

**REPORT OF CHAIRMAN OF ENVIRONMENT AND SUSTAINABILITY  
COMMITTEE****PLANNING OBLIGATIONS PROTOCOL****Purpose of the Report**

1. To approve the content of the Planning Obligations Protocol and to request approval to formally approach each Nottinghamshire District/Borough Council for agreement. The Planning Obligations Protocol can be found in Appendix 1.

**Information and Advice**

2. The Planning and Compulsory Purchase Act 2004 (as amended), makes provision for voluntary legal agreements to be entered into with developers/landowners as part of a grant of planning permission. These agreements are known by a variety of names: Section 106 agreements, planning contributions, planning obligations and developer contributions.
3. When developments take place, they frequently bring with them impacts on the local physical and social infrastructure, which must be addressed to make the development acceptable both in planning terms and to society in general. Planning contributions can be used to overcome these impacts, thereby enabling development schemes to go ahead that might otherwise be refused permission.
4. The County Council seeks to mitigate the impacts that new developments have on the services it provides i.e. education, transport, libraries etc. Planning law recognises that developers should reasonably be expected to pay for, or contribute towards, the costs of services, infrastructure or resources where the impacts are as a result of their development.
5. The County Council has a duty to provide sufficient school places in Nottinghamshire and whilst education provision is a statutory function of the County Council, the Government does not provide monies to accommodate pupils generated as a result of new development as a matter of course.
6. The County Council's updated Planning Obligations Strategy was approved at Policy Committee in April 2014 and sets out the County Council's standard requirements therefore enabling developers to take into account the potential costs of a proposed development at the earliest stage. The strategy does not have any statutory status but if development proposals do not comply with the requirements set out then it could be used as a reason for refusal of planning permission by Local Authorities.

7. At a meeting of the Nottinghamshire Chief Executives in November 2013, inconsistencies throughout Nottinghamshire in the way each District/Borough Council involves the County Council in negotiations and agreements with developers were raised. It was accepted at this meeting that a more coordinated approach between each District/Borough Council and the County Council was required in respect of planning obligations and it was agreed that a protocol should be drafted which sets out the details of a future joined-up approach.
8. A County Council Member/Officer working group met in March 2014 to discuss the series of issues that were facing the County Council in terms of both the viability facing developers leading to a reduction in education contributions and the differing arrangements in place between the County Council and each District/Borough Council which has led to delays in the negotiation and planning process. A drafted protocol was also presented at this meeting for discussion.
9. Officers have continued to progress discussions with each District/Borough Council and throughout this process amendments have been made to accommodate the comments received and two further County Council Member/Officer group meetings have been convened (May and December 2014) to discuss the progress of the protocol and to provide an update on current issues facing the County Council in relation to planning obligations.
10. The Member/Officer working group, in December 2014, recommended that the protocol be considered at Policy Committee and that approval is requested to formally approach each Nottinghamshire District/Borough Council for formal agreement.

### **Other Options Considered**

11. For the Council not to agree the protocol however, issues surrounding the inconsistencies would continue and may result in reductions of future developer contribution monies for County Council services and infrastructure.

### **Reason/s for Recommendation/s**

12. To ensure that Nottinghamshire County Council works consistently with the Nottinghamshire District and Borough Councils in respect of its requirements to mitigate the potential impacts that new developments may have on its infrastructure and services.

### **Statutory and Policy Implications**

13. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **Financial Implications**

14. There are no direct financial implications however the County Council does receive monies from planning obligations towards the cost of providing additional services and infrastructure when required.

## **RECOMMENDATION/S**

- 1) That Policy Committee approves the protocol and agrees that each Nottinghamshire District/Borough Council is approached to request formal agreement of the protocol.

**Councillor Jim Creamer, Chairman of Environment and Sustainability Committee**

**For any enquiries about this report please contact: Sally Gill, Group Manager Planning, 01159696536**

### **Constitutional Comments (SLB 05/01/2015)**

15. Policy Committee has the authority to consider the content of this report.

### **Financial Comments (SEM 02/01/15)**

16. The financial implications are set out in the report.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

### **Electoral Division(s) and Member(s) Affected**

All

**APPENDIX 1**

**Planning Obligations  
Protocol**

**February 2015**

## **Introduction**

The main principles of achieving sustainable development are through a plan-led approach. To achieve sustainable development it is crucial that the impacts that new developments may have on the local physical and social infrastructure are mitigated.

It is essential that collaborative working with neighbouring local planning authorities and the County Council takes place to ensure effective coordination of strategic planning issues that cross administrative boundaries. Councils should have full regard to the requirements on local planning authorities to cooperate on such issues.

Local planning authorities and the County Council will work together to assess the quality and capacity of infrastructure. Working with other providers this will include, but not be limited to, requirements in relation to transport, water supply, wastewater and its treatment, energy (including heat), telecommunications, utilities, waste, health, education, affordable housing, and the regeneration of areas.

