



The No Pain Guide To Gain:

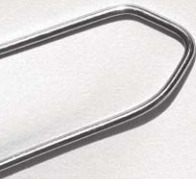
A community guide to
planning obligations



Foreword

The town and country environment in which we live our lives and the facilities and services that we all use are not just a matter for private agreement between professional planners and developers. As customers we must be directly involved as equal partners in the agreements that are made and the decisions that are taken.

We do not begin as an equal partner. We are volunteers, not full-time or paid professionals. We have other lives to lead. The Council seems to have its own shopping list of pet schemes. We are presented with gobbledegook language. We seek effective involvement only to get just more meetings. When we are involved it is often too late to make a difference.



To be equal and effective partners we have to be ahead of the game: have easy access to the right information; understand the language; be clear about our priorities and plans for our own neighbourhood; have the confidence to react in a quick and professional way; and know where to find practical help.

This guide has all the ingredients to make us effective partners. It is essential reading and a vital reference for communities wanting to be back at the heart of the town planning system.

David Farnsworth

Co-founder of the Bristol Neighbourhood Planning Network

The terms used in this guide

Planning obligations go by a number of names – including planning gain, developer contributions and Section 106 agreements. Throughout this guide we use the term ‘planning obligations’ to refer to the package of measures promised by a developer. We use the term ‘Section 106 agreement’ specifically to refer to the contract signed by the developer and council to secure these commitments.

We have tried to keep this guide jargon-free, and to explain any unusual terms in the text. For further explanation of planning terms we recommend the ‘Planning jargon buster’ by South West Planning Aid at www.planningaid.rtpi.org.uk

A planning obligations route map



Pre-application (page 31)

Application (page 35)

Decision (page 44)

Key

- Standard planning application process
- Additional stages in the process that might happen, depending on the planning application
- What happens with planning obligations at each stage of the process
- Section 106 agreement signed
- Section 106 agreement delivered

Implementation (page 46)

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You can fold out the back cover of this guide to view a 'planning obligations route map' explaining what happens with planning obligations at each stage of a planning application.

Introduction

Neighbourhood rumours, speculation in the local press, a flurry of hard hat wearing visitors, planning notices on lamp-posts, a letter from the council – all signs that a new development is in the offing. If you're not already on the case, its time for action.

What impacts will the proposed development have on your local area? If the impacts are unacceptable, then you may want to oppose the development. On the other hand, if you feel that the development is essentially acceptable as long as certain steps are taken, then you may be able to use planning obligations to ensure the impacts of the development on the community are addressed. There is no reason why negotiations to maximise benefits to the community through planning obligations, should the development proceed, cannot run in parallel with an opposition campaign.

Whilst there is no strict legal requirement for the council or developer to consult the community on planning obligations – or to involve the community in planning obligations negotiations – local communities can and do shape planning obligations using a wide range of tactics. And there is some support for this from Government and from the planning profession. This guide aims to show you how others have done it, so that you can get started on making planning obligations deliver for your community.

Bankside Open Spaces Trust is a charity working with local communities to improve parks and open spaces in Southwark, London. There are few parks, and those that exist need support. A development has been proposed that would have a negative impact on an adjacent garden managed by the Trust. The Trust is working with other groups to oppose the development, but at the same time is arguing that if the development does go ahead, planning obligations should be directed to protect and maintain the open space.



Planning obligations on the move

The Government is paving the way for the introduction of the Community Infrastructure Levy (CIL) as part of the Planning Bill 2008. It is planned that the Community Infrastructure Levy will partly replace planning obligations, although planning obligations will still be used to negotiate some contributions from the developer, such as affordable housing. It is likely that the first councils will introduce the Community Infrastructure Levy around the end of 2009, with others bringing it in over the following year or so.

So how will the Community Infrastructure Levy work? The council will put together a 'shopping list' of all the 'community infrastructure' needed in the area. Community infrastructure is everything that is needed to make a community function well – from roads to libraries. Developers will be required to contribute towards a proportion of these costs, depending on the size of the development proposed. It is not yet clear what provisions there will be for community involvement in this process. The key challenge will be to ensure that communities can influence what goes into the community infrastructure 'shopping list' so that these items are then financed through the Community Infrastructure Levy. One likely route for community involvement is through Local Strategic Partnerships – key players in the production of each council's Sustainable Community Strategy. See page 30 for more on getting involved with your Local Strategic Partnership and Sustainable Community Strategy.

A manifesto for community involvement in planning obligations

This is not a manifesto based on wishful thinking, it is a practical manifesto. All of the approaches below have been used by communities in working with councils or developers. You can use this manifesto as a shopping list of options for how you want to change the way that communities are involved in planning obligations locally.

Not all of these options will work everywhere, but if every council put in place just a couple there would be a huge increase in real community benefits from planning obligations.

Councils and developers need to recognise the community as an integral part of the planning obligations process, not an optional extra. Where this has been taken on board it has delivered wins on all sides. Developers have secured planning permission more quickly, reduced their legal costs for negotiating planning obligations and slashed development timetables, new and existing communities have secured the facilities, services and resources that make the community 'tick' and councils have delivered on their performance targets.

- Councils should work with communities to identify priorities for planning obligations. This needs to happen on a strategic, rather than a case by case basis. Community priorities should be known up front so that they feed into the consideration of every planning application. This might be through

securing community input into neighbourhood plans (e.g. St Pauls Unlimited, Bristol), or through creating community project banks (e.g. London Borough of Southwark), so that the priorities that emerge for planning obligations reflect community needs.

In the St Pauls area of Bristol, developers discuss planning proposals with community organisation St Pauls Unlimited. This allows St Pauls Unlimited to set out the community's planning obligations priorities so that developers can take them into account in their planning applications. Work with the community to identify planning obligations priorities is set out in the area's neighbourhood plan.

- Councils should work with the community to develop a formal mechanism for involving the community in pre-application discussions regarding planning obligations. This should include an opportunity to comment on the impacts of a proposed development, and the measures required to minimise them (e.g. Ealing Community Network, London, Neighbourhood Planning Network, Bristol).

Harborough District Council has a formal process for consulting the community on how planning obligations contributions will be spent. Once the council has secured contributions for e.g. open space maintenance or the provision of youth facilities, local people are invited to work with the council to identify priorities for spending this money.

Ealing Community Network has developed a scheme whereby the local community gets an opportunity to input into the planning obligations process at a very early stage. Developers will post initial briefs for new developments on a dedicated website and a group of people, in whose area the development is proposed, will be alerted. This group, consisting of, for example, members of local residents associations will have a range of expertise and experience, including someone with knowledge about health facilities. The groups will have an opportunity to meet and discuss the development: to consider whether it should go ahead and to explore what social and environmental impacts will follow should it be built. The results are then fed back into the planning process, informing the decisions taken by the planning authority.

- Councils should require developers to pay for community engagement in the planning obligations process prior to the submission of a planning application.
- Communities should be supported to create credible community umbrella organisations that can represent community needs when working with developers.
- Communities should, where possible, have access to their own, independent consultants such as planning consultants, architects and commercial valuers, to represent them in negotiations with developers (e.g. Spitalfields 1989, Elephant and Castle 2001, London). Professionals experienced in working with communities, councils and developers are required to support communities to engage in negotiations.
- Developers should be transparent in their dealings with communities, for example on how much they can contribute to community needs.
- Councils should set out a mechanism, as part of the Local Development Framework, to involve local people in monitoring and delivering planning obligations once they have been agreed (e.g. Harborough District Council).
- Communities should be supported to develop the capacity to manage community assets arising from the planning obligations process, for instance through a community development trust.

Frequently asked questions

In this section

- What are planning obligations?
- Who signs up to planning obligations?
- What can planning obligations be used for?
- Who or what regulates how planning obligations are used?
- How long have planning obligations been around?
- When does a development attract planning obligations?
- When doesn't a development attract planning obligations?
- How much money is available through planning obligations?
- Who gets the money from planning obligations?
- Won't developers just pass on the costs of planning obligations as higher house prices or higher office rents?
- What gets funded through planning obligations?
- When is money from planning obligations available?
- Can planning obligations fund the running costs of community facilities?
- Are there other ways to control what a developer contributes?
- Can developers avoid planning obligations?
- Can developers get out of planning obligations?
- What if the developer sells the site?
- What if a developer doesn't deliver?
- What if the council doesn't deliver?

What are planning obligations?

A planning obligation is a legal agreement whereby a developer will mitigate, or compensate for, the harmful impacts of a new development.

Development delivers the homes, schools, shops, transport facilities and employment places that people need. But, development has the potential to create negative pressures on the community and the environment - more traffic, more congestion, more pollution, more disturbance, the loss of facilities and amenities, or rising land values and rents squeezing out those who do not own land or buildings, or cannot afford to stay. Planning obligations are there to enable development to happen, but to ensure that any harm that results is removed or reduced to an acceptable level. In particular, they enable the provision of the infrastructure needed to support development, such as roads, public transport, open space, schools, health facilities and affordable housing.

Who signs up to planning obligations?

When a developer submits a planning application, the council assesses the actions required to minimise the impacts of the proposed development and negotiates with the developer to pay for all or part of this work. Planning obligations are agreed before work on a development starts, and are set out in a legally binding contract, known as the Section 106 agreement, between the council and the developer.

What can planning obligations be used for?

Councils can use planning obligations to, for example:

- **ensure that a development is in line with council policies** e.g. by requiring a proportion of affordable housing;
- **mitigate** the impacts of a development e.g. by contributing to the extension of a local school to provide for families moving into a new development; or
- **compensate** for loss or damage caused by a development e.g. by replacing wildlife habitat or open space which is built on

Planning obligations can:

- restrict how land is developed or used
- require a developer to take certain actions
- require a developer to make payments to the council, or another body, to provide facilities or services

When a council considers whether a planning obligation is appropriate, it has to apply five 'tests', which are set out in legislation and government policy:

1. Planning obligations have to be directly related to the development. Most councils interpret this as meaning that planning obligation monies have to be spent on or near the development. Others also include items that residents of the new development will use, such as leisure centres or parks.
2. The scale of obligations needs to be appropriate to the proposed development. Small developments will contribute less in planning obligations than larger developments. While the developer of one new shop might be required

to contribute towards a new cycle path, the developer of a new shopping complex could be asked to pay for a whole transport network to enable people to shop without using their cars.

