to be exported to spreadsheets in order to be sorted and filtered.

Given these limitations Camden set about creating a comprehensive alternative database, that would be an “add-on” module to their existing planning applications management system. The aims of this integrated approach were to:

- improve flexibility in reporting;
- improve linkages with development control application monitoring;
- enable access to Legal Services reports and s106 agreements (both in draft form and final signed agreement);
- allow emails to be sent to implementing officers when trigger dates are reached and/or funds received;
- enable expenditure deadlines to be automatically generated as “reminders”;
- improve integration with financial systems; and
- integrate with the Council’s Geographical Information Systems

To oversee the design and implementation of the module the Council set up a sub-group of experts from the area such as a s106 monitoring officer, and officers responsible for performance management and applications monitoring, finance, legal, development control and IT.

*[www.camden.gov.uk](http://www.camden.gov.uk)*

## Ensuring a smooth handover of planning obligations

10.10 It is important that there is a smooth handover of any infrastructure or deliverables (for example, affordable housing, open space etc) resulting from planning obligations to the relevant provider. LPAs should have management and monitoring systems in place to ensure that any providers who will take ownership and/or management of the infrastructure have sufficient lead-in time for the infrastructure to become functional at the appropriate time and for any outstanding issues that may affect its functionality to be resolved.

## Providing information on implementation

10.11 It is essential that parties to agreements are able to access and be provided with the range of information they need from LPAs to enable them to carry out their respective roles in the process and to deliver the obligations that they have agreed to provide. LPAs should put in place administrative systems to ensure that the necessary information is easily available and accessible. For example, LPAs may wish to inform and remind developers well in advance of any trigger dates or milestones where planning obligations should be provided.

10.12 It is also essential that developers are able to access or be provided with the information they need from the LPA to be able to observe how and when their contributions have been spent, and whether this is to the agreed timetable and standards. In cases where the development does not proceed but obligations have been paid, the LPA should be able to readily return any such contributions where the terms of the s106 agreement provide for this.

10.13 LPAs also need to ensure that the necessary information regarding the implementation process for obligations is provided or made accessible to other stakeholders such as Councillors, the local community and public sector infrastructure providers. These stakeholders should be able to be kept informed of the progress of the implementation of obligations. It is also essential that information on the implementation of obligations is made available and transparent so it can be demonstrated to members of the public and others that obligations are being taken up and spent on the infrastructure that has been agreed.

10.14 Automated monitoring systems can be a valuable and efficient means of providing regular reports to relevant stakeholders such as Councillors, public service providers and the local community. The ability to provide such information over time can help promote transparency and accountability throughout the process.

### Case Study 10.3: Cambridge City Council Southern Corridor Area Transport Plan (SCATP) – dedicated officers and scrutiny reports

The SCATP seeks to secure developer contributions towards necessary transport infrastructure. A Special Projects Implementation Manager is responsible for monitoring SCATP obligations. The database has over 300 obligation records. An annual report on the management and monitoring of obligations is produced for the Council's Environment Scrutiny Committee.

[www.cambridge.gov.uk](http://www.cambridge.gov.uk)



## Other tools

### Performance bonds

10.15 Performance bonds (also known as sureties), in the context of obligations, can be an effective tool for LPAs to transfer the risk of under- or non-delivery of obligations. They are commonly used by LPAs for carrying out highways infrastructure works. LPAs can use performance bonds to ensure that in the event that the agreed obligations are not delivered (for example in the case of underperformance or financial default) they are provided with the necessary finances to compensate where the terms of the s106 agreement provide for this. Often the LPA will ask the developer to contract with a financial intermediary (usually a bank or some other financial institution) who undertakes to make a payment or reimburse the LPA in the event that the agreed obligations are not delivered. Typically the developer will pay a fee to the financial intermediary for carrying out this role and taking on the risk, but will not have to set aside finance or a deposit to provide for the infrastructure if required.

#### Case Study 10.4: Use of performance bonds to ensure the implementation of obligations for open space and associated facilities, Fareham Borough Council

Fareham Borough Council make use of performance bonds to help guarantee the delivery of agreed obligations for the provision of open space and any associated facilities. Their adopted SPG on Open Space sets out the use of performance bonds in this context:

“Where a developer is to lay out on or off-site and maintain for an agreed period Open Space and/or facilities, the legal agreement will include provision for a Performance Bond (or surety) covering the estimated costs. The estimated costs will include all expenses associated with the provision, maintenance and administration of the playing space and/or facilities. The estimated costs will be based upon the average unit cost per square metre for each relevant form of outdoor playing space contained in Appendix 7. In the event of a developer defaulting, in whole or part, in their obligation, the Council will be able to obtain the necessary funds and arrange for the works or maintenance to be carried out. Equally, where it is agreed that the open space and/or facilities are to be transferred to the Council, the Performance Bond will be released following the satisfactory completion of the maintenance period, the payment of any required Development Contribution to cover future maintenance costs and the transfer of the land to the Council.”

<http://www.fareham.gov.uk/council/departments/planning/spg/intro.asp>  
[www.fareham.gov.uk/](http://www.fareham.gov.uk/)

Good practice check list	
LPA's may wish to designate an officer whose responsibilities include the monitoring of the implementation of planning obligations.	✓
LPA's may wish to develop a monitoring system, perhaps including an IT database, to support the handling of public enquiries, enforcement and return of unspent contributions.	✓
LPA's ensure that contributions for specific infrastructure and facilities are 'ring fenced' in budgetary terms within the LPA for those uses, and that there is a clear audit trail.	✓
LPA's ensure effective and efficient joint implementation by County Councils or other infrastructure providers and local planning authorities where infrastructure and facilities are provided by one body and the financial contribution is held by the other.	✓
LPA's will wish to consider how best to make monitoring information available to the members of local authority and the public, for example through reports to the Planning Committee.	✓
LPA's may wish to involve developers in reviewing the effectiveness of monitoring systems.	✓

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Planning obligations (or “section 106 (s106) agreements”) are an established and valuable mechanism for securing planning matters arising from a development proposal. This guidance brings together a range of case study examples illustrating how local planning authorities (LPAs), developers and others are working together to deliver planning obligations effectively.

The aim of the guidance is to provide LPAs and anyone carrying out development with practical tools and methods to help improve the development, negotiation and implementation of planning obligations. The guidance will also be of interest to others involved in the obligations process, such as solicitors and consultants.

ISBN 10: 1-85112-848-4  
13: 978-1-85112-848-8

£10.00

ISBN 1-851128-48-4



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