

**Planning Obligations
Supplementary Planning Document**

Initial Consultation

July 2006

Consultation Arrangements

This initial (non-statutory) consultation is being undertaken in accordance with Herefordshire Council's Statement of Community Involvement Submission Document (June 2006) to ensure the views of the public, developers and other stakeholders help shape a more informed and inclusive Supplementary Planning Document (SPD) on Planning Obligations.

Consultation on this initial document will take place over August 2006. We welcome comments on any aspect of this document, but we would be particularly interested in your views on the questions set out below.

How to Respond

Your comments should be returned to the address below, or e-mailed to ldf@herefordshire.gov.uk by **31 August 2006**. Please use the form provided with this document. A copy of this document and a form for comments is also available on our website at www.herefordshire.gov.uk, in the Quick Links Planning/Forward Planning/LDF/Supplementary Planning Documents page, or from **Emma Lawrence** at:

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Consultation Questions

1. Should the Council develop a Code of Practice setting out the processes it intends to follow in seeking planning obligations and the standard of service developers can expect in dealing with planning applications?
2. Which of the scenarios set out in Options 1-4 should the Council follow or do you have any suggestions for different scenarios?
3. What is an appropriate threshold size of development for housing proposals at which planning obligations should be requested?
4. Should the threshold vary for different locations e.g. between urban and rural?
5. At what threshold should planning obligations be sought from commercial development?
6. Should the number of topic areas for which contributions are generally sought be extended? If so, which particular topic areas should be brought within the scope of the SPD?
7. Could more use be made of standard agreements?

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1. Introduction

- 1.1 Herefordshire Council's Local Development Scheme (LDS), January 2006, outlines the commitment to producing a Planning Obligations Supplementary Planning Document (SPD). The LDS can be found at www.herefordshire.gov.uk.
- 1.2 The Planning Obligations SPD will provide guidance on the requirements and mechanisms for contributions from development for infrastructure and other related provision. It will:
- provide greater clarity for developers and applicants;
 - speed up the processing of applications;
 - provide a clearer framework for assessing requirements and for calculating contributions; and
 - play an important role in ensuring community and infrastructure needs are fulfilled as part of new development.
- 1.3 This initial consultation paper explains how and when the SPD will be produced, what planning obligations are, options for how the SPD could be developed as well as the possible processes for receiving and spending contributions from planning obligations.

2. Timetable for Production

- 2.1 The timetable outlined below shows the main stages in the production of the Planning Obligations SPD. The Council is currently in the information gathering stage of the document's production. Following this initial consultation, the draft SPD will then be prepared ready for a public consultation process in October/November 2006. Representations will then be considered and the document amended where appropriate with a view to adopting the final SPD in March 2007.

2.2 Timetable

Timetable for SPD production	2006												2007		
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
Information gathering															
Initial Consultation on options for SPD and Scoping SA															
Preparation of draft proposals															
Public Participation on Draft SPD and SA															
Consideration of representations															
Adoption of SPD															

3. **Sustainability Appraisal**

- 3.1 As part of the SPD information gathering process the Council is preparing a Subsidiary Sustainability Appraisal Scoping Report. This will outline those plans and programmes that will be taken into consideration during the production of the SPD. It will also provide relevant baseline data for the County and establish a number of sustainability issues and objectives that the Draft SPD objectives and options will need to be appraised against. The report will shortly be available to view and download from the Council's website.
- 3.2 A complete SA report will be published along with the Draft SPD later this year. The report will also be subject to public consultation.