3. Planning obligations should be necessary to bring the development in line with the council's policies – i.e. the development without the planning obligations would have to be refused.
4. Planning obligations cannot cover issues which are not dealt with through the planning process. For instance, replacing the boiler in the local vicarage is not relevant to the planning process – so could not be funded through planning obligations.
5. Planning obligations have to be reasonable. For instance, they cannot be used to provide facilities at a private tennis club where only selected members will benefit. It is for the developer and council, and ultimately the courts, to negotiate what is deemed to be 'reasonable'.

Who or what regulates how planning obligations are used?

There are legal and policy restrictions on the use of planning obligations. Legal restrictions arise from courts considering planning obligations and deciding that in order to be legal they have to comply with certain criteria. Policy restrictions are set out by the government (e.g. in Circular 05/05: Planning obligations) for councils and developers to follow. These are then further interpreted and fine tuned by councils.

How long have planning obligations been around?

Planning obligations are not a new idea. They were originally introduced in the 1930s. But, by the 1980s many people had become sceptical about planning obligations – which had become seen as a way for the developer to bribe the council. So, planning obligations were overhauled and clearer guidance given on their use.

The use of planning obligations has increased significantly during the last 10 years. Whereas obligations used to focus mainly on costs such as access roads to new development, they are now used to secure a much wider range of benefits, such as affordable housing. Over time, councils have set precedents for securing more, and different planning obligations. The way that the five 'tests' described above are interpreted has been challenged and broadened.

When does a development attract planning obligations?

Theoretically, developments of any size can attract planning obligations. In practice, planning obligations are usually restricted to larger developments. Many councils have policies that impose planning obligations on developments over a certain size - for example, requiring residential developments of 15 or more homes to include 20% or 30% affordable housing.

Planning obligations are not restricted to new developments. An extension to an existing building could attract planning obligations.

When doesn't a development attract planning obligations?

Some councils don't ask for planning obligations on small sites. Others don't ask for obligations on developments on council owned land; the logic being that asking for planning obligations will reduce the value of the land the council is selling, cancelling out any financial advantage to the council.

Councils may not seek planning obligations if the developer will be absorbing abnormally high costs - such as treating contaminated land before development can start. Equally, councils may choose to 'reward' a developer who takes on higher than usual risks, such as being the first developer to build in a regeneration area, by not levying planning obligations.

How much money is available through planning obligations?

Not all obligations bring in money. Some get the developer to provide benefits in-kind (e.g. open space on the development site). Where money is involved planning obligations are arrived at in two ways. Some councils have a list of standard charges setting out, for example, the contribution required per house developed to e.g. education or transport. For items where the council has no standard charges, the council negotiates with the developer to agree what will be contributed.

In 2004, councils agreed about £1.9 billion in planning obligations – £1.2 billion for affordable housing and £700 million for other types of obligations (Valuing planning

obligations in England: Final report, Communities and Local Government, May 2006). Each agreement is made up of a list of different obligations, with the average amount per obligation varying from £107,776 per obligation in London, to £47,000 per obligation in the north of England. The size of obligations can also vary within a council area. In one example, a council secured contributions from different developers ranging from £179 to £749 per bedroom towards education facilities.

The size of obligations depends on the value of the land being developed, the cost of the development, the council's policies on planning obligations and their negotiation process with the developer.

Typically, planning obligations account for about 5% of the total cost of a development.

Who gets the money from planning obligations?

Planning obligations don't necessarily result in money changing hands. If a developer is required to build, for instance, a cycle path, they will deliver it as part of the development. Many obligations do require a developer to contribute money, and these payments are usually made to the council. Where the developer and council are confident that the money will be well spent, payments are made to other organisations, e.g. to a car club operator, or to a community foundation to make small grants to community projects.

Won't developers just pass on the costs of planning obligations as higher house prices or higher office rents?

Not usually. In most cases – where developers hold land on an 'option', the operation of the land market means that the burden of planning obligations is effectively passed 'back' to the landowner; developers pay less for the site and so the landowner receives a lower price for their land. In some cases, however, planning obligations may mean property buyers pay more or developers' profits are cut. Usually this happens where land is in very short supply or when the developer has owned the site outright for some time (since before planning obligations were first thought of). Community groups need to be aware of this when asking for bigger planning obligations.

What gets funded through planning obligations?

Each council has policies, standards and guidance relating to planning obligations which determine what contributions are sought. There is no definitive list of what can be secured through planning obligations as every development, and every community is different.

The most common planning obligations require contributions to:

- affordable housing
- education
- transport and travel
- community and leisure facilities
- open space and the environment
- health facilities
- employment

The table below shows the average value of planning obligations per development in 2004 (Valuing planning obligations in England: Final report, Communities and Local Government, May 2006).

Type of obligation	Average value per obligation
Affordable housing	£250,000
Education	£118,000
Transport and travel	£83,000
Community and leisure	£59,000
Open space and environment	£25,000

Affordable housing

Councils often require a percentage of homes on developments over a certain size to be affordable to those on low incomes. The developer will usually build the houses in partnership with a housing association that will manage them long term (with the developer providing the land on which the housing is built). Alternatively, the developer will pay a sum of money to the council to invest in affordable housing. Affordable housing might be provided at a subsidised rent or for shared ownership where residents buy part of the property and pay rent on the rest. Shared ownership deals often target 'key workers' such as teachers, nurses or the police force.

Education

Councils will usually apply a standard formula to assess the likely increase in the child population as the result of a new development. Where a development will bring more children to an area, the council might seek a contribution to improving existing education facilities, or, if these are full, require an extension or new school to be built. Contributions to non-school facilities and services such as childcare or play schemes are sometimes sought.

Other than on very large developments which include a new school, it is rare for a developer actually to build education facilities. In the majority of cases they will make a payment to the council for the work.

Transport and travel

Planning obligations are used to reduce the impact of increased traffic in an area e.g. by providing roads, improved road junctions, traffic light systems, CCTV, park and ride or green travel plans. Alternatively, the council can require the developer to take steps to reduce the number of new car journeys the development will bring e.g. by reducing the number of car parking spaces or making the development car free, or by providing a car club, cycle parking or dedicated cycling and walking routes. New or extended bus routes to serve the development or community transport schemes for the elderly or disabled have also been funded through planning obligations.

Community and leisure facilities

Planning obligations are used to pay for building and managing new or existing community buildings and facilities. This might include providing disabled access that exceeds Building Regulations standards, conserving historic buildings, undertaking archaeological investigations, improving facilities for tourists or providing public art.

If a community project will lose its facilities due to redevelopment, planning obligations could pay for temporary accommodation during the development, as well as long term accommodation once the development is completed.

Some councils have used planning obligations to set up a community development trust or community land trust to co-ordinate the

delivery and management of the community facilities funded through planning obligations.

Open space and the environment

Planning obligations are secured for creating, improving and managing new and existing parks, play areas, recreation facilities or nature reserves and improving the design of public spaces or providing new street furniture. Some councils have a policy where developments over a certain size contribute '1% for art' – to pay for public art.

Developers have paid for measures to reduce noise or monitor air quality during construction and once the development is occupied.

Councils also use planning obligations to require the developer to increase the environmental performance of buildings – or to provide environmental facilities such as recycling.

Health facilities

These include health centres, dental and GP surgeries, and consulting rooms in community buildings. Health Authority approval is required for new, or extensions to existing, GP surgeries. Developers involved in the provision of health facilities will need to be involved in discussions with the Health Authority.

Employment

Support for employment might include the provision of new business units, business support services and training or subsidised rents for local businesses. On larger developments, developers have funded

schemes to train and employ local people in the construction of the development, or made a commitment to employ a proportion of the labour force from the local area.

Other uses of planning obligations

This is certainly not the limit to how planning obligations are used. Councils might use planning obligations to achieve anything from ensuring that a house built in a rural area can only be occupied by an agricultural worker to securing the funds for major flood prevention schemes. Some councils ask developers to contribute towards the cost of employing a council officer to ensure developers deliver on their planning obligations.

When is money from planning obligations available?

A planning application has to be implemented for planning obligations to be triggered. Just because a developer has signed a Section 106 agreement which, for example, provides £100,000 for open space, does not mean that the council receives that money as soon as permission is granted.

As planning obligations payments are linked to key stages in a development, such as commencement or first occupations, if the development does not start for some years, then neither will the delivery of planning obligations.

Large developments are often developed in phases. Different elements of the planning obligation may be attached to different phases of the development, and therefore be delivered over a number of years.

The York Natural Environment Trust (YNET) was set up in 1988 by a group of concerned individuals, worried about threats to green areas in York. They have monthly meetings with planning officers to comment on applications affecting the environment, as well as commenting on strategic planning documents.

In 1989 the Trust became involved with a piece of land following a survey that highlighted it as a valuable amenity and wildlife resource.

In 1991 they became involved in a Planning Inquiry into a proposal by Persimmon Homes to develop the land. The Planning Inspector eventually turned down the application. Further negotiations between the developers, the council and other interested parties, lead to an agreement allowing some of the site to be developed. But planning obligations required that the remainder be turned into a nature reserve, and provided a sum of money to be used to manage it.

The agreement was signed in 1993 but it was not until late 1997, when the site had moved in to the control of the City of York Council, that work on the Clifton Backies Nature Park actually began. The first public open day followed in 2001.

If the developer does not start work on the development, the planning consent usually expires after two or three years. The Section 106 agreement will then also expire, and the council will not receive the money.

Can planning obligations fund the running costs of community facilities?

There are too many tales of planning obligations gone wrong – new community centres with no money to equip or run them, offices built for local voluntary sector organisations, but then offered at unaffordable rents, community spaces that can only be accessed through private offices, projects that don't happen because the contribution secured was too small.....

For planning obligations to really work, the full costs of new facilities or services have to be factored in – and secured through planning obligations or other funding sources.

In general, funding for on-going management and maintenance costs is something that developers seek to avoid, preferring one-off payments. However, payments can be phased over a period of time, and can be for maintenance purposes or to help community facilities become self financing. Government guidance (Circular 05/05: Planning obligations) recommends that where a developer delivers a facility intended for wide public use (rather than being just for people from the new development), maintenance costs should normally be borne by the body that will own the facility, not by the developer. There are

ways around this however. Money can be given to endow a community foundation so that it can continue to make grants towards, for example, summer play schemes rather than getting a one-off sum from the developer for a play scheme for one summer only.

The Quartet Community Foundation established the Community at Heart Endowment Fund as a way of creating a fund whose income would provide support for charitable activities in the area, on an on-going basis.

The first contribution was £100,000 from Bristol City Council, from planning obligations from the Temple Quay North development. The fund, and the income it earns can be used only in the Community at Heart neighbourhood. A further £100,000 is already on stream. So there is an income for community projects without an on-going commitment on the developer.

