

# Planning Obligations Supplementary Planning Document



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## **Planning obligations Supplementary Planning Document**

### **1. Introduction**

**1.1** The purpose of any Supplementary Planning Document (SPD) is to provide additional guidance on key development plan policies and how they will operate. This Planning Obligation SPD provides advice to customers and interested parties on when Planning Obligations (also known as S106) are likely to be required as part of new development and the process in agreeing the S106 through the application process.

**1.2** This SPD does not introduce new obligations or policies, but lists all potential requirements in one document to assist applicants. Where further detail is found in other guidance or documents, these are signposted.

### **2. What are S106?**

**2.1** Planning Obligations (also known as S106 Agreements) are legal agreements which can be attached to a planning permission to mitigate the impact of an otherwise unacceptable development to make it acceptable in planning terms. In order for planning obligations to be used, they must meet three legal tests:

- it is necessary to make the development acceptable in planning terms;
- directly related to the development;
- and fairly and reasonably related in scale and kind to the development.

**2.2** Planning Obligations can include site specific issues as well as the provision of infrastructure, or facilities necessary to support the additional residents and help achieve the council's policy objectives.

### **3. What do planning obligations cover?**

**3.1** Planning obligations can cover a range of facilities and services including:

- affordable housing
- payments towards required education provision
- ensuring agricultural dwellings are not sold separately from the land they serve
- ensuring residential annexes are occupied by dependent relatives and are not sold as a separate independent dwelling
- requiring infrastructure (roads, drains) to be provided
- requiring land to be dedicated and equipped as open space or playgrounds
- requiring sums to be paid for the provision of offsite infrastructure or the long term maintenance of open space
- Planning obligations are used to address negative impacts caused by a development and should not be seen as a way for the council to share in the profits from a development or as an inducement offered by a developer as a way to gain planning permission. Unrelated or unnecessary planning obligations are not a means to secure planning permission for unacceptable

development. Planning obligations should always be relevant to a development and contribute to achieving the planning aims of the council.

- Along with conditions, planning obligations provide a means to ensure that a proposed development contributes to the creation of sustainable communities.

### **What may be included as a planning obligation?**

**3.2** Planning obligations can be positive by requiring a developer to do a specific thing or negative by restricting development or use of the land.

**3.3** In general, planning obligations may secure one or more of the following:

- a financial contribution
- works in kind
- restrict the development or part of the development or the use of the land in specified way
- require specified operations or activities to be carried out on the land
- any other measure required to mitigate the impact of the development

**3.4** A fundamental guiding principle is that planning permission cannot be bought or sold.

**3.5** Planning applications are required to meet all relevant planning policies, many of which will not involve the use of a planning obligation e.g. adequate space around dwellings, high quality design.

## **4. Local Plan Policies**

**4.1** The National Planning Policy (NPPF) states that Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.

**4.2** The following Local Plan policies set out the type of contributions that are expected from development:

- Strategic Policy 9: Infrastructure Delivery and Implementation
- Strategic Policy 10: Education Infrastructure
- Strategic Policy 16: Meeting Housing Needs
- Strategic Policy 17: Affordable Housing
- Strategic Policy 18: Residential Development on exception sites
- Strategic Policy 23: Green Infrastructure

- Strategic Policy 26: National Forest
- Strategic Policy 27: Climate Change, Water Body Management and Flooding
- Strategic Policy 28: Renewable and Low Carbon Energy Generation
- Strategic Policy 32: Outdoor Sports and Open Space
- Strategic Policy 33: Indoor Sports
- Strategic Policy 35: Accessibility and Sustainable Transport
- Detailed Policy 7: Pollution and Contamination
- Detailed Policy 11: European Sites

## **5. How are planning obligations secured?**

**5.1** Planning obligations are secured through legal agreements (also called "section 106 agreements") or unilateral undertakings that may be entered into by anybody with an interest in the land that relates to a planning application. This would normally involve the council and a developer agreeing by way of planning obligations, certain works or payments for measures that are required before planning permission may be granted.

**5.2** Planning obligations relate to a planning permission but are also attached to the land and registered as a local land charge. This means that obligations cannot only be enforced against those who entered into it but against anybody who gains title to the land. This ensures that if land is sold with a planning permission and related planning obligations, those obligations can be enforced against the new owner(s) of the land, i.e. successors in title. Because planning obligations run with the land, all owners, lessees and mortgagees must be signatories.

## **6. Use of financial viability appraisals**

**6.1** It is recognised within planning policy that in dealing with development proposals, financial viability concerns may arise. These may arise genuinely, for example where remediation costs are exceptional.

**6.2** In the interests of meeting planning policy objectives and/or regeneration initiatives, the council may, in such circumstances, consider the merits of individual development proposals, through an open book appraisal. In these cases, the council will require detailed financial appraisals to be provided by the applicant to support their argument.

**6.3** An independent financial assessor may be required on complex applications. This approach is advocated within circular 05/2005. The assessor to be commissioned by the council and the costs are to be met by the applicant.

**6.4** Where there are viability concerns applicants may wish to contact the Borough Council's Enterprise Team to discuss whether there is available assistance to encourage the on site provision of affordable housing. Please contact Thomas Deery on [thomas.deery@eaststaffsbc.gov.uk](mailto:thomas.deery@eaststaffsbc.gov.uk) or 01283 508664.

### **Vacant Building Credit**

**6.5** National policy provides an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable housing contributions may be required for any increase in floorspace.

