

Stratford-upon-Avon District Council Planning Obligations



September 2005

1. Introduction

Development has an impact on society, its environment and the way that it functions. The planning system aims to mitigate this impact and where possible deliver benefits through new development. It is only fair and reasonable that developers contribute towards schemes to mitigate the impacts of development and or deliver benefits.

The Strategy of the Revised District Local Plan sets out clear policy objectives to achieve sustainable communities in the District. These include proposals for the provision of housing, local employment, education, health facilities, open space and recreational facilities and transport infrastructure. It is anticipated that the public sector will fund many of the key elements required to deliver the Local Plan strategy. However, developer contributions are also a necessary addition to mitigate development impacts if the objective of delivering sustainable communities is to be achieved.

Planning obligations are an essential way of securing these contributions. They enable the Local Planning Authority and an applicant to agree restrictions and provisions that are necessary to mitigate and/or enhance development where such provisions cannot be secured by conditions. Planning obligations are a crucial part of the delivery of the planning service. The new guide updates guidance on use of planning obligations in the District which was published in June 2000.

The purpose of this guide is to:

- explain the use of planning obligations and procedure for their completion;
- provide clarity and transparency to applicants, developers and the general public in the administration of planning obligations; and
- set out clearly the systems for accountability and monitoring of planning obligations.

2. What is a Planning Obligation?

It is a legal agreement regarding the use or development of land and generally entered into between the Local Planning Authority and applicant and any others that may have an interest in the land. Obligations are registered as a local land charge and are enforceable against the people entering into the legal agreement and any subsequent owner of the site. It is a legal instrument executed as deeds. Therefore it is recommended that applicants employ a solicitor to act on their behalf.

Planning obligations can either be made by an agreement between the Local Planning Authority and a developer/applicant or by a unilateral undertaking by the applicant. Both types of obligations are entered into under Section 106 of the Town and Country Planning Act 1990.

3. The policy basis for planning obligations in Stratford-on-Avon District

The principle of securing developer contributions is supported by national, strategic and local policies. Nationally, Circular 05/2005 (July 2005) provides government guidance and promotes the use of planning obligations. This Circular replaces Circular 1/97. In particular, it sets out a number of key principles to guide the application of planning obligations. It needs to be emphasised that the core principles underpinning the use of planning obligations have not changed significantly from what was in Circular 1/97.

Other sources of national guidance have clear policies about the use of planning obligations. For example, PPG13 and PPG17 provide national policy justification for securing developer contributions towards transport infrastructure and public open space respectively.

Policy T.10 of the Warwickshire Structure Plan provides strategic guidance on developer contributions. It states that 'The County Council will seek developer contributions to be provided for public transport, pedestrian and cycling facilities to serve development and regeneration'.

Policies COM.5, DEV.5, IMP.4, IMP.5 and IMP.7 in the Revised District Local Plan are all designed to secure developer contributions towards improving facilities and infrastructure in the District.

4. What can an obligation ask me to do ?

If an obligation is required it can:

- restrict the development or use of land in a specific way;
- require specific operations or activities to be carried out;
- require land to be used in a specific manner; and
- require money to be paid to the Local Planning Authority (or other parties) on specific terms.

In Stratford-on-Avon District it is likely that applicants with proposals that will generate significant development impacts will be required to contribute towards a range of benefits to help mitigate those impacts. The benefits sought will reflect the key priorities for the District as established in the Community Plan and the Council's Corporate Strategy. These documents have already undergone extensive consultation with the general public and local businesses and have their full support. The following are of particular importance:

- affordable housing;
- transport infrastructure;
- the provision of and/or maintenance of open space and recreational facilities;
- sustainable transport measures to improve cycling, walking and public transport facilities;
- education – such as cash contribution for new schools or extension to improvement of existing schools;
- housing for the elderly;
- habitat protection;
- local community facilities such as community halls.

Legal agreements may also be sought to deal with detailed matters such as phasing of development, remedial action to deal with contaminated land (such as brownfield sites) and public access to buildings and open spaces.

This list is not exclusive and there might be the need for other issues to be included. The District Council will be working in partnership with others, for example, the County Council to secure planning obligations. A corporate approach will be taken to negotiating planning obligations and the Council's Asset Group will oversee the process. In the event that it becomes necessary to prioritise items to be included in the planning obligation, such prioritisation will reflect the aspirations of the local community expressed in the Community Plan and the Council's Corporate Strategy.

Developer contributions will only be sought where they meet the requirements of Circular 05/2005. The Council will ensure that contributions are:

- necessary;
- relevant to planning;
- directly related to the proposed development;
- fairly and reasonably related in scale and kind to the proposed development; and
- reasonable in all other aspects.

The District Council operates a twin-track approach to planning obligations based on a standardised methodology and through negotiation. It has Supplementary Planning Guidance (SPG) setting out when and how the Council will seek to negotiate the specific aspects of a planning obligation relating to both transport and open space. Section 106 templates have also been prepared to accompany the SPG to speed up the delivery of planning obligations. The following SPG documents have been adopted and can be found on the District Council's website (www.stratford.gov.uk):

- **A revised methodology for calculating developer contributions towards transport schemes in Stratford-upon-Avon**

This SPG provides a fair, simple and justifiable method of calculating developer contributions towards transport schemes for all developments that have significant transport impact in the town. This includes residential development of 5 dwellings and above and non-residential development of 250sq.m of floor space and above. For copies of the document please contact the Planning Policy Team on 01789 260337. If you wish to discuss details of the document please contact Ernest Amoako on 01789 260399.