4. **What are Planning Obligations?**

- 4.1 New development often puts pressure on already over-stretched infrastructure and it is generally expected that developers will mitigate or compensate for the impact of their proposals by way of 'Planning Obligations'. These are usually concluded under Section 106 of the Town & Country Planning Act 1990 (as amended) and are agreements between local planning authorities and developers (and the landowner where the developer does not own the land) that secure contributions (in cash or in kind) to address community and infrastructure needs associated with development.
- 4.2 The Government is undertaking a review of the system of Planning Obligations, including consideration of options, which will require changes in legislation. In July 2005, however, it issued Circular 5/05, which updated policy guidance on the use of obligations within the existing legislative framework. This guidance has influenced some of the options and processes reviewed in this document.
- 4.3 Circular 5/05 reiterates previous guidance that planning obligations should only be sought where they meet the following tests:
- (i) relevant to planning;
 - (ii) necessary to make the proposed development acceptable in planning terms;
 - (iii) directly related to the proposed development;
 - (iv) fairly and reasonably related in scale and kind to the proposed development; and
 - (v) reasonable in all other respects.
- 4.4 The Circular also provides guidance on provision for subsequent maintenance of facilities and on pooling developer contributions from planning obligations in cases where individual developments will have some impact but not sufficient to justify the need for a discrete piece of infrastructure. It also encourages local authorities to use formulae and standard charges as part of their framework for negotiating and securing planning obligations. They can help speed up negotiations, and ensure predictability, by indicating the likely size and type of some contributions in advance.
- 4.5 In addition to Circular 5/05, guidance on the use of planning obligations in relation to specific aspects of development has been provided in Government Planning Policy Statements

(PPSs) and Planning Policy Guidance Notes (PPGs).

- 4.6 At a local level, the emerging Herefordshire Unitary Development Plan Revised Deposit (UDP) strategic policy S2 (criterion 9) on Development Requirements and development criteria policy DR5 on Planning Obligations set out the circumstances where obligations will be used and the benefits that will be sought in furtherance of the Plan's strategy. A Planning Inspector considered Policy S2 (criterion 9) and policy DR5 as set out in the Revised Deposit, as well as objections to them, at the UDP Public Inquiry in Spring 2005, but recommends no changes to their wording in his report of March 2006. The latter document can be viewed on the Council's web site.

DR5 Planning obligations

To further the strategy of the Plan planning obligations will be sought to achieve community, transport and environmental benefits where these benefits are reasonable, necessary, relevant, and directly, fairly and reasonably related to the proposed development. The circumstances in which such benefits will be sought will be identified in relevant Plan policies and may be further detailed in supplementary planning guidance.

- 4.7 Policy DR5 is supported by Supplementary Planning Guidance (SPG) on Affordable Housing (2004) and by requirements in the Local Transport Plan 2 (2005). Basic systems are currently used by the Council for collecting contributions from planning obligations for affordable housing, education, transport improvements and open space provision. An SPD on Planning Obligations will support policies S2 and DR5 of the emerging UDP (due to be adopted in March 2007).

5 Council Priorities

- 5.1 The government suggests a transparent process for developer contributions from planning obligations based on achieving the policy priorities for a particular area. As part of the information gathering stage for the production of an SPD on Planning Obligations (which has included a review of policies and practice in other local authorities, a consideration of relevant government guidance in the form of Circular 5/05, and an appraisal of its own policies and current processes) a number of areas where planning obligations might be appropriate have been identified. These include:

- Accessibility, Transport and Movement
- Affordable Housing
- Community Facilities
- Community Safety
- Economic development, Training and Employment
- Education Facilities
- Leisure Facilities and Open Space
- Safeguarding/Enhancing the Built Environment
- Safeguarding/Enhancing the Natural Environment
- Town Centres

5.2 It is recognised that there is, as yet, no formal mechanism for evaluating or prioritising these areas, although the Community Strategy (June 2006) highlights key outcomes for the County of Herefordshire. Those that are most relevant to the production of an SPD on Planning Obligations are:

- more and better paid employment;
- more adaptable and higher skilled workforce;
- reduced traffic congestion through access to better integrated transport provision;
- reduced health inequalities and promotion of healthy lifestyles;
- children and young people have healthy lifestyles and engage in positive behaviour;
- reduced levels of, and fear of, crime, drugs and anti-social behaviour;
- fewer accidents;
- cleaner, greener communities; and
- people are active in their communities and fewer are disadvantaged.

6. Developing the Options

6.1 This section describes options developed from analyses of the existing situation at the Council as well as plans and proposals used by other authorities, highlighting their key features, advantages and disadvantages. Each option is illustrated by an example with references to websites where further information can be obtained.