The scheme is part of a resident-led sustainable regeneration strategy that aims to ensure that community projects will be able to continue without being entirely reliant on grant or government funding.

David Ralph, Chief Executive of Community at Heart, has a bigger vision for funding. “What I would like to see is a contribution taken from every Section 106 agreement the council signs and put it into a pot, like ours, for community projects.”

Are there other ways to control what a developer contributes?

Planning applications should comply with the council's plans and policies. These might include innovative policies such as requiring 10% of the energy for the development to come from on-site renewable sources.

Secondly, councils can use planning conditions to control or direct the manner in which a development is carried out. Conditions can be imposed by the council when planning permission is granted. Conditions tend to cover standard issues that will be common to most developments (and most local authorities will have a list of standard conditions). Unlike planning obligations, no money is transferred in relation to planning conditions.

Alongside planning obligations, councils have the powers to secure payments under non-planning legislation such as Section 278 of the Highways Act 1980 for works to the public highway.

Can developers avoid planning obligations?

Developers are aware of the planning requirements – including planning obligations – that are set out in a council's planning policies. It is therefore hard for the developer to insist that they should not comply with council policies and still gain planning permission.

Can developers get out of planning obligations?

It is relatively difficult for a developer to get out of planning obligations because they are entered into voluntarily. It is therefore hard for the developer to argue that they didn't agree to the planning obligations or that they are unreasonable.

Planning obligations can be altered, or removed but only with the agreement of the council and the developer against which they are enforceable. Altering a Section 106 agreement is a lengthy, complex legal process requiring a 'deed of amendment'. For this reason, it rarely happens.

If a new planning application on a site under development is submitted this has no impact on the existing Section 106 agreement unless a new planning permission is granted with an associated Section 106 that replaces the original agreement.

If a development is abandoned (e.g. if the developer goes bust), planning obligations are unlikely to be delivered.

Who can help?

What if the developer sells the site?

Planning obligations are said to 'run with the land'. If a developer sells land with planning permission with planning obligations attached, the new owner takes on the planning obligations and the responsibility for delivering them.

What if a developer doesn't deliver?

Local people can be effective monitors of planning obligations. If delivery of obligations by the developer, the council or other body slips against the timetable set out in the Section 106 agreement, you can find out why, and what is being done to resolve the delay.

Government guidance (Circular 05/05: Planning obligations) recommends that councils ensure that information on the implementation of planning obligations is readily available to the public. In practice, this is rarely the case.

If provision from a developer fails to materialise at the agreed time, then you can report this to the council to ensure that they are aware of any alleged breach. If the developer continues to take no action following a letter from the council, the council can take the developer to court to try to obtain delivery of the planning obligations commitment. If the developer is in breach of a requirement to carry out works required under a Section 106 agreement, the council can undertake the works itself and recover reasonable expenses. In practice, councils do not like doing this as it is expensive and the outcome uncertain. In general, the council will seek to

reach a negotiated settlement with the developer.

The monitoring of the delivery of planning obligations by councils can be limited. Overstretched planning departments often lack the manpower to effectively monitor and enforce planning obligations, though some councils employ dedicated planning obligations officers whose role includes enforcement. Without effective enforcement, agreed planning obligations may not be delivered.

What if the council doesn't deliver?

Slow delivery of planning obligations can be down to the council – particularly in cases where planning obligations require the developer to deliver works on the development site. The council will request the works, then the developer will draw up plans for council approval. Inevitably there will be negotiation as the council seeks to secure a higher quality of works than the developer proposes – and feedback may be required from a number of council departments. This process can take some time and delays can result.

If you believe the failure is on the part of the council, you should first write a letter of official complaint to the council. If, after they have had a reasonable opportunity to deal with the complaint, the council either refuses to proceed, or gives an unsatisfactory response, you can contact the Local Government Ombudsman.

In the local community:

- neighbours
- local community organisations e.g. 'Friends of ...' groups, neighbourhood planning groups, the local Civic Society
- local branches of e.g. Friends of the Earth, CPRE

For professional help:

- local people with technical skills e.g. architects, planning consultants
- Planning Aid
- Environmental Law Foundation
- organisations which could help deliver planning obligations e.g. wildlife trusts, local cycling groups
- other agencies that are routinely consulted on planning applications e.g. the Highways Authority, Environment Agency, Natural England

At the council:

- officers in the planning policy section who draft planning obligations policies
- the case officer for the relevant planning application
- the planning officer who deals with planning obligations
- your ward councillors
- officers for the department that deals with your planning obligations interest e.g. parks, education
- officers in the community development or regeneration department who may be able to support you

The developer:

- any existing contacts you have with the developer e.g. through local business forums, friends of friends
- the developer's community relations or regeneration consultation team (if they have one)

Providing a united front

One of the reasons that developers and councils can be reluctant to engage with the community is that they struggle to deal with the number of groups, and sometimes conflicting range of views, that come their way. If you can make a co-ordinated approach to the council or developer you make their life easier and increase the chances that they will work with you.

Ultimately, the best approach for communities to maximise their influence on major developments is to form a credible umbrella organisation to represent community interests. In some cases there might be an existing organisation that can take this role. In others, you may need to form a specific alliance of community organisations to represent community views. If you are planning to get involved in, for instance a large scale regeneration scheme, then this organisation might need to be formalised to the point of having paid staff, and its own group of consultants representing its views alongside those of the council and developer.

During redevelopment of the Elephant and Castle, an umbrella group was set up to represent 60 (later growing to 250) community groups. The umbrella group was involved from the outset, inputting into the development brief for the regeneration developed by the London Borough of Southwark. The group also sat in on the

interviews of the development consortia competing to be the preferred developer for the scheme. A credible umbrella organisation, represented by its own consultancy team and supported by community planning professionals with experience of working with developers, consultants, the council and the community was key to this level of access to the planning process.

In the local community

Your neighbours

If you have concerns about a proposed development, your neighbours may well have too. Find out what they think the impacts of the development will be and what they think could help to minimise these impacts. Encourage them to get involved in getting the right planning obligations linked to the development.

Local community organisations

A whole range of community organisations get involved with planning issues. These might be neighbourhood planning groups which focus specifically on planning issues, tenants and residents associations, local environment or historic buildings groups, or local branches of national organisations such as Friends of the Earth or CPRE (Campaign for the Protection of Rural England).

The council may bring together regular groups or forums to discuss and input into

local issues. Due to their council links, these groups are more likely to be consulted on planning applications as a matter of course.

Working as part of a group to influence planning obligations is far more powerful. Where there is strong community support or opposition for a development, the council will be more willing to engage than if the issue appears to be limited to one or two individuals.

If there isn't already a group working on planning issues locally, you can concentrate local views and energy around a new development by forming a new local group.

For professional help

A developer will be supported by a team of professionals throughout the planning and development process. This will include technical specialists such as planning consultants, architects and commercial valuers, skilled negotiators and a legal team.

To position themselves as credible players in the process, a community needs to get access to the same set of skills. A strong team would include a planner to guide you through the planning system, an architect who can think in three dimensions and comment on the impact of proposals, a commercial valuer who can give an insight into the development appraisal, and someone who knows the development process and can help you to negotiate. You might also need someone who can help you manage these professionals and what they are doing on your behalf. Not all

professionals have experience of working, and communicating, with community groups,

How can you get access to this kind of expertise? There may be local people with these skills who are interested in getting involved - ask around, ask neighbours, ask friends of friends.

There are organisations that can support community groups by providing volunteers with these skills, for example Planning Aid or the Environmental Law Foundation.

National organisations with similar interests to you may have staff that can help you - or be able to put you in touch with other community groups that can share their experience.

Other agencies that are consulted on planning applications

Although councils take the lead in negotiating planning obligations, government encourages the involvement of other public agencies with land use planning interests. There are specific organisations consulted by the council, for example the local Highways Authority, the Environment Agency or Natural England. You can write to them about your concerns and wishes.

Organisations which could help deliver planning obligations

Involving third parties can give your proposals added credibility. Are there other people who could help strengthen the proposals that you are putting forward? For instance, if you are

advocating the inclusion of a car club, contact a car club operator to get a feel for whether a car club would be viable and if they would run it. Talk to your local cycling group about upgrading cycling facilities or your local wildlife trust about enhancing or creating wildlife habitats. If you are proposing anything that will require on-going maintenance, such as a sports facility, open space or a community centre, think through how it will be managed in the long term. The cost of managing these facilities can fall to the council, who may be reluctant to take on this obligation, so try to create a plan of what needs to be done to make the facilities self financing and viable in the longer term.

At the council

Planning obligations policies

Don't just think about influencing the planning obligations associated with a particular planning application – think also about influencing the policies and plans that provide the framework for decisions on individual development proposals. Planning obligations policies will be developed by officers in the planning policy section of the council.

Planning applications

Contact the council's development control team to find out about the status of a planning application. Each planning application will be allocated a case officer, who will deal with all issues relating to the application.

Planning obligations

Some councils have a dedicated planning obligations officer whose role often involves negotiating with the developer, and ensuring obligations are delivered.

Other council departments

Building a relationship with relevant council staff e.g. the local parks officer or getting involved in bodies such as a local parks forum will give you a head start. You may influence what the council includes on its planning obligations 'shopping list' and increase the chances of being consulted on priorities for planning obligations.

Council officers in, for instance, the community development or regeneration department may have a brief to support community organisations. Ask them how they can help you.

Councillors

Local councillors are rarely directly involved in the negotiation of planning obligations. However, they can support you in putting your case to the planning officers. Note that if your local councillor sits on the planning committee, they will not be permitted to get involved in discussions with you about individual planning applications.

The developer

Communities have successfully dealt directly with the developer. You need to think of this in terms of a negotiation – doing a deal.

You need to do your homework. Visit the developer's website, to find out if they have a policy or commitment to working with the community, or if they have been involved in other developments locally (and if so, what they contributed through planning obligations).

You need to work your contacts. Do you have any links to the developer – perhaps via a local business forum, friends of friends etc.?

What is the deal you are offering? What are the advantages to the developer of working with you? Will it save them time or money? What action will you take if the developer doesn't engage with you? Perhaps delay the planning application through objections or create negative press?

Getting people on board who can represent you credibly to the developer is key. If you don't feel able to make the approach yourself, get support from, for instance, your local Planning Aid team to represent you to the developer.

Getting talking to the developer early in the process is key – particularly if you want the developer to include a community facility in the development. You need to get your ideas put forward before the developer's architects have started designing the site layout. Later on, the developer will already have spent money on site layout so will be less inclined to pay architects and other professionals to redesign the development to meet your needs.