## **7. Index Linking**

**7.1** Obligations are based on calculations at the time of the decision, thus there is a need to index link these financial calculations annually to ensure that the contributions remain at a sufficient level to fund the required infrastructure when the proposal is implemented. If Planning Obligations were not indexed linked then insufficient contributions would be secured resulting in a loss of benefit to the Borough as a whole.

**7.2** The use of inflationary indices for Planning Obligations is an established principle and the Council uplifts contributions annually. The type of index will be specified in the S106 agreement.

## **8. Monitoring of planning obligations**

**8.1** The details of agreed planning obligations will be held on an electronic database in order to track compliance as the development proceeds.

**8.2** The council will liaise with developers (and applicants) and use other means of monitoring including site inspections, to ensure that applicants discharge their obligations at the agreed date or trigger. If there is a failure to comply with the planning obligations, appropriate steps will be taken to ensure compliance with the agreement.

**8.3** MHCLG in June 2019 published a response to the reforming development contribution consultation representations. In respect of monitoring fees, the Government states that regulations have been amended to clarify that the monitoring fee should not exceed the authorities' estimate of its cost of monitoring the planning

application. Further guidance is expected and once finalised, expectations regarding the Borough Councils monitoring fee will be reflected in this guidance.

## **9. Expected costs and timescales**

**9.1** It is important that where an application proposal is likely to result in the need for a S106, a draft heads of terms as well as a solicitor's undertaking to cover the Borough Council's necessary costs should be submitted as soon as possible in the application process.

**9.2** The signing of a S106 should usually be expected to take:

- Less than 4 weeks for a minor S106 agreements (less than 2 obligations) - the legal costs are usually less than £1,500k combined
- Less than 8 weeks for a medium sized S106 agreements (more than 2 but less than 6 obligations) – costs usually between £1,500 to £4,000k combined
- 8 to 12 weeks for a large sized S106 agreements (of more than 6 obligations/schedules) – costs usually £4k plus combined

**9.3** Please note where more parties are involved, or a S106 is complex then the above timescales and costs could be significantly increased.

## Appendix 1

The table below summarises the Local Plan policy requirements

<b>Type Obligation</b>	<b>When is it required</b>	<b>What is the policy requirement?</b>	<b>Further information or contact</b>
Affordable Housing	On major applications for residential use	On site affordable housing provision in line with Strategic Policy.  Depending on location this is 25%, 33% or 40% with at least 13% on site provision in all cases.  Off site provision calculated at a cost of £40,000 per affordable dwelling required.	See Housing Choice SPD
Education	On residential proposals 7 dwellings and above	To provide education infrastructure for all tiers; infants, junior, primary, secondary, sixth form and specialist education	Staffordshire County Council Education contributions policy
Highways Infrastructure and Sustainability travel	On a case by case basis	On a case by case basis typical requirements are the following: <ul style="list-style-type: none"> <li>• New or increased bus service,</li> <li>• cycle vouchers for new residents,</li> <li>• Traffic Regulation Orders</li> <li>• Travel Plan</li> <li>• Travel Plan monitoring</li> <li>• Off site highway works</li> <li>• TRO's, travel management plan monitoring</li> </ul>	Staffordshire County Council Highways
Town Centre Public Realm improvements	For major applications for residential use or employment	On a case by case basis	Public Realm Improvement Plan



Type Obligation	When is it required	What is the policy requirement?	Further information or contact
	use within Uttoxeter or Burton town centres		
Open Space	On major applications for residential use	On a case by case basis based on the number of houses and expected population.	Open Space Calculator
Playing Pitches	On major applications for residential use	On a case by case basis based on the number of houses and expected population.	Playing Pitch Calculator
National Forest Planting	<p>Employment sites over 1 hectare</p> <p>Residential sites over 0.5 hectares in the National Forest Area</p> <p>Highway Schemes within the National Forest</p>	<p><b>1. Housing:</b></p> <p>(a) Sites under 0.5 ha: Normal landscaping appropriate to site</p> <p>(b) Sites over 0.5 ha: 20% of development area to be woodland</p> <p>(c) Sites over 10ha and Sustainable Urban Extensions: 30% of the development area to be woodland planting and landscaping</p> <p><b>2. Industrial:</b></p> <p>a) Sites under 1 ha: Normal landscaping appropriate to the site's setting and landscaping</p> <p>b) Sites over 1 ha: 20% of the development area to be woodland planting and landscaping</p> <p>c) Sites over 10ha and Sustainable Urban Extensions: 30% of the development area to be woodland planting and landscaping</p>	National Forest Guidance for developers

Type Obligation	When is it required	What is the policy requirement?	Further information or contact
		<b>3. Highway Schemes in the National Forest:</b> Highway schemes should achieve well wooded settings with planting adjoining the roadside and off site. Appropriate landscaping should also accompany road improvements.	
Bins	On all residential proposals	£75 per dwelling to cover the cost of providing all	Waste, Storage and Collection Guidance Document 2012
Cannock Chase SAC	All new dwellings within 8km of the Cannock Chase SAC	£230 per dwelling	Cannock Chase SAC Guidance to Mitigate
Health	On major applications for residential use	On a case by case basis Indicative formula is set out below:  New population arising from the development x additional consultations required x cost of delivering the consultations	Contact CCG
Air Quality measures	On major applications in, or with a direct impact on an existing air quality management area (AQMA).	On a case by case basis, such measures could include:  Electric charging points Air Quality monitoring measures	East Staffordshire Borough Environmental Health
Community priorities	On major applications	On a case by case basis	See Neighbourhood Plans, many of which have identified specific infrastructure projects