

Policy for the use of, and determination of projects for, Children and Families S106 funding

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Version Log

Version	Status	Date	Description of change	Reason for change	Pages affected
1.0	Final	November 2018	New Policy	New Policy	All

Purpose

This policy covers the way the Children and Families Directorate S106 contributions from applicants/developers are requested and how they are allocated to projects at schools.

Other than the Supplementary Planning Document (SPD) guidance there is no policy in place that determines how children & families S106 funding should be allocated to projects and spent. This policy sets out the principles that will be applied to identify the affected establishments, the level of funding requested, the project to which funding received will be allocated, the governance required and how the project will be managed.

Background

The council's Supplementary Planning Document (SPD) on planning obligations provides advice to developers and applicants on the use of planning obligations in the planning application process in Herefordshire. It specifically provides guidance on how the council will implement Herefordshire's Local Plan – Core Strategy (adopted October 2015) (CS) on planning obligations and identifies the types of community infrastructure where developer contributions will be sought as part of a proposed development. The SPD forms the basis for pre-application discussions and negotiation when determining planning obligations.

Planning obligations, or Section 106 Agreements, are legally binding agreements entered into between a local authority and any person with a legal interest in the land. The subject of the section 106 agreement, which can include a developer and/or applicant and are an established and valuable way of bringing development in line with the objectives of sustainable development as articulated through relevant local and national planning policies.

Any new development may require mitigation to make it acceptable. Such mitigation could be the subject of an obligation involving a contribution. The council has deemed it necessary for contributions to be sought from all additional residential units above certain size thresholds and where a need is identified.

The Council's approach to seeking contributions through Section 106s is set out in a clear process, which ensures that the negotiation of contributions is transparent and efficient for the applicant, the authority and any other interested parties. This is detailed in the SPD produced to provide advice to developers and applicants on the use of planning obligations in the planning application process in Herefordshire.

Planning obligations are the means by which a local planning authority can secure contributions, improvements or mitigation works to offset any adverse impact of new development. Therefore, it is the overriding objective of the SPD that, in the interests of sustainable development, it is reasonable to expect developers/applicants to contribute towards the financing of new or improved infrastructure directly related to new development proposals.

Where appropriate and particularly on small residential schemes, contributions from several applicant/sdevelopers can be pooled to enable the necessary benefits to be secured. The pooled benefits will still relate to the development from which they were raised.

Legal and policy framework

Government guidance on planning obligations is provided in the National Planning Policy Framework (NPPF) and Planning Practice Guidance on planning obligations. These give guidance on the types of obligations that may be acceptable. Local planning authorities are also recommended to publish guidance themselves for potential developers in order that the council's approach is clear and easy to understand. This information is provided in the SPD with the aim of providing a fast, predictable, transparent and accountable system. Central government encourages the use of formulae and standard charges where appropriate and the publishing of standard heads of terms, agreements / undertakings or model agreements wherever possible.

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. They may only constitute a reason for granting planning permission if they meet three tests. These tests are set out as statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and as policy tests in the NPPF. They must be:

- Necessary to make the development acceptable in planning terms i.e. required to bring a development in line with the objectives of sustainable development as set out in the CS. These are the matters which, following consultation with potential developers, the public and other bodies, are agreed to be essential in order to allow the development to go ahead and in accordance with the policies laid down in the CS;
- Directly related to the development (there should be a functional or geographical link between the development and the obligation being provided as part of the applicant's/developer's contribution);
- Fairly and reasonably related in scale and kind to the development (planning obligations should not be used solely to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives that are not necessary to allow consent to be given for a particular development)

These tests are to prevent applicants/developers being over-burdened by requests from local planning authorities which are not policy justified, as well as preventing a perception that developers may be "buying" planning permissions.

Education Contributions

The advice in the NPPF is clear that contributions should only be sought where the need for additional facilities arises as a consequence of the new development. Moreover, they should be fairly and reasonable related in scale to the proposed development. Applicants/developers will be expected to make an appropriate contribution towards enhancing existing facilities or new provision where current levels of service are insufficient to accommodate the development. For education, this will usually be related to existing capacity in schools.

The council also has the responsibility to develop and support provision of early years' education (pre-school) and nursery places. There is a continuing need for additional capacity arising from demographic changes as well as continuing changes in education. Where development falls within an area identified as in need of additional places, a contribution towards early years provision will be sought.

Education contributions will be sought from residential developments providing ten or more additional units and where the implementation of the development will result in the generation of additional numbers of children in excess of that which local educational facilities in permanent buildings can accommodate in terms of capacity or when measured against qualitative standards set out in the Education Building Bulletins.

Contributions will be calculated based on the number of children likely to be generated by the development and the costs of providing additional facilities/services needed.

Contributions will be sought for:

- Pre-school / nursery places;
- 5 – 10 years (primary schools);
- 11 - 15 years (compulsory secondary school age);
- 16 + (post statutory school-age, in schools); and
- Children with special educational needs beyond the capacity of existing schools in the area.

Principles

- As determined by the SPD, contributions will only be sought for primary and secondary schools where it can be demonstrated that there is insufficient capacity to accommodate any children created by the housing development.
- Contributions will only be sought for the primary and secondary schools that are determined to be the catchment schools for the development.
- The level of contribution requested will be as per the SPD which indicates the amount of funding that will be requested where applicable, for early years, primary, secondary, post 16 and SEN.
- Where an outline application is received, responses will be provided on a per dwelling basis as the mix of housing and set amount of housing to be provided at this stage is unlikely to be known. All other applications will have the actual contribution request and split calculated.
- If requested, a project to which the funding will be allocated will be provided at the time of submitting the planning comments with the contributions expected.
- Dependent upon the type and cost of a project, up to five housing development contributions will be considered against one project to enable contributions to be combined.
- Funding received will be checked against the original request for contributions. Where the amount differs, the final amount received will be apportioned in line with the original contribution request to determine the amount of funding available for each element of the S106 funding unless the breakdown is provided in the signed S106 agreement.

- Where a project has been identified, contact will be made with the school confirming that the funding is now available and that the project may proceed.
- Where no specific project is included in the S106 agreement but a generic use of funds is requested, consideration will be given to the most efficient use of the funding at the school in line with the following:
 - Where the council is planning work at the school in line with the school capital investment strategy, the funding will be contributed towards this project.
 - Where the council have no immediate or short-term plans for work at the school, the school will be contacted to identify potential schemes towards which this funding can be attributed.
 - In most cases it is unlikely that the S106 contribution will be able to fully fund the project and therefore the school will need to put funding into the project themselves.
 - All projects identified will need to conform with the three tests identified above. They will need to be capital in nature and able to demonstrate that they address the impact of additional children from the development. Examples of projects are: increased ICT infrastructure, extensions, provision of canopies, external play areas and internal remodelling.
- A record of officer decision will be produced for expenditure of all allocations of funding below £500k. If expenditure of an allocation above £500k is sought an executive decision will be taken by the relevant cabinet member with portfolio responsibility for education prior to any project progressing.
- Unless the project is council led, schools will be expected to manage the work themselves. Reimbursement will only be made upon provision of a certified invoice.

Review of the Policy

This policy reflects the current position and will be reviewed annually, or as required to meet changes in local or national circumstances or legislation.