- **Provision of open Space**

This SPG provides guidance and a detailed mechanism for the provision of open space. It is applicable to Stratford-upon-Avon and the Main Rural Settlements. Copies of this document can be obtained from the Planning Policy Team on 01789 260337. Detailed information can be obtained from Andrew Ford on 01789 260332.

5. Procedure for completing Planning Obligations

Not all planning applications will be subject to planning obligations. Only development proposals with significant impacts will need a planning obligation to be completed before planning permission is granted. Generally, developers will not be required to contribute towards resolving existing problems or deficiencies in existing facilities. However, they may be required to make a contribution towards resolving existing problems if the proposed development would make things worse. The Council will work with its partners to complete and monitor planning obligations. All partners will be required to provide the Council with clear justification for the contributions that they will wish to seek as a result of future development proposals.

6. Types of obligations

There are two types of obligations, a bilateral agreement known commonly as a 'Section 106 Agreement' and a 'unilateral undertaking'

- **Section 106 Agreements**

This is a bilateral agreement between the applicant and the Council and occasionally others. If a Section 106 Agreement is required prior to the grant planning permission, the District Council will normally advise the applicant about what is required and the reason for the requirements.

It is always advisable for applicants to start work on them as early as possible to prevent any delay in the determination of the planning application. It is recommended that Heads of Terms of a Section 106 Agreement are discussed and agreed as part of the pre-application discussion and are submitted with the application.

The Council and the applicant will agree who will take lead responsibility in preparing an initial draft of the Section 106 Agreement. Where an applicant takes on the responsibility, it is recommended that the instructing solicitor contacts the District Planning Authority to establish the standard clauses that the Council would wish to be included in the Agreement.

If the Heads of Terms have not been discussed and agreed in advance during pre-application discussions, the case officer will advise the applicant about those Heads of Terms that are considered relevant after assessing the impacts of the proposal.

In very complex applications, an independent view might be sought to examine the negotiated settlement. This will be agreed with the applicant who will bear the cost. This is essential to ensure that adequate and appropriate mitigation measures are properly quantified whilst at the same time ensuring the viability of the scheme.

In some cases the Council may wish to prepare the Agreement and will liaise with the applicant's solicitors. The applicant will be responsible for the Council's costs whether or not the Agreement proceeds to completion. An initial estimate of the costs can be obtained in advance from the Council.

In certain specific circumstances standard templates will be prepared to facilitate speedy delivery of the process. Where a standard template for the Section 106 Agreement has already been prepared, copies will be provided to the applicant during pre-application discussions.

It is also good practice that applicants investigate and resolve any third party interests relating to the application site before the submission of the planning application.

The Council will seek to ensure that Section 106 Agreements are completed within the set deadlines for determining planning applications. In cases where this is clearly not achievable, it is likely that the planning application will be refused. A favourable planning decision notice will only be issued when any associated planning obligation has been completed.

To enable us to help you:

- speak with the planning officer dealing with the application if you have concerns with the requirements of the suggested agreement;
- give the name and address of your solicitor; and
- do not forget the Certificate of Title.

● **Unilateral undertaking**

A unilateral undertaking is an obligation offered by an applicant to the Local Planning Authority to support an application or an appeal. Whereas many of the procedures set out under Section 106 Agreements would equally apply, unilateral undertakings are often prepared without the active involvement of the District Planning Authority other than when such involvement is required by the applicant. The applicant bears the cost of Council's involvement, including the verification of the undertaking. The authority can either accept or reject such an offer with justification.

7. Monitoring and Enforcement

The effective use of planning obligations in the District requires a system that offers clarity, transparency and is easily accessible to the general public. The Council is introducing a standardised approach for securing developer contributions which offers clarity, simplicity and transparency. Relevant SPG's have undergone extensive public consultation before their adoption. Developers are able to a great extent to anticipate at an early stage in the development process how much they are likely to need to contribute to mitigate development impacts. It is anticipated that the simplicity of the process will facilitate simplicity of monitoring.

Once a Section 106 Agreement is agreed and signed and planning permission granted, the agreement becomes part of the permission. It is a public document and anyone may see a copy of the agreement and any correspondence connected to it.

The Council has established a computer database to record and monitor effectively all Planning Obligations. The system has inbuilt mechanisms to track whether or not the terms of the agreements have been adhered to. The Council has identified an officer with the specific responsibility of monitoring this process.

The Council will pursue action against an applicant or other interested party who violates the terms of a legal agreement. Equally, an applicant or other party would have a right to take action against the Council if it fails to honour its part of the agreement.

A report will be presented to the Council following the end of each financial year, summarising the types of planning obligations that have been completed and how the contributions have been used.

8. Conclusion

The guide seeks to clarify the manner in which Planning Obligations are used in the District. It also provides details of other Council documents that are relevant to securing developer contributions. For any further information, please contact Ernest Amoako on 01789 260399 or Les Greenwood on 01789 260120.

If you find the text in this document difficult to read
we can supply it in a format better suited to your needs.
Please contact us on 01789 260332.



Elizabeth House, Church Street
Stratford-upon-Avon CV37 6HX
Telephone 01789 267575
Facsimile 01789 260808
Minicom 01789 260747
DX700737 STRATFORD-ON-AVON 2
website www.stratford.gov.uk