Bankside Residents Forum in London made a direct approach to developer Land Securities. Land Securities was developing an office block and retaining the freehold of the property, so had an incentive to invest in the surrounding area to ensure that the offices remained attractive to potential tenants.

The key ingredients to success for the Forum were knowing a key representative at Land Securities through local business forum 'Better Bankside', and having Forum members able to 'speak the developer's language'. The Forum negotiated a package of contributions with the developer who then took the agreed package to the council as part of its planning obligations offer.

The package included a contribution of £50,000 for works to community space, £15,000 to pay for public consultation on open spaces, £400,000 towards street lighting, and the establishment of a community fund that will help local organisations with small grants of around £5,000.

What happens when?

Planning obligations have a long life. It is not unusual for planning obligations negotiations between the council and developer to start before the developer submits a planning application. From here, the actual delivery of the planning obligations may be many years down the road, especially for a large development.

You are the people who live and work in the area, know the patch and who will feel the benefits and impacts of new developments. However, there are few formal mechanisms for you to be involved in planning obligations, so it's down to you to create opportunities to get in on the process.

There are two main routes to doing this:

- getting involved now to influence council policy on planning obligations so that you can impact on a larger number of developments in the future
- getting involved in the planning obligations related to a specific development

There are then four main stages in the life of a planning application and its associated planning obligations:

- before the developer submits a planning application
- the period when the council is considering the planning application
- the council's decision on the planning application
- the implementation of the planning application – building the development and delivering on the planning obligations

The action that you need to take to influence planning obligations will depend on how far the planning application has progressed. The earlier you can get in on the act, the greater your chance of getting what you want.

A combination of getting people with the right skills and experience on your side, making the right contacts and getting your hands on the right information will help you to maximise your impact on planning obligations.

You can fold out the back cover of this guide to view a 'planning obligations route map' explaining what happens with planning obligations at each stage of a planning application.

What to do - and when

Now

Community involvement in planning obligations doesn't need to be related to a particular development. You can get involved in changing council policy on planning obligations at any time – and the rewards can be greater than tackling a single development. If you can get the needs of your community or group written into council policy, then they will be considered in relation to all relevant planning applications.

You can also find out if the council has any unspent planning obligations money – and whether you can influence how it is used.



Sustrans is a charity that works on practical projects to encourage people to walk, cycle and use public transport. So far they have managed to create around 10,000 miles of cycle routes throughout the UK.

Creating a network like this is not cheap, especially as ideal routes often run through development land that is far too expensive to buy for a path. So Sustrans use the planning system, and planning obligations, to get around this.

The first thing that Sustrans do is get their plans for a cycle route into the Local Development Framework. Then, when the land is developed, the council have a clear policy that allows the inclusion of a planning obligation ensuring the land is used for the cycle route.

“There is an example in Chard, Somerset,” said Rupert Crosby, Sustrans regional negotiator. “We have been wanting to link two portions of our Route 33 from Chard to Ilminster; just a short portion of 100m. Currently cyclists and walkers have to make a 1km detour around a factory. Now the factory site is being redeveloped, we have been able to take advantage of them knocking down a couple of old buildings to put the cycle route straight through, funded through planning obligations.”

This is a very long-term strategy. “There are routes that can take 20 years to complete as we just wait for a piece of land to become available,” explained Alexandra Allen from Sustrans.

Find out if the council has any unspent planning obligations money

Recent research (Cushman and Wakefield, 2008), found that £1.25 billion of planning obligations is being held, unspent, by councils. The researchers used the Freedom of Information Act to access this information from 300 councils. One sixth of the money had been held by councils for more than five years.

Most Section 106 agreements will include time limits, usually three or five years, after which the council will have to return any underspend to the developer. Especially if time is running out, the council may welcome the opportunity to ensure that the money is spent. Councils often don't put planning obligations monies into their budgets as the timescales for the money to be made available are so uncertain. This often results in money accumulating with no fixed plans for spending it.

Actions

- contact the council or your local councillor and find out if there are any unspent 'pots' of planning obligations funding for your area.
- find out from the planning obligations officer (if the council has one) or planning team who gets notified when money from planning obligations comes into the council. This might include local councillors or relevant council departments. Request that your community group is notified when planning obligations funds become available.

Find out if the council is reviewing its policies on planning obligations

When making decisions on individual planning applications the first thing a council has to do is to look at their policies and plans. Usually a council will have particular documents setting out their policies on planning obligations. It is vital that the community has an input into these documents when they are being prepared. If they don't, then when it comes to the council considering particular planning applications, many of the important decisions will already have been made.

The Local Development Framework is a group of plans and policies that determine what is developed where, and when. (Some councils may still have old style Local Plans or Unitary Development Plans, but these are gradually being replaced by Local Development Frameworks).

The Local Development Framework includes:

- the Local Development Scheme - the timetable that sets out when the council is writing or reviewing each of the documents in the Local Development Framework
- Local Development Documents -
 - Development Plan Documents, that set out the development plans and policies for the area – including those on planning obligations
 - Supplementary Planning Documents, that provide additional information and guidance to elaborate on policies and proposals in the Development Plan Documents. Some councils have a Supplementary Planning Document on planning obligations.

These documents will set out what size of developments attract planning obligations, the types of planning obligations that the council seeks, and details of any standard charges that the council makes. When councils prepare these documents they have to consult the community. So keep an eye out for when this is happening. There will usually only be a narrow window of opportunity to influence these documents but it is vitally important that you do.

Actions

- contact the council (or visit the council's website) for a copy of the Local Development Scheme. There can be a large number of documents being produced, and available for consultation. Choose the ones that are most relevant to your interests – and focus on getting your needs included in these. Then, when planning obligations are being considered, your priorities will already be part of the council's policies.
- contact the council's planning policy team and ask how your community or group can have an input into the documents you are interested in
- approach the council to be included on the list of organisations that are consulted on Development Plan Documents and Supplementary Planning Documents – if they have one
- keep an eye on the local media for stories on consultation events and take a look at the council's website to find out if any consultation events are being planned in the near future
- when there is a public consultation event on a planning obligations document make sure you take part
- lobby the council to introduce a planning obligations supplementary planning document – if they don't already have one

Many councils currently suffer with shortages of resources, meaning there is often lots of ground work and surveys that local community groups can undertake in partnership with the council. This enables local communities to provide their specialised knowledge about an area to those writing policies for it. Planning Aid for London recently trained a local historical group to survey and map historic monuments and public art within the Borough of Haringey. The training of the group cost approximately £1,000 and enabled thirty residents to undertake the work and feed back the information directly to the council conservation team. This was far cheaper than the council employing external surveyors to undertake the project.

The group hopes that the resulting good relationship with the council will put them in a strong position to be involved in relevant planning obligations discussions in future.

Find out when the council is reviewing its policies on consulting the community

The Statement of Community Involvement (SCI) (which forms part of the Local Development Framework) is the council's policy for community engagement in the planning process.

Actions

- contact the council's planning policy team and find out who is leading on the Statement of Community Involvement (SCI)
- if the Statement of Community Involvement has been completed and adopted:
 - get a copy and find out what commitments the council has made to consulting the community on planning issues, and make sure that these are delivered on
 - ask when the Statement of Community Involvement is next due to be reviewed, and how you can ensure that you are consulted. This is an opportunity to tighten up any weaknesses in the Statement of Community Involvement.
- if the Statement of Community Involvement is still in development:
 - find out how you can input into the Statement of Community Involvement
 - lobby to get opportunities for the community to influence planning obligations included in the Statement of Community Involvement

Find out how to get involved in the Local Strategic Partnership

The Local Strategic Partnership, which is co-ordinated by the council, brings together public sector agencies such as the council, police and Health Authority with local businesses, the voluntary sector and community groups to set the vision for the council area. In practice, the level of community involvement in the Local Strategic Partnership differs from council to council.

The Local Strategic Partnership is responsible for the production of the area's Sustainable Community Strategy – a document setting out the long-term vision for the area and the actions and commitments required to deliver a better quality of life locally.

The priorities set out in the Sustainable Community Strategy are turned into action via a delivery plan known as the Local Area Agreement. The Local Area Agreement contains a set of targets against which central government assesses the performance of the council. These targets therefore have a significant impact on how the council and other public sector budgets, including planning obligations, are spent. Local Area Agreements generally cover the following themes:

- children and young people
- safer and stronger communities
- healthier communities and older people
- economic development and enterprise

You can help to shape the priorities in the Local Area Agreement by becoming involved with the work of the Local Strategic Partnership.

One of the main ways in which the Sustainable Community Strategy is delivered is through the planning system, via the Local Development Framework. Involvement in the Local Strategic Partnership is therefore another route to influencing Development Plan Documents and Supplementary Planning Documents on planning obligations, and the Statement of Community Involvement.

It is also being suggested that the work of the Local Strategic Partnership could be closely linked to deciding the shopping list of community infrastructure to be delivered through the Community Infrastructure Levy – the new system that will in part replace planning obligations.

Actions

- contact the council and find out who is responsible for co-ordinating the Local Strategic Partnership
- find out how you or your community group can get involved

Collect information on your community's priorities for planning obligations

If your community has a ready made list of local needs, then these can be referred to when planning obligations are decided.

Actions

- approach a local organisation, such as Planning Aid, to represent you in an approach to the council to discuss community priorities for planning obligations.

It is not unusual for developers to seek pre-application discussions with a council on specific planning applications. If a developer can understand any council concerns early on they can adjust their planning application accordingly rather than risking delays once the application is submitted, or a refusal of permission. These pre-application discussions often include planning obligations. The council will inform the developer whether the development will attract planning obligations – and begin negotiations on heads of terms - the key aspects of the planning obligations deal.

A few councils have 'early warning systems' for notifying or consulting communities on pre-application discussions, though most do not. There are few duties on councils to involve communities in early talks or even to inform them of what is going on.

On large developments, pre-application public consultation events are sometimes held. These offer the opportunity to view and comment on a planning application before it is submitted – and find out what planning obligations are being discussed.

Before the developer submits a planning application

Bristol has an active network of over 30 neighbourhood planning groups, which campaigned to secure a strong Statement of Community Involvement from Bristol City Council. This includes a requirement for developers to submit a 'Community Involvement Statement' about their pre-application discussions with the community on all planning applications over 10 units or 1000 square metres. Ten 'ground rules' lay out how such discussions should be conducted. The Community Involvement Statement must be signed off by the neighbourhood group as a fair account of the discussions that took place between the developer and community, before the council will register the planning application.

