

# THE APPROACH TO DEVELOPER CONTRIBUTIONS IN PEMBROKESHIRE

## PLANNING OBLIGATIONS - SUPPLEMENTARY PLANNING GUIDANCE (SPG)

Adopted by Pembrokeshire County Council 18 May 2009

Adopted by Pembrokeshire Coast National Park Authority 24 June 2009

**This paper sets out Pembrokeshire County Council's and the Pembrokeshire National Park Planning Authority's approach to securing contributions towards local infrastructure, facilities, services and amenities through Section 106 legal agreements in relation to new development. Most contributions are required from residential development; however there are circumstances when non-residential development will be expected to make a reasonable contribution.**

### Introduction

1. New development can offer great benefits to the community by virtue of the homes, workplaces and facilities it provides. It stimulates the economy, but also has consequences for the provision of public services.. Insensitive and badly planned development can create a considerable negative impact on the environment, facilities and services in the area. It places a considerable burden and cost on the community, a cost which is borne by those which live, work and visit the area.
2. The County Council and National Park Authority as planning authorities, wish to ensure that the impacts of new development are positive, that negative impact is minimised and that new development provides a pro-rata contribution to the social, economic and environmental wellbeing of the community as a whole.
3. The County Council and National Park Authority will seek developer contributions through legal agreements and other statutory measures in order to provide for additional input to services and infrastructure which are required by the new development. Each and every planning application will be considered on its merits and the planning obligations will be negotiated separately in accord with the Welsh Office Circular 13/97.
4. The Circular tests are quite clear in that a planning obligation must be:
  - Relevant to planning;
  - Necessary to make the proposed development acceptable in planning terms;
  - Directly related to the proposed development
  - Fairly and reasonably related in scale and kind to the proposed development; and
  - Reasonable in all other respects.
5. Government advice stipulates that planning obligations must be governed by the fundamental principle that planning permission may not be bought

or sold. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms. It goes on to state that planning obligations should never be used purely as a means of securing for the local community a share in the profits of a development ie. as a means of securing a betterment levy.

6. However, to create some certainty for developers, to ensure consistency and a transparent method of negotiation it is recognised that similar developments will result in a similar scale of planning obligations. Therefore this Supplementary Planning Guidance (SPG) is intended to provide landowners, developers and residents with guidance as to the type and scale and other contributions which the County Council and National Park Authority will seek from defined types and scales of development. It provides additional guidance to support policy 127 of the Joint Unitary Development Plan for Pembrokeshire 2000-2016 (JUDP).
7. This SPG covers the following services, facilities and infrastructure which the County Council and National Park Authority will be seeking contributions and obligations on:
  - Affordable Housing
  - Education
  - Libraries and Community Uses
  - Recreation Open Space
  - Recycling and Waste Facilities
  - Transportation
  - Others to be added
8. Affordable Housing has already been the subject of public consultation and there is an existing adopted SPG. However, each of the other above issues has a topic paper which has been written with the involvement of the relevant Directorates of the County Council and the Pembrokeshire Coast National Park Authority which have provided the background and technical supporting information.
9. Developers are urged to seek advice early in the development process and ask for further guidance on Section 106 agreements prior to the submission of any planning application. Officers are able to give written advice and attend site visits as deemed necessary. It is important that applicants seek to address planning obligations as part of their planning application. Both the County Council and the National Park planning officers are able to give pre-application advice which will be current for six months from the initial enquiry date. This will give developers confidence that the planning authorities will not seek to amend planning obligation requests during this timescale. Planning applications are unlikely to be registered if prospective applicants have not sought to address planning obligation issues.

## **Legislative and Policy Framework**

### **National Policy**

10. Planning Policy Wales, and various TANS including TAN 2 on Planning and Affordable Housing and the Welsh Office Circular 13/97 provides advice and guidance on the appropriate benefits secured through Section 106 agreements.
11. The Department for Communities and Local Government Planning Obligations: Practice Guidance (July 2006) gives case study examples of good practice and also provides a template for a standardised legal agreement.
12. The Barker Review proposes that Central Government should use tax measures to extract some of the 'windfall gain' that accrues to landowners from the sale of their land for residential development purposes. It also suggests that the Government should impose a 'planning gain supplement' on the grant of planning permission, with the majority of the revenue returning to the local authority. The Government is still refining exactly what this charge should be called – now the Community Infrastructure Levy (CIL), and what it should be attributed to and in what timescale. Originally proposed to be operational by 2009, this target is now looking unrealistic. It is considered to be important to bring in Section 106 policy guidance now on infrastructure requirements - whatever the timescale of the introduction of any CIL. Adjustments can be made to the system as and when the CIL commences.