6.2 Option 1 – “No SPD approach”

Key Features

This option is generally characterised by ‘ad hoc’ negotiations on a case-by-case basis on what is necessary to overcome a specific obstacle to development or secure compliance with an adopted national or local planning policy. Although policy and/or established practice may be developed in one or two areas e.g. affordable housing, it is not comprehensive and there is no clear process for identifying other service requirements or prioritising the contributions sought. This can often lead to protracted negotiations and lack of clarity for all parties concerned.

6.3 Advantages and Disadvantages.

It can be argued that this option allows the authority to concentrate on its key priorities at the time, and channel a greater proportion of contributions received into these areas. Officers may build up considerable expertise in negotiations, and there is clearly compliance with the tests for planning obligations set out in government guidance. On the other hand, the process is often time-consuming and may have a detrimental effect on development control performance. The approach places considerable responsibility on planning case officers and policy officers in other services to recognise opportunities as and when they arise, and have sufficient expertise to negotiate without the benefit of comprehensive policy guidance and established procedures. The absence of comprehensive policy guidance means the process is not fully transparent, resulting in uncertainty for developers and the public. It is also likely that the limited range of contributions sought leads to the full potential of developer contributions from planning obligations not being met.

Example: Herefordshire Council (Current Situation)

The Council's current approach reflects many of the characteristics of Option 1. Although detailed policy has been developed for affordable housing and systems are in place for collecting contributions, guidance in other areas is less well developed or absent. Discussions on planning obligations have identified a number of other areas where developer contributions might be appropriate, but there is as yet no formal mechanism for evaluating or prioritising them.

6.4 Option 2 – 'Qualitative Guidance'

Key Features

This option is characterised by a comprehensive framework of guidance, often in the form of a portfolio of documents, specifying the type of contributions that will be sought in respect of particular forms and sizes of development. However, there is generally a lack of information on how contributions will be calculated or the use of standard formulae, and often a lack of guidance on how particular needs will be prioritised. As with Option 1, this can lead to lengthy negotiations and uncertain outcomes.

6.5 Advantages and Disadvantages.

Option 2 can facilitate inter-departmental working in the process of identifying and justifying the types of contributions sought and the development of formal channels of communication to ensure that a wide range of community needs are considered in seeking developer contributions from planning obligations. The testing of Supplementary Planning Guidance (SPG) or SPDs through public consultation can also contribute to community involvement and test compliance with government and regional guidance. However, as with Option 1, the process of negotiation is often time-consuming and may have a detrimental effect on development control performance. The lack of quantitative information on contributions sought results in uncertainty for developers and the public and a lack of transparency. Circular 5/05 encourages local authorities to use formulae and standard charges as part of their framework for negotiating and securing planning obligations.

Example: London Borough of Hillingdon

The Council has published SPG (currently being updated) in the form of a portfolio of papers on specific issues brought together under an umbrella document setting out the Council's overall strategy for planning obligations. Of the areas covered by the SPG, only education, health facilities and particular elements of employment training include figures for contributions likely to be sought. (Information can be viewed at www.hillingon.gov.uk following links to Environment & Planning, Planning, and Planning Publications).

6.6 Option 3 – 'Quantitative Guidance'

Key Features

This approach involves comprehensive guidance not only on the type of contributions that will be sought but also on the size of contribution to be sought. SPG/SPDs provide precise

information on the particular elements of infrastructure and community facilities for which contributions will be sought in respect of particular forms and sizes of development, and how contributions will be calculated (generally following a formula). The information can be conveniently set out in the form of a matrix.

6.7 Advantages and Disadvantages.

Like Option 2, Option 3 can facilitate inter-departmental working and the development of formal channels of communication to ensure that a wide range of community needs is considered in seeking developer contributions from planning obligations. The testing of SPG/SPDs through public consultation can contribute to community involvement and test compliance with Government and Regional guidance. Once the guidance is adopted, contributions can be easily calculated, reducing the need for extensive negotiations and contributing to improved development control performance. There is greater certainty for developers on what contributions will be sought, and it becomes relatively easy to pool contributions for specific projects. However, the approach requires a considerable amount of work to identify, justify and cost the infrastructure requirements.