The Neighbourhood Planning Network has raised funding to support community groups in their pre-application discussions with developers; this will include help from architects on design matters, and from experts on planning obligations. The Network anticipates that once these practices are established, the developer will cover these costs. The new community involvement requirements will be active from July 2008.

How do I maximise my chances of finding out about pre-application discussions?

- approach the council to be included on its list of organisations that get consulted on pre-application discussions – if they have one
- lobby the council to introduce a system of pre-application discussions with the community, especially when putting together its policy statement on planning obligations or its Statement of Community Involvement
- keep an eye on the local media for stories on potential developments – or invitations to attend pre-application public consultations

Actions

- start talking to other people and community groups locally. Acting as group of local people or community groups is far more powerful and persuasive than acting alone.
- approach a local organisation, such as Planning Aid, to represent you in an approach to the developer or council to discuss community priorities for planning obligations
- contact the council's planning team to find out the status of the pre-application discussions, what planning obligations are being considered and how you can have an input. If you don't have any luck initially, try contacting the department relevant to your planning obligations interests, such as housing, or education.
- find out if the council has a policy, set out in its Statement of Community Involvement, on how the developer should consult the community at the pre-application stage. If so, check with the council that the developer is complying with this policy.
- make direct contact with the developer and propose a dialogue with the community to gauge community priorities for planning obligations. You can use the Land Registry www.landregisteronline.gov.uk to find the owner of a development site.



Planning Aid for London has worked intensively over 18 months with residents on a London estate due for redevelopment. It has held workshops and meetings with individual community groups in and around the estate.

These conversations revealed that many local community groups and residents had similar 'wants', such as space for their activities, or funding for training programmes. Planning Aid for London was able to bring together the needs of groups and residents and present them to the developer as a single package – a single 'voice' for the community. The developer will put together a planning obligations package on the basis of the consultation.

Effective community engagement, particularly if undertaken at the very early stages of formulating a planning application can save the developer significant financial resources. The facilities desired by the residents and community groups were identified at such an early stage that they have easily been incorporated into the masterplan and planning applications. Therefore not only will the residents and groups be less likely to object to the applications and cause lengthy time delays negotiating but also there will be less need to incorporate these into planning obligation agreements and hold lengthy negotiations with the council on such issues.



Once a developer submits a planning application to the council, the council logs the application on its planning register. The council will publicise the application, by writing to local residents, putting up notices near the development site or placing a notice in the local paper, and the public will have three weeks to comment on the application.

If there have been no pre-application discussions about planning obligations, these will begin at some point between the submission of the planning application and the application decision. Once the draft heads of terms (the key aspects of the planning obligations deal) have been agreed, these will be put on the planning register.

If you haven't been involved at the pre-application stage, this is the time to concentrate your efforts as the planning obligations will be agreed in principle before a decision is made on the planning application. Once the decision is made on the planning application your opportunity to shape planning obligations is limited.

When a planning application is submitted

Walton Street Cycles has been based in its premises in Lucy's Eagle Iron Works in Oxford since 1975.

But their workshop was threatened as the site had been sold to Berkeley Homes who had been given permission to create a canal side development with 249 homes. Planning obligations were negotiated between Oxford City Council and Berkeley Homes. While this provided 40% affordable housing, money for a community centre and an outdoor play area, it offered nothing to the local businesses losing their premises.

“We are just a small business,” explained John Wilson, owner of the shop. “And we were confronted with an enormous corporation who threatened to take away our livelihood. So we decided to fight, even though they could throw money at lawyers and always afford to come back for more.”

Public support and an active media campaign were crucial in getting Berkeley Homes to provide a new site for the cycle workshop.



Actions

- visit the planning department and view a copy of the planning application
 - contact the case officer for the planning application to find out:
 - the status of planning obligations discussions
 - what obligations are likely to be included
 - which council plans and policies support the types of planning obligations that you are interested in
 - how you can get involved
- If they are reluctant to help, stress that Government guidance on planning obligations emphasises the importance of community involvement in setting and negotiating planning obligations ‘wherever possible and appropriate’ (e.g. Planning Obligations Practice Guidance, Communities and Local Government, 2006, paragraph. 8.2). If the case officer proves hard to get hold of, you could try going via a member of the council’s community development team or your local councillor.
- request any information on planning obligations that is available from the planning register. Government guidance (in Circular 05/05: Planning obligations, paragraph B42/43) recommends that councils provide information on draft planning obligations – though in practice this is rare.
 - pull together information to support your proposals for planning obligations for the development
 - write to the case officer stating the good or bad impacts that you feel the

- development will have, and asking that planning obligations be used to reduce the negative impacts
- seek a formal meeting to discuss your proposals on planning obligations with the case officer
- if you feel that there is an impact of the development that has not been fully understood by planning officers, suggest a site visit by officers. You could also invite local councillors to join you.
- get a copy of the case officer’s report for the planning committee meeting where the planning application will be decided. This will include a summary of the scope of the associated planning obligations and the sums of money involved.
- lobby council officers, councillors, local people and organisations - and, if appropriate, the media and your MP to support your proposals. Lobbying a local councillor could result in a planning application being decided by the planning committee rather than begin dealt with by planning officers. This might give your concerns and suggestions more weight and some Planning Committees allow the public to speak at their meetings so you will be able to make your views known directly to the decision makers on the application.
- work proactively with the local authority to push it further in its negotiations with developers, and keep the pressure up when the agreement has been signed to ensure that what is promised is delivered.

Previous attempts to develop a 13.5-acre site to the east of Brighton's railway station site had stirred up local opposition and been rejected by the council. The council channelled some of this opposition into a Community Planning Weekend in November 1999, where a brief for the site was developed and adopted as Supplementary Planning Guidance (these documents are now known as Supplementary Planning Documents) by the council.

While there was public involvement at the planning weekend, many people did not engage with the process until the final planning appeal against the development was rejected. They did not want to feel like they were helping the developer get planning permission through their endeavours. But when it was inevitable that the development was going to be built, the only avenue for them to get actively involved was in the negotiations for planning obligations. The successful planning application was for a supermarket, two hotels, a language school, a community centre and over 200 homes.

A pressure group called BUDD (Brighton Urban Design and Development) had been set up to oppose the initial proposals and now embarked on a campaign for a more environmentally and socially sensitive development.

The combination of public pressure and a council wanting sustainable development led to a planning obligations agreement including:

- 43% affordable housing
- a 40% saving on the amount of carbon dioxide emitted from the development with all homes to meet the BRE Ecohomes 'Very Good Standard'
- 20 nest boxes, landscaping, introduction and management of wildlife habitats
- £150,000 for public art, and a requirement to establish a Public Art Steering Group to commission the work
- £70,000 to protect and enhance a site of nature conservation interest
- a travel plan aimed reducing car dependency and promoting alternatives, including car sharing and provision of facilities such as showers and cycle racks
- £100,000 for the refurbishment of existing play space and to provide a warden to supervise outdoor activities

One of the options on the table was for a community centre. "We started to talk to the communities around the station site," Steve Barton of Brighton and Hove Council's Community Development Unit explained. "Asking them what they would like a centre to look like." The research they undertook showed that a plot of land would simply not be enough. Early discussions with the developer managed to get a promise of £500,000. But even this was inadequate and Steve Barton was forced to admit that he would have to report to the planning committee that this would not fulfill the planning obligation requiring a community facility.

It was at this point that the Ethical Property Company offered to match the £500,000 – ensuring that a community centre would be able to function – and to run and manage the building. A portion of the funding is earmarked for community engagement in the design process of the centre.

What information do you need?

Any planning obligation you put forward will require clear evidence to support the need for the council to seek this contribution (i.e. it is in line with council policies and plans), and for the developer to pay for it. Councils often lack the resources to provide evidence of need for planning obligations – so miss out on securing the full range of potential benefits.

It's worth getting to grips with four key areas of information:

- the planning application for the development
- the council's policies on planning obligations
- any information available on the planning obligations being discussed
- existing work on community priorities for planning obligations

Council planning documents are available from reception at the planning department (often at the main council office). You can also access some or all of these documents on-line, or at local libraries. Most planning receptions have a duty officer who can assist with any queries. Call ahead to let the planning reception know which documents you wish to see. They may be stored elsewhere and take a couple of days for the council to retrieve for you.

The planning application

Councils keep a planning register which includes a list of current planning applications, and a planning decisions register. This will be available from the planning reception, and often on the council website.

When you are looking at the planning application, you need to think in terms of the physical impacts of the proposed development. Will it create dark corners that will reduce personal safety? Will it produce roads that are difficult to cross? Will existing public transport cope with the new residents a development will bring to an area? Will there be an impact on local shops?

What will the development bring? Will it bring more people? Perhaps shopkeepers might welcome this, but do pedestrians and cyclists see a potential problem with increased traffic? Can you think of ways of reducing the volume of traffic?

Is there something that the community has needed for a while, such as a community centre or a play area? The additional people a housing development will bring could be used as an argument for the inclusion of this sort of resource within the planning obligation requirements.

To get a better feel for how the proposed development will look, visit the development site with some of the plans included in the planning application. You will be able to get an idea of the changes the development will bring – good and bad.

Larger applications will be accompanied by studies to assess the likely impacts of the development. These might include an Environmental Impact Assessment, a Retail Impact Assessment or a Traffic Impact Assessment, setting out the

expected impacts of the development, and the steps the developer proposes to take to mitigate them. These studies are commissioned by the developer, so will give a developer's perspective. Councils may lack the resources to commission their own studies, so will rely on the developer's reports. If you feel that there are gaps in the developer's proposals, then you can outline these in your letters and meetings with the council.

As well as viewing the planning application you are interested in, look at recent planning applications in the wider area so that you have the bigger picture on how the area is likely to change.

Try not to be just another NIMBY – objecting to everything. Your views are much more likely to be listened to if you can be constructive than if you are negative.

Council policies and guidance on planning obligations

The Local Development Framework – a group of plans and policies that determine what is developed where, and when – will include the council's policies on planning obligations. Some councils also have specific guidance on planning obligations set out in a Supplementary Planning Document. These policies will form the basis of the planning obligations that the council will seek from the developer. You can review these documents to identify the council's own policies that support the planning obligations you would like to see delivered. If, for example, you

want to make the case for, say a car club to reduce private car travel, you should look to see if the council has policies that support the establishment of car clubs.

Information on the planning obligations being discussed

If negotiations on planning obligations have already started, you can try to access information on what has been agreed to date.