### **Audit Commission**

13. The principle and process of securing planning obligations through the use of legal agreements was considered by the Audit Commission in July 2006 in the following documents:
  - Value for money self assessment guide
  - Securing community benefits through the planning process
  - Route map to improving planning obligations
  - Corporate awareness checklist
14. The Audit Commission recommended various methodology and processes. This SPG has been produced taking into consideration the Audit Commission recommendations.

### **Development Plan Policies**

15. The Joint Unitary Development Plan adopted by Pembrokeshire County Council in July 2006 and the National Park Authority in June 2006 sets out the general basis for the need to provide contributions towards community

infrastructure etc. Its policy 127 'Infrastructure Related to Development' states:

*Where development generates a directly related need for new or improved infrastructure, services or community facilities, then: provision that is reasonably related in scale and kind to the development, shall be made by that development; and provision that is made by the development may be on site or contributions may be made to the provision of facilities elsewhere, provided their location can adequately service the development.*

16. The timely provision of directly related infrastructure, services and community facilities shall be secured by planning conditions (s), the seeking of planning obligations (s) by negotiation, and/or by any other agreement or undertaking. Some details of the provision sought by the County Council and the National Park Authority are set out in the JUDP including:

Policy 12	Large scale employment development
Policy 13	Small scale employment development
Policy 18	Large Scale Tourist Attractions
Policy 19	Other Tourist Attractions
Policy 50 & 51	Affordable Housing
Policy 52	Low Impact Development

### **Application of this Supplementary Planning Guidance**

17. Developer contributions will be sought from mainly residential development, for both on and off site provision. In all cases contributions will be agreed through negotiation based on the provisions of this supplementary planning guidance and any other relevant considerations. In cases where contributions are not agreed, the County Council and National Park Authority are likely to refuse planning permission for a development proposal, as it is unlikely that the proposal will have made provision for the impacts it creates.
18. The contributions and obligations sought will be based on the County Council and the National Park Authority's assessment of the needs created by the development as indicated. The County Council and the National Park Authority will keep the 'needs' arising from development under review and will bring forward revision to this guidance as required. In some cases the developer will be required to carry out assessments of need in connection with planning applications.

19. The tables at the end of this Paper summarise the form of contributions and other obligations which the County Council and the National Park Authority is likely to expect for different types and scales of residential development. Details of the type and scale of contribution which may be expected are set out in the relevant supporting Topic Papers.

### **Thresholds**

20. Contributions will be sought from developments which generally propose a net gain of THREE OR MORE DWELLINGS

21. Residential development in Pembrokeshire is mainly of a small scale and on small sites. Infill sites and additions to villages being the norm. It is important to ensure that these small sites make a fair contribution to the level of local services and facilities that future occupiers will and should have the benefit of.

22. The County Council and the National Park Authority considers that the creation of a development which involves three or more dwellings will clearly have an impact on and place significant pressures on existing local services, infrastructure and facilities that should be addressed by developer contributions.

23. It can be argued that any development which increases net residential numbers by any more than one will have an impact. However, for the ease of administration, at this formative stage of Section 106 contributions being introduced throughout the County, the level of three or more is seen as a sensible trigger point. Three dwellings being the figure which clearly demonstrates that the resulting residential development is of a commercial scale.

### **Implementation**

24. One of the aims of this SPG is to assist the development industry by giving a framework for developers to identify contributions at an early stage. The County Council and the National Park Authority also recognises that it is important that securing appropriate developer contributions does not result in undue delays in the determination of planning applications once they are submitted.

25. Developers, those considering acquiring land, and those considering the sale of land for development, need to understand the likely scope and scale of developer contributions which may be sought. In cases where the impacts of development are reasonably predictable it is possible to determine the likely scale of contribution with reference to Table 1 below and the relevant Topic Papers.