Example: Wycombe District Council

The Council has published Draft SPD in the form of a single document in three parts addressing context, strategy and then separate “topic papers” on different areas where developer contributions will be sought. The approach lists the infrastructure and facilities which will normally be sought and their relationship to the type, scale and impact of the development. Formulae for off-site contributions are detailed for all types of proposal with related thresholds. Information can be found at www.wycombe.gov.uk and following the links to consultation for the new LDF via Imagine the Future3.

6.8 Option 4 – ‘Tariff Approach’

Key Features

This scenario is being pioneered in the Growth Areas identified in the government’s Communities Plan. In essence, it involves identification of all the elements of infrastructure expected to be required in an area, and costing those elements that are attributable to growth in housing and employment. After discounting those elements, which are funded from other sources, the remaining costs are divided by the number of new houses (and/or commercial premises) to be built in the plan period. The resultant sum is then applied to each new unit built.

6.9 Advantages and Disadvantages.

The comprehensive nature of the approach ensures that a wide range of community needs and infrastructure requirements are considered in seeking developer contributions, and partner organisations are involved in the process. In some cases contributions can overcome a particular constraint and allow development to proceed earlier than would otherwise be possible. Once the guidance is adopted, contributions can be easily calculated, reducing the need for extensive negotiations and contributing to improved development control performance. There is greater certainty for developers from the outset and contributions can be earmarked for specific projects. However, the approach requires a considerable amount of work to identify, justify and cost the infrastructure requirements reflecting the range of

infrastructure to be provided for, and the need to involve service providers outside of local government. Furthermore, the approach is at an early stage of development, and is also questionable whether it is appropriate to areas outside defined 'Growth Areas.'

Example: Milton Keynes Growth Area

The Milton Keynes Partnership – the delivery vehicle for housing growth in the city, has developed the approach. It applies specifically to the designated MK Urban Development Area; although it is possible it may be rolled out to a wider area in the future. Agreement has been reached with developers to pay a charge of £18-29k per dwelling. Under the system, developers would not only pay the tariff, but also provide land for local requirements such as schools and health centres. They would have to agree to make 30% of all homes in their schemes affordable. In return, developers and landowners would be guaranteed that no further contributions would be expected of them, either through traditional s106 or by planning gain supplement. Half the money raised by the tariff would be used to fund local infrastructure needs, whilst half would be spent on strategic infrastructure. The government has agreed to initially fund the infrastructure and recoup the expenditure through tariff contributions.

7. Developing the Process

- 7.1 Any strategy for seeking developer contributions needs to be complemented by internal working practices that ensure that the adopted approach does not impose demands on the authority, which outweigh the benefits derived. This means developing a clear, easily understood process that helps rather than hinders the authority's ability to meet national and local targets for the handling of planning applications. Circular 5/05 specifically states:

"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."

- 7.2 The government intends to publish guidance on good practice later this year. However, the review of other local authorities has already identified some procedures, which are regarded as good practice, many of which are endorsed and commended in the Circular. These include developing Codes of Practice, Standard Agreements and systems for monitoring the receipt and spending of contributions from planning obligations.

7.3 Codes of Practice

Many local authorities have published comprehensive guidance notes for developers, explaining the Council's strategy for seeking contributions and how their processes operate, in order to make clear the level of service a developer can expect and increase public confidence in the planning obligations system. Explanation of the process can be assisted by diagrams, as for example in Westminster City Council's SPG on Planning Obligations (www.westminster.gov.uk).

7.4 Standard Agreements / Undertakings

Circular 05/05 encourages local planning authorities to use and publish standard heads of terms, agreements/undertakings or model clauses wherever possible in the interest of speeding up the determination of planning applications. Westminster City Council has published a standard agreement on its website (see website information above).

7.5 Monitoring of Agreements

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. 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. It is increasingly common for authorities to employ an officer with specific responsibility for monitoring agreements.

8.0 Summary

As part of an initial consultation on the production of an SPD on Planning Obligations, this document suggests some options and ways forward for the preparation of a Draft. We would like your views on any of the above – please see the “Consultation” section at the beginning of this document.