Government guidance (Circular 05/05: Planning obligations) calls for the process of negotiating planning obligations to be as open, fair and reasonable as possible. It states that members of the public 'should be given every reasonable assistance in locating and examining proposed and agreed planning obligations'. However, in practice, this is not always easy.

Some councils encourage developers to prepare a planning obligations statement to accompany their planning application, setting out the mitigating actions they might take.

Councils are required to record details of planning obligations proposed or entered into on the planning register. Government guidance recommends that councils include the 'heads of terms' (the key elements of the planning obligations deal) and any significant changes to draft planning obligations with current planning applications on the planning register as they become available.

Where applications including planning obligations are considered by a planning

committee, a draft heads of terms for obligations should be included in committee papers and open to public inspection. Planning obligations must also be registered as local land charges.

Planning applications on which decisions have already been made are also included on the planning register and must include details of any planning obligations entered into. Looking at the planning obligations associated with recent developments will give you a feel for what has been negotiated in the past.

Existing work on community priorities for planning obligations

As well as general, council-wide policies, the council may have policies or guidance specific to the area where the development is planned. These might include Supplementary Planning Documents for particular neighbourhoods or development sites, local area studies, neighbourhood or area plans or other council research which can help to provide evidence for local planning obligations priorities.

The council may have a community projects bank – a list of ready identified community needs. For example, if a development including homes likely to attract young families lacked a children's play area, the community projects bank could assist in identifying improvements to local parks to meet the added demand for play space.

The London Borough of Southwark's community development unit, and community planning experts at the Willowbrook Centre worked with local people to develop a community project bank.

A series of events were held – stalls at community festivals, surveys of local businesses, and workshops – to gather thoughts and opinions from the community. Needs identified included disabled access improvements to community buildings, a shared community minibus, community festivals, arts projects, affordable artists studios, tree planting on estates, upgraded play areas, new seating, better lighting, and activities for young people.

Now, when the council comes to negotiate planning obligations (or make decisions on how to spend regeneration funding) with developers, it has a 'shopping list' of community needs to call on.

Has a local regeneration organisation or community group assessed community needs? The priorities identified through this work can be used to support your ideas for planning obligations.

It is well worth looking at existing projects in your community. For example, in Brighton planning obligations were secured for a car club in part, at least, due to the efforts of the community in starting to set one up. The developer contributed start up funding for the car club and offered free membership to the residents for the first year. The car club was set up as part of development of 50 homes with a total of five parking spaces.

Evidence that a council or developer elsewhere in the country has approached planning obligations in a certain way could support your proposals for trying something new. Organisations, such as Planning Aid, that work, campaign or advise on planning issues may be able to assist with this.

Ascott-under-Wychwood is a West Oxfordshire village with a history dating back to before the Normans. It is likely that there has been a shop of some kind in the village since the twelfth century, all the way until the last one closed down in 1998.

In 2002, when the community became aware of plans to redevelop a farmhouse and associated yard, they decided to try and use planning obligations to establish a community shop.

"The first we heard about it was through the Parish Council," explained Stuart Fox, treasurer of the community shop. "The farmhouse in the village that was up for development had part of it designated for retail. So we approached the developer ourselves and said that if he provided us with a shop, we would put up no objections to his redevelopment."

This original plan, which involved the developer giving the shop to the community for free, fell through when the scale of the redevelopment was seen; it was too large and the houses were too densely packed, so West Oxfordshire District Council rejected the plans. However the council was very keen not to lose the potential for a shop and worked with the Parish Council, negotiating with the developer.

The council agreed to allow the developer to remove the shop element from his development, as long as he contributed to setting up a shop elsewhere in the village. The community added to the developer's contribution by selling 200 shares in the shop to local people – and bought a shop. It opened in November 2003, and is still going strong. Initially it was just staffed by volunteers, but now they are able to pay around half the staff. The management are still volunteers from the community.

The redevelopment of the farm house went ahead and nine cottages and three flats were put up in the yard.

A decision should be made on a planning application within eight weeks (thirteen weeks in the case of major developments) of it being submitted. For small applications, the decision can sometimes be made by a planning officer. For larger, or controversial applications, the decision is usually taken by the council's planning committee.

At the planning committee meeting the chances of re-opening the scope of planning obligations are remote, though there have been situations where, following a deferral to seek other changes to the scheme the developer has 'upped' their offer to overcome local opposition rather than get a refusal of planning permission. The committee has the power to defer a decision to give time for the planning officer to secure additional or different planning obligations.

If the application is refused, or the approval has conditions attached to it, the developer may appeal against the decision to the Planning Inspectorate.

When a decision is made on a planning application

Planning applications can seek either outline or detailed planning permission. A development with detailed planning permission can (theoretically) start as soon as permission is granted, assuming there are no further details that need to be approved by the council. An outline planning permission will have 'reserved matters' that have to be resolved before development can commence. These reserved matters might include, for example, the detailed layout of a new housing estate, the design of homes, or the materials to be used.

If the application is approved, this will be subject to the signing of the Section 106 agreement securing the matters set out in the planning obligations heads of terms. The Section 106 agreement is drafted by the council's (or sometimes the developer's) solicitor. It is only signed when both the council and developer are happy with the contents.

The Section 106 agreements for larger development sites with more complex planning obligations will take longer to agree and sign. All landowners, including, for example, any mortgagees, are party to the Section 106 agreement – not just the developer making the planning application. Section 106 agreements can take a long to agree, as the solicitors for all of the parties involved have to approve the agreement.

Actions

- work proactively with the local authority to push it further in its negotiations with developers, right up until the decision is made

If the decision is being made by the case officer:

- the case officer's report can usually be seen by members of the public on request – though most often after the decision has been made

If the decision is being made by the planning committee:

- get a copy of the case officer's report to the planning committee. Copies of the report are generally available three to five working days before the committee meeting. You can request a copy to be sent to you or pick one up from the council's offices or at the committee meeting.
- attend the planning committee meeting, which are open to the public and normally held in the evening
- depending on the council's policy, it may be possible to speak briefly at the meeting. Check with the Committee Clerk at the council to find out what the procedure and protocol is for speaking at the meeting.
- although by the time an application has got to committee the main opportunity to introduce new obligations is likely to have passed, the committee may be prepared to instruct officers to re-open negotiations. The developer may decide that they will take the initiative and open discussions directly with the objectors. Although this is rare, it is worth keeping up the pressure right until the decision is made.

Once planning permission has been granted, it can take many months to sign the Section 106 agreement as legal teams for the council and developer negotiate the details of the agreement. Although the Government guidance (in Circular 05/05: Planning obligations, paragraph B42/43) states that planning authorities should publish draft planning agreements, in practice few do. It is worth inquiring and referring them to the Circular (sections B41 to 45 cover public involvement) if they try to suggest they are not obliged to.

Once the Section 106 agreement is signed, your opportunity to influence what gets included is more or less closed. However, there may still be opportunities to have an input into exactly how the money is spent.

Once signed, the Section 106 agreement should be added to the planning register. Documents on the planning register can be viewed at the planning department reception – and increasingly, on-line. All planning obligations are also recorded on the local land charges register, which is maintained by the council and is available to the public. The register includes a description of the charge (in this case the planning obligation), and says where the relevant documents can be inspected.

The Section 106 agreement will include:

- the parties to the agreement
- definitions of key terms used in the document
- copies of relevant images and plans
- the commitments that each party has made – including the timescales for delivery of the obligations (which can be staggered during the construction period and beyond).

After the decision

Actions

- keep the pressure up when the agreement has been signed to ensure that what is promised actually makes it into the Section 106 agreement
- get a copy of the Section 106 agreement
- find out if there is a financial review mechanism at any stage of the project. Contact the case officer for the planning application to find out how you can be involved.
- if the Section 106 is generally worded, for example, if there is a sum of money allocated for open space improvements, contact the relevant council department to find out how you can be involved in deciding how this money is spent.
- if you believe that the developer is failing to deliver on an element of the Section 106 agreement, contact the case officer for the planning application to find out what, if any, action the council is taking. If this falls short, start your own campaign to ensure the developer delivers.

The redevelopment of the Millennium Quarter in Tower Hamlets, London in the late 1990s was going to result in a massive change for local residents. Up to 3000 new people would be moving to the area. Local residents were asked to produce a list of the most appropriate mitigation measures that should be applied. £5.3 million was agreed for community facilities to be collected as a tariff for each new house.

For each payment made by a developer, 10% went straight to a community fund. A panel of local people and councillors then selected the projects to receive funding.

The developer's perspective

In this section

- The business of being a developer
- Why should a developer engage with the community?
- Development appraisals
- Development appraisals and planning obligations
- How can you find out what's in the development appraisal?
- What can make planning obligations more acceptable to a developer?



The business of being a developer

Developers make money by buying land or buildings, increasing their value through building on, or changing the use of the land, then selling at a profit. To achieve the highest profit a developer will seek to maximise the value of the development and minimise costs – including planning obligations.

Developers range from small local firms building a handful of homes, offices or shops to national companies with multi-million pound turnovers such as Land Securities, Barratt Homes or British Land.

There are different sorts of developers. Some undertake a development, then retain ownership and make money by renting out the property they have built. This approach is common for large retail developments, or where a company is developing a property for its own use. Because the developer is going to be occupying or managing the property in the long term, there is more incentive for them to invest in good development with lower running costs. Given that these developers will be operating in the community for many years, developing good community relations tends to make sense.

Speculative developers on the other hand, buy land, get planning permission, build and sell as quickly as possible in order to start on the next development. Their profit comes from the sale of the development. Because they have no long-term interest in the development, there can be less incentive to engage with the local community.

Property development is a complex and risky business on which a lot of factors have an impact. There are certainly big profits to be made, but also big money to be lost if poor decisions are made, or there is a downturn in the economy. Developers expect to make a significant return if they have taken risks in putting together a development.

More than anything else, what determines how developers behave is the state of the property market. Speculative development will only happen in a stronger market when property prices are rising. In a market where property prices are falling developers will simply not build, because the financial risk is too high. Given that any engagement between the community and developer is a negotiation, the community generally has a stronger hand in a more buoyant property market. In a quieter market, where profits are less certain, a developer may view community demands as one hassle too far and pull out of the development.

Some developers may limit their financial exposure or risk by partnering with other developers, particularly on larger schemes. Where the developer lacks the funds to undertake a development themselves, they will involve a funder such as an insurance company, pension fund, property trusts and bonds, specialist property investment company or public body such as a Regional Development Agency. Public finance is often involved in development designed to regenerate deprived areas, where profits are too low to attract developers.

The development partners will work together in a joint venture, often establishing a new company to undertake the project.