26. In some cases the impacts are less predictable and can only be established through site specific investigation. The County Council and the National Park Authorities are unable to give detailed advice to

speculative queries but recommend that this SPG is used to gain a general impression. It should be noted that negotiations for the purchase of land should only be undertaken on the basis that any developer contributions which may be sought can only be finally determined through the planning application process.

27. There will be instances when the viability of a proposal is questionable. Developers are then likely to seek reductions in the amount of planning obligations required. Both planning authorities are keen to ensure that planning obligations do not act to stifle or prevent development. When it can be proven that a proposal is not financially viable in terms of all the policy requirements of the JUDP, priority will be given to the delivery of affordable housing in any further negotiations. Viability will be tested through the use of the Three Dragons Development Appraisal Toolkit. It will be necessary for developers to provide an 'open book approach' for their proposals if they are to successfully argue that a scheme should benefit from reduced planning obligation requirements.

**Liaison with adjoining local authorities**

28. There may be development proposals which if implemented would have an impact on the infrastructure, services or facilities provided within the boundaries of adjoining authorities. In the case of the County Council planning area and the Pembrokeshire Coast National Park planning area there is already agreement as to the provision of facilities etc required by new development. However, with regard to Ceredigion and Carmarthenshire, the authorities would endeavour to liaise to ensure that a pro-rata contribution is calculated and designated to appropriate facilities etc within each authority boundary where the impact is. The Authorities would be seeking to ensure that there is also an equivalent agreement in place for developments taking place within adjoining authorities' boundaries but which impact on Pembrokeshire.

**Legal Fees and Planning Administrative Costs**

29. The County Council and the National Park Authority will seek contributions towards both the legal fees and administrative costs of planning obligations. Such costs will be relatively limited as a proportion of contributions overall, but will enable the County Council and the National Park Authority to resource the process effectively. In addition to meeting legal costs, such contributions will help to fund systems which manage and co-ordinate the process of handling applications liable to result in developer contributions from start to finish. The legal and administrative fee for most residential planning applications is divided as set out below and would normally be requested prior to the instruction being passed to the Planning Authority's legal team.:

	amount
Legal	£400
Planning administration including	£100

monitoring (currently with PCC)	
<b>Total</b>	<b>£500</b>

### **The use of unilateral undertakings**

30. The County Council and National Park Authority system will use standard S106 legal agreement wording as far as possible. This reduces legal time spent on planning agreements and helps to keep the cost down. The use of unilateral undertakings is likely to be a more expensive legal route than the use of a Section 106 agreement, and it should be noted that if submitted, the Planning Authority's legal fee could be substantially more than if using the Section 106 standard format.

### **Cumulative impact**

31. Many developments may not by themselves generate the need for major investment in new infrastructure. However a series of developments will have a cumulative impact on infrastructure, services and facilities. Those responsible for their provision will find it more cost effective to make a single improvement after a number of smaller developments have been carried out. Service providers will create funds into which financial contributions arising from legal agreements will be paid. These funds will then be directed towards the cost of the additional infrastructure etc required on a phased basis.

### **Community Councils, Town Councils and other delivery bodies**

32. Local communities will often have identified services and facilities which are subject to increased pressure through new development. Action Plans may have been produced which highlight such pressures. Developer contributions may be sought which contribute to the enhancements of such services and facilities which are made necessary by the new development.

33. In villages and settlements where the Community Council, the National Park Authority or a Trust for example, is responsible for the upgrading, maintenance and provision of existing facilities, with their agreement, Section 106 contributions can be made available to them for the upgrading of existing facilities to accommodate the demands of new residential development.

34. In such circumstances, the County Council will remain responsible for the monitoring and collection of the monies and will distribute the contributions within an agreed timescale or at certain trigger points to the Community Council.

### **Updating and inflation**

35. This SPG will be posted on the County Council and National Park Authorities websites and is available as a free download. Information on costs which form the basis of developer contributions will be updated annually as at 1 April each year, or as agreed by the Director of Development and the National Park Authority's Director of Planning and Conservation. Planning applications received after the 1 April of any year will be the subject of any revisions. Annual inflationary costs will be calculated with regard to the Retail Price Index and the BCIS General Building Cost Index and any other index considered appropriate at the time.

## **New and/or Revised Topic Papers**

36. From time to time it will be necessary to review the topic papers. Where material revision is needed the County Council and the National Park Authority will undertake public consultation on proposed changes. Any comprehensive review of the principle of the SPG content will be subject to public consultation.

37. It is likely that in the foreseeable future, contributions could reasonably be expected to provide for the impact on:

- Community and Social Services
- Crime and Disorder
- Employment and training
- Environmental Enhancements including Flood Defence and Town Centre Improvements
- Fire and Rescue Infrastructure
- Health Care

## **Public Consultation**

38. This SPG has been the subject to public consultation during the Autumn of 2008, and was adopted as County Council and National Park Authority policy on 18 May and 24<sup>th</sup> June 2009 respectively.

39. The County Council resolved to implement the transportation element of the SPG as from 1 September 2009, to a maximum of £2,500 per dwelling on all residential developments with a net gain of 3 or more dwellings, and that subject to review the remaining topic papers be implemented as from 1 April 2010.

40. The National Park Authority agreed that the guidance will be operated from 1st September 2009 by the National Park Authority in respect of the transport obligations to a maximum of £2,500 per dwelling and that, subject to review, the remaining topic areas come into force from the 1 April 2010.

**TABLE ONE**

**A typical 10 dwelling development could be required to provide the following:**

<b><u>Topic</u></b>	<b><u>Calculation</u></b>	<b><u>Note</u></b>
<b><u>Affordable housing</u></b>		<b><u>3 dwellings</u></b>
<b><u>Education</u></b>	<b><u>10 x £8,044.78 = £80,447.80</u></b>	<b><u>Assuming no one bed units on site</u></b>
<b><u>Libraries and community facilities</u></b>	<b><u>10 x £187 = £1,870</u></b>	
<b><u>Recreation Open space</u></b>	<b><u>10 x £948.56 = £9,485.60</u></b>	<b><u>Assuming no on-site provision and nearby facility which could be enhanced</u></b>
<b><u>Recycling and Waste Facilities</u></b>	<b><u>10 x £90 = £900</u></b>	<b><u>Assuming no on-site provision and nearby facility which could be extended</u></b>
<b><u>Transportation</u></b>	<b><u>10 x £2,500 = £25,000</u></b>	<b><u>This would be the maximum</u></b>
<b><u>Legal and administrative cost</u></b>	<b><u>£500</u></b>	<b><u>A one off fee payable to cover the costs of providing the section 106 and monitoring of.</u></b>
<b><u>total</u></b>	<b><u>£ 118,233.40 (equates to £11,823.34 per dwelling)</u></b>	<b><u>Payable on a negotiated phasing through the development – typically upon occupation of 4th and 8th dwelling</u></b>

**A typical conversion development of an existing dwelling in an urban area to 10 one bed flats (net gain of 9 dwellings)**

<u>Topic</u>	<u>Calculation</u>	<u>Note</u>
<u>Affordable housing</u>		<u>2 dwellings</u>
<u>Education</u>	<u>9 x 0 = £0</u>	<u>Only one bed units on site therefore no contribution required</u>
<u>Libraries and community facilities</u>	<u>9 x £187 = £1,683</u>	
<u>Recreation Open space</u>	<u>9 x £948.56 = £8,537.04</u>	<u>Assuming no on-site provision and nearby facility which could be enhanced</u>
<u>Recycling and Waste Facilities</u>	<u>9 x £90 = £810</u>	<u>Assuming no on-site provision and nearby facility which could be extended</u>
<u>Transportation</u>	<u>9 x £1,250 = £11,250</u>	<u>Reduced amount due to sustainable location</u>
<u>Legal and administrative cost</u>	<u>£500</u>	<u>A one off fee payable to cover the costs of providing the section 106 and monitoring of.</u>
<u>total</u>	<u>£22,780.04 (equates to £2,531.11 per unit)</u>	<u>Payable on a negotiated phasing through the development – typically upon occupation of 6<sup>th</sup> unit</u>

**Useful contacts regarding Section 106 details**

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