Why should a developer engage with the community?

Developers differ in their attitude to engaging with the community – and their ability to do so. The biggest incentive for a developer to get you on their side is to help them get planning permission with as few delays as possible. Talking to you early on may help a developer understand, and potentially address, your concerns rather than having your opposition delay the planning process later on.

There are enlightened developers who take a long term view and see the value of positive engagement with the community. Certainly, where a large development will be built over a number of years, or the developer plans to occupy or manage the properties being built, it makes sense for the developer to build links with the local community. There are developers who are passionate about the quality of materials and architecture they are leaving for future generations. However, there are also developers who see community involvement as a big problem – certain to impose delays and extra costs. These developers have to be shown the benefits of engaging with communities and you may need to take a tougher line with them.

Different sizes of developer will have different levels of resources to enable them to engage with the community. Big players may have departments dedicated to community relations, whereas smaller developers will

have less time and resources to deploy. A small developer may view approaches from the community as a sign of trouble and decide not to pursue a development. On the other hand it may be easier to create a personal relationship with a small developer and be able to tap into a developer's interest in investing in the community, providing them with a sense of personal satisfaction from seeing what their planning obligations contributions have delivered.

The council may have a policy, set out in its Statement of Community Involvement (its policy on how and when the community will be consulted on planning issues), expecting a developer to undertake consultation with the community. The developer may need to be reminded of this.

Development appraisals

In order to assess the financial viability of a development, a developer undertakes a development appraisal. This takes into account the cost of the land to build the development, the cost of building the development, the value of the completed development and their profit. Development appraisals can be very sensitive to apparently small changes in a development scheme. For instance, increasing or reducing the rental income per square foot that a developer will achieve by just 50p will have a huge impact on a large development.

Profit

Profit is the driving force of development. The more risky the development, the higher the developer's expectation of profit.

A developer will seek a profit in the range of 10% to 20% of the total cost of the development. Profit levels will differ, depending on the type of development. If the developer cannot achieve a certain level of profit, they will not develop. This is why sites that are difficult to develop e.g. where land is heavily contaminated, or deprived areas where house prices are low, remain undeveloped.

On larger projects, a percentage point difference in profit will amount to hundreds of thousands of pounds.

Profit = Value of completed development – (Land cost + Build cost + planning obligations)

Value

The value of the completed development depends on a number of factors:

- where in the country the development is located
- the types of building the developer puts up e.g. housing, industrial, retail, offices
- the amount of each building type the developer can fit on the site – which depends on the density and height of the development
- the amount that the premises developed can be sold for, or let for, on the open market

The market will dictate the most profitable development for a developer to pursue. This might be high density, multi-storey, private sale housing, or high street shops on prime retail land, or low density exclusive homes or local shops in marginal locations. The planning system moderates the market by setting constraints on what can be built

where, for instance by designating land for employment or limiting the number of storeys a developer can build. The planning system is concerned with the overall benefit of development to the community, not just the narrow financial benefit to the landowner or developer.

Build costs

A developer's build costs include the cost of demolishing any buildings currently on the site, removing any contamination, building materials, wages, professional fees e.g. architects, planning consultants and engineers, legal fees, the cost of borrowing the money to finance the development, utilities infrastructure, and marketing and advertising. Planning obligations, and the Section 278 agreement with the Highways Authority to cover the cost of connecting the development with the existing road network, are also included in build costs. A community seeking planning obligations is another cost to the developer.

The planning system impacts on build costs by, for example, imposing requirements on the design of developments, the building materials used, the environmental performance, the quality of landscaping, the density of development and, of course, any planning obligations.

Land

Developers will either own, or have an 'option' on the land they plan to develop. An 'option' is where a developer pays a sum of money to a landowner to give them the option to buy a piece of land at a negotiated or pre-agreed price if planning permission is secured.

Owning land is a cost to a developer. Money locked up in land is money not available for other investments, and if the developer borrowed money to buy the land, they will be paying interest on the loan. However, a developer will only develop the land if it is financially worthwhile. If the costs or risks are too high, a developer will leave a site undeveloped until the situation changes, or sell the land.

A developer will carry out a development appraisal at the land purchase stage in order to assess the amount that they can afford to pay for the land whilst retaining their target profit margin.

Development appraisals and planning obligations

The developer will have allowed for a certain level of planning obligations in their development appraisal. If the council and community push for obligations above this level, the developer will seek to protect their profit. This could be achieved by reducing their build costs through a lower quality development, increasing the value of the development by increasing the development density, including more valuable land uses on the site or by paying less for the land.

(The chance of a developer being able to pay less for the land will depend on whether the 'option' arrangement permits this and on the preparedness of the landowner to accept less. This isn't as far fetched as it sounds. If similar planning obligations need to be provided by all developers the landowner is unlikely to be able to find other developers who will offer any more for the land).

Alternatively, a developer might withdraw a planning application and submit a much less ambitious scheme for a development site. This can ultimately result in a poorer development and reduced community benefit. In one example a developer initially applied for planning permission for 64 affordable housing units. However, the planning obligations negotiations with the council fell apart and the developer submitted a new planning application for three retail units and 24 private housing units. This was what was ultimately built.

Developers will sometimes submit parallel planning applications for a site, to strengthen their bargaining power in negotiating the planning obligations deal.

For a developer, uncertainty equals risk, so developers want to pin down the costs of development as early as possible. This includes getting a clear idea about the likely scale of planning obligations. Developers increasingly enter into pre-application discussions on planning obligations with the council so that they have a better idea of costs at an early stage.

A council may not wish to request planning obligations that make the development unviable. The balancing act for the council is to seek as high a planning obligations contribution as possible for a development that is acceptable (in planning terms) without making the scheme unviable for the developer. Ultimately, a developer can appeal to the Secretary of State if they feel that the council's planning obligations requirements are unreasonable.

How can you find out what's in the development appraisal?

The developer's development appraisal is usually considered commercially sensitive so is rarely available to the council or community. Some councils require 'open book' negotiations where developers disclose certain information, and some developers may volunteer it, though this information may remain confidential to the council. Community efforts to secure access to development appraisals via the Freedom of Information Act have proved unsuccessful to date. There are one or two examples where the community has developed a sufficiently strong relationship with a developer that the developer has agreed to share their development appraisal.

This lack of access to the development appraisal makes negotiations something of a poker game as the council and community will not know how the developer's figures stack up and how much they can really afford to contribute to planning obligations without making the development project unviable.

Particularly on larger schemes, the council may commission an independent development appraisal to assess whether the level of planning obligations being sought really is too high, or whether the developer is bluffing.

Producing a development appraisal is not an exact science. Two development appraisals for the same site can produce different results – depending on the assumptions that have been built into the financial model. So an independent appraisal can only provide a guide to the council.

Community groups have commissioned their own development appraisals to underpin their perspective, with their own figures.

What can make planning obligations more acceptable to a developer?

The timing of the payment of planning obligations can help to reduce the impact on the developer's bottom line. A developer's cash flow is usually at its worst at the beginning of a project, when there are substantial costs to contend with. If the agreement is to contribute later in the development when the developer has started to sell some of the properties and generate income, they may be more amenable to the obligations. There is a risk here, though. The later the developer is supposed to provide planning obligations the greater the risk that they won't be delivered.

The council's perspective

In this section

- The council's role
- Which councils negotiate planning obligations?
- How does a council decide on what planning obligations to ask for?
- When might the council seek planning obligations that don't meet its own policies?
- What can't influence the planning obligations the council seeks?
- The council's priorities for planning obligations
- How does a council work out how much to ask for?
- Negotiating planning obligations
- The Section 106 agreement

The council's role

The council is the key player in the planning obligations process. Council policies and plans set the framework for what is required from planning obligations. Council officers negotiate planning obligations with the developer, and the council's legal department often draws up the Section 106 agreement that secures these obligations. The council is also responsible for enforcing the delivery of the agreed obligations.

Which councils negotiate planning obligations?

The vast majority of planning obligations are negotiated by unitary (including city and borough councils) and district councils. But county councils often want to be involved and will negotiate a small number of obligations themselves – these are usually related to transport issues, waste facilities or mineral workings. Although parish and town councils do not negotiate planning obligations, they do work to influence the obligations that district and unitary councils seek.

How does a council decide on what planning obligations to ask for?

When considering a planning application and its associated planning obligations, council officers will examine the physical impacts of the development, and assess what contributions can be sought in the light of planning law, and national and local planning obligations policies and guidance. Ultimately, any planning obligations the council agrees must be sufficiently robust to stand up at a planning appeal. Fighting, and losing, a planning appeal is an

expensive business for the council, so there is a strong incentive to get it right.

The council's policies and plans determine the nature and scale of planning obligations that can be sought. Councils can only require developers to undertake planning obligations in line with their 'Local Development Framework' – the group of documents that determine what can be developed where, and when. Some councils also have Supplementary Planning Documents (additional guidance in support of their main policies) relating specifically to planning obligations. These will describe in more detail the council's approach to planning obligations and guidance on how much developers will be required to contribute.

When might the council seek planning obligations that don't meet its own policies?

In situations where a planning application is recommended for approval without meeting the council's policies on planning obligations, the case officer from the planning team will have to explain why. For example, the case officer might reduce the contribution to open space normally required on the condition that the developer builds to a higher than usual environmental standard. If the developer then failed to deliver on the environmental standard then the council would generally require that they pay the full open space contribution that would have been required.

A council may also reduce the planning obligations if the result would be to make an acceptable development unviable.

What can't influence the planning obligations the council seeks?

A council cannot refuse a good, appropriate planning application on the basis that it does not contribute the planning obligations that the council or community might want.

The council's priorities for planning obligations

Within the council, there will be competing demands on planning obligations funds from e.g. the education, parks or housing departments. These departments will need to have undertaken research to provide evidence for the need for any planning obligations contributions they want developers to make. They should not request obligations merely on a whim. Research (Valuing planning obligations in England: Final report, Communities and Local Government, May 2006) shows that councils often lack the resources to research and identify the full impacts of development, so lose out on planning obligations.

Sometimes, the council will consider the aspirations of the community to be too low. A planning application may command community support – but the council may wish to seek a higher planning obligations contribution from the developer.

How does a council work out how much to ask for?

Thresholds

Planning obligations are usually only required on developments above a certain size. The thresholds for planning obligations differ from

council to council and depending on the type of obligations. For example, Bristol City Council requires developers to make contributions to:

- affordable housing for developments of more than 25 homes
- educational facilities for developments of more than 40 homes which generate pupil numbers in excess of local school spaces
- park and ride facilities for office developments in the city centre

Developers sometimes size developments so that they fall just below these thresholds in order to avoid attracting planning obligations and to maximise profits.

Standard charges and tariffs

Some councils use standard charges, which set out the scale of contribution they will seek from developers on key items. Using standard charges saves time as it avoids the need for negotiations between the developer and council. The council will provide standard wording for the Section 106 agreement – which need only be signed by the developer. This is known as a unilateral undertaking. Looking at the council's standard charges will give you useful guidance on the scale of contributions a developer will be expected to make.

For example, the London Borough of Camden requires developers to make contributions towards education facilities of £3,252 per two bedroom property, £6,953 per three bedroom property and £11,387 per four or more bedroom property.

A small number of councils are introducing 'tariffs'. A tariff is a fixed sum charged per unit of development, and spent on infrastructure by the council and other public partners. Councils introducing tariffs generally retain the option of negotiating on some items. In Milton Keynes, the tariff is set at £18,500 per new house or £260,000 per hectare of employment land.

'Pooling' contributions

Where a number of developments are proposed in an area, councils can split the costs of facilities that will benefit all the developments between the developers involved. Councils use this approach to seek planning obligations where a number of small developments would otherwise not individually attract obligations, but together will have a significant impact.

In this situation, you need to be talking to the council about what planning obligations they are seeking to fund through 'pooled contributions'. Although significant community 'asks' might be too large for any one of the developments, they might be achieved through the bigger pool of funds from the group of developments.

Negotiating planning obligations

Where a council does not have standard charges or tariffs, it negotiates the planning obligations deal with the developer.

Negotiating a planning obligation requires a good deal of skill. Unsurprisingly, the performance of the council officer, or the

consultants leading negotiations on behalf of the council, is a key factor in the level of contributions secured. The council may be negotiating one or two major planning obligations deals per year, with a developer who is often much more experienced. This lack of experience can result in poor deals for the community. Where councils use standard tariffs or charges to calculate planning obligations, research (Valuing planning obligations in England: Final report, Communities and Local Government, May 2006) shows that they generally secure significantly higher contributions than when obligations are negotiated.

Particularly for large, complex developments, the council and developer might use expert independent mediators to help negotiate planning obligations. If there is difficulty in reaching a negotiated agreement on planning obligations, and particularly where the developer is going to appeal, the developer may offer to enter into an obligation they feel is reasonable. This is known as a unilateral undertaking.

A council can only be bound by another party via a negotiated agreement. Therefore, a unilateral undertaking (which is not negotiated) can only contain obligations on the developer. It cannot, for example, require the council to return unspent planning obligations monies to a developer after a certain period of time.

Useful information and resources

The Section 106 agreement

The legal agreement that sets out the planning obligations agreed is known as a Section 106 agreement. Councils increasingly offer standard wording for Section 106 agreements, particularly on commonly sought contributions such as open space or education. Using the council's standard wording saves the developer time and money and helps the council meet its targets for determining planning applications (within the target eight or thirteen week period).

Standard wording will be general, such as contributing an amount to be spent on open space within a one mile radius of the development site or to contribute to key areas of open space used by all residents of the town or city. This is attractive to the council as it allows them flexibility to spend the money where it is most needed. Alternatively, the developer may want to agree a more specific contribution. This will be a negotiated agreement and will therefore take longer to complete.

Once the council has completed negotiations with the developer, a contract is drawn up to secure the planning obligations. The drafting of the contract is crucial. If requirements are not sufficiently specific, then the council may not achieve what they hoped – and will ultimately be unable to enforce the obligation.

When the Section 106 agreement provides for the payment of money it will cover four key areas – the amount of money to be

contributed by the developer, what it will be spent on, when the money will be paid and how long the council has to spend it. The Section 106 agreement will require the developer to make payments at key 'trigger points' during the development. Councils will prefer to get payments as early as possible – usually at 'commencement' of the development. On a new build project, this will be when the developer starts laying foundations. On a refurbishment project, it is when the developer starts fitting out the building after stripping out the old interior. A developer, on the other hand, will prefer to delay payments until first occupation – when they have sold or let some of the buildings and have cash coming in.

On larger developments, the delivery of planning obligations is often phased and linked to trigger points throughout the development process e.g. the occupation of the 50th or 100th home. If there is to be a staggered timing for the delivery of obligations the values of the obligations will often be index-linked. This ensures that the value of the payment is not reduced by inflation between the signing of the agreement and delivery of the planning obligation.

There will generally be a requirement that, if the council does not spend the planning obligations monies within a given timescale – often three or five years – they must be returned to the developer.

Campaign to Protect Rural England
Campaigning to protect England's countryside, CPRE has a network of over 200 local groups that respond to planning applications and lobby their local council and MP on planning issues.
www.cpre.org.uk 020 7981 2800

Citizens Advice Bureau
Free, confidential advice at over 3,000 locations across the UK, including support on legal problems involving planning.
www.citizensadvice.org.uk

Civic Societies
There are almost 700 Civic Societies across the UK, bringing together groups of people that regularly lobby and campaign on planning issues.
www.civicsocieties.org.uk 020 7539 7900 / 0151 231 6900

Communities and Local Government
Government department responsible for planning.
www.communities.gov.uk 020 7944 4400

Environmental Law Foundation
Links communities and individuals to technical expertise on how the law can help resolve environmental problems such as pollution, development and health.
www.elflaw.org 020 7404 1030

Friends of the Earth
Environmental campaign group with around 200 local groups throughout the country that campaign on issues from climate change to biodiversity. Planning is a key campaign area.
www.foe.org.uk 020 7490 1555

Land Registry

Provides ownership details, plans and documents for over 20 million properties in England and Wales, for a small charge.

www.landregisteronline.gov.uk

 Local Government Ombudsman

The body that investigates complaints about councils, including complaints about housing, planning, education and social services.

www.lgo.org.uk 020 7217 4620

 National Association of Local Councils

Represents the 8,500 parish and town councils in England and Wales, and promotes their role in community leadership.

www.nalc.gov.uk 020 7637 1865

 Planning Aid

Provides free, independent and professional help, advice and support on planning issues to people and communities who cannot afford to hire a planning consultant

www.planningaid.rtpi.org.uk 0121 693 1201

 Town and Country Planning Association (TCPA)

Campaigns for the reform of the UK's planning system to make it more responsive to people's needs and aspirations and to promote sustainable development.

www.tcpa.org.uk 020 7930 8903

 Royal Town Planning Institute (RTPI)

Membership body for planning professionals that promotes good planning and contributes to informed discussion about planning through lobbying and research.

www.rtpi.org.uk 020 7929 9494

www.communityplanning.net
Resource by the Royal Town Planning Institute on all aspects of community planning

www.direct.gov.uk
Links to a wide range of government information, including an A-Z list of local councils

www.foe.co.uk/resource/local/planning/
Friends of the Earth website including briefings on recent planning issues and downloadable resources on how to campaign on planning issues.

www.planninghelp.org.uk
Campaign to Protect Rural England's web-based guide to using the planning system.

www.planningportal.gov.uk
The Government's on-line service for planning. Includes the National Planning Application Register which includes information on every planning application in England and Wales and tracks applications through to the decision stage.

About the Ethical Property Foundation

The Ethical Property Foundation is a charity committed to empowering charities and community groups to make the most of property, and to improving the social and environmental performance of the commercial property sector. Established in 2004, the Foundation is the sister organisation of the Ethical Property Company, a leading social enterprise that provides affordable office space to charities, co-operatives and campaign groups.

The Foundation launched its charity specific Property Advice Service in 2005 to provide independent information, advice and training to organisations leasing, buying or managing premises. By building the sector's knowledge and confidence around premises issues and ensuring they have access to good professional advice, the Foundation aims to make property a boost rather than a burden to charitable organisations. Launched initially in London, the Property Advice Service expanded into Bristol in early 2007 and has already assisted more than 550 organisations with their property dealings.

In addition to providing property advice to charities and community groups, the Foundation is currently exploring how it can influence the main stream commercial property sector to improve its environmental and social performance.

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Development House
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Bristol
Brunswick Court
Brunswick Square
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BS2 8PE
Tel. 0117 916 6455
Fax. 0117 916 6490

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No. 4756158

Publications

□ **Circular 05/05: Planning obligations,** Communities and Local Government, 2005. Provides guidance on the use of planning obligations. Available free on-line or for £7.50 via the Parliamentary Hotline on 08457 023474.

www.communities.gov.uk/publications/planningandbuilding/infrastructurelevyguidance

□ **The Community Infrastructure Levy,** Communities and Local Government, January 2008 Sets out the background to the Community Infrastructure Levy and the Planning Bill. Available free on-line.

www.communities.gov.uk/publications/planningandbuilding/infrastructurelevyguidance

□ **A Local Campaigners Guide to the New English Planning System,** Friends of the Earth, 2005

www.foe.co.uk/resource/guides/new_english_planning_system.pdf

□ **Planning jargon buster: A glossary of technical terms used in town and country (or spatial) planning,** South West Planning Aid, March 2007

www.planningaid.rtpi.org.uk/SITE/UPLOAD/DOCUMENT/SW%20documents/TownPlanningBooklet-Glossary.pdf

□ **Planning Obligations: Practice Guidance,** Communities and Local Government, August 2006. Case studies on the effective delivery of planning obligations. Available free on-line or for £10 from Communities and Local Government Publications on 0870 1226 236.

www.communities.gov.uk/publications/planningandbuilding/planningobligationspractice

□ **Valuing planning obligations in England: Final report,** Communities and Local Government, May 2006 National survey of planning obligations secured by councils. Available free on-line.

www.communities.gov.uk/publications/planningandbuilding/valuingplanningobligations

Fold out this flap to view a 'planning obligations route map' explaining what happens with planning obligations at each stage of a planning application.

This guide has been researched and written by Jo Taylor, with additional research and writing by Hugh Warwick, from an original idea by Jamie Hartzell. The Ethical Property Foundation would like to thank all those who have assisted with the research and writing of this guide. Particular thanks are due to Nancy Astley and Michael Parkes of Planning Aid for London, Barry Pearce of South West Planning Aid, Sarah Foster, Paul Bellack, Andy King, David Hunter and David Lipfriend, and to all those who provided case studies for inclusion in the guide.

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A planning obligation (or Section 106 agreement) is a legal agreement in which a developer promises things (from affordable housing, to parks or community centres) that will reduce the harmful impacts of a development.

Although formally agreed between the council and developers, community groups have the power to influence planning obligations. This practical, no-nonsense guide shows you how.

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