The Community Infrastructure Levy (CIL) regulations introduced into law three tests for planning obligations in respect of development which is that obligations should be:

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

If an obligation does not meet all of these tests it cannot in law be taken into account in granting planning permission.

The District and Borough Councils in Nottinghamshire have developed different approaches to working with the County Council on planning obligations. This document sets out a collaborative approach to Nottinghamshire County Council's obligations for public services and infrastructure<sup>1</sup> provision throughout Nottinghamshire and provides guidance for use across the County by District and Borough Councils.

Planning obligations either on a unilateral or multilateral basis have been an essential and accepted part of the planning process for many years, with the primary purpose of ensuring that all implications of development, that cannot be appropriately controlled by conditions, are subject of a Section 106 legal agreement which addresses impacts either directly or indirectly via financial contributions.

The following section sets out a working protocol for use by the Nottinghamshire District and Borough Councils (in their capacities as local planning authorities) and the County Council and will apply to 'major' developments which are defined as follows<sup>2</sup>:-

:

---

<sup>1</sup> Infrastructure is typically defined in Council's Infrastructure Plans and many include transport, energy, water, ICT, waste, minerals, education, health, emergency services, community services, culture and leisure, open space, forestry, biodiversity, waterways, regeneration etc.

<sup>2</sup> Unless these differ from locally adopted policies

- Residential development for 10 dwellings or more;
- Residential development on a site in excess of 0.5 hectares where the phasing of developments will add up to 10 dwellings or more;
- Non-residential development of 1,000 square metres or more gross floor space;
- Non-residential development on a site of at least 1 hectare;

In addition to the above:

- The Highway Authority will continue to assess any development which is likely to result in a material increase in the volume of traffic or material change in the character of traffic entering or leaving a classified road or proposed highway and seek local highways and transport contributions; and
- The Flood Risk Management Team will work closely with Districts/Boroughs and developers to secure suitable and feasible sustainable drainage solutions for new developments that are sympathetic to wider flooding issues in an area.

This document should be read in conjunction with Nottinghamshire County Council's Planning Obligations Strategy, where it has been adopted, and other District/Borough Councils' strategies and documents on this matter.

## **The Council's Approach**

### **Nottinghamshire County Council**

In considering the infrastructure requirements of any development, the County Council will:

- Act in accordance with relevant planning policies and other policy documents including the Government's National Planning Policy Framework (NPPF);
- Provide a coordinated response regarding infrastructure implications to the District/Borough Council consultations on all Local Plans, development briefs, planning applications and informal enquires;
- Provide a coordinated response<sup>3</sup> to planning applications, within the consultation timescales, unless otherwise agreed with the relevant District and Borough Council;
- On the occasions that the County Council is approached directly by a landowner, developer or agent requesting information on likely developer contributions, the County Council will provide the advice but copy correspondence to the relevant local planning authority;
- Provide evidence and reasoned justification based on planning policies for requests for developer contributions;
- Identify a named individual to coordinate the County Council's response, and provide a list of people to contact for detailed discussions and enquiries;
- The County Council's service area teams will assess the capacity of existing infrastructure and services and particular area needs in areas planned for growth in District/Borough Local Plans and will assess the infrastructure and service needs of any specific development proposal;
- Provide its coordinated response to the relevant District and Borough Councils and developers, and will provide draft heads of terms for incorporation into Section 106 obligations;
- Attend meetings with the relevant District and Borough Councils, applicants and their agents when requested and justified by the Local Planning Authority to discuss draft Section 106 heads of terms;
- Inform the District/Borough Councils, as soon as practicably possible, of any major or contentious County planning applications at an early stage in the process;
- Where requested by the relevant local planning authority, the County Council will provide evidence and witnesses for planning appeals, including hearings and inquiries where the decision is supported;
- Participate in District/Borough Councils' Development Team meetings when requested.

---

<sup>3</sup> The Highways Authority and Flood Risk Management Teams may respond separately to consultation requests on a case by case basis, in these cases they will endeavour to meet statutory deadlines.

## **District and Borough Councils**

The Nottinghamshire District and Borough Councils will:

- Consult the County Council on scoping opinions, pre-application proposals and applications for planning permission for 'major' development (as defined on page 2);
- Allow a 14 day period (10 working days) for baseline information requests for all screening/scoping opinions and pre-application consultations;
- Allow a statutory 21 day period (15 working days) for responses on all consultations on planning applications, extended by agreement;
- Notify the County Council of proposed developments that are likely to involve County Council requirements prior to pre-application if available;
- Inform the County Council as soon as practicably possible of any subsequent amendments to the proposal if the County Council's requirements are affected;
- As is required by the National Planning Policy Framework, in pursuing sustainable development local planning authorities will, in determining planning applications, take into account the infrastructure requirements arising from a development and the viability of that development. In making such determinations (excluding those determined by the County Council) the District/Borough Council will liaise with, and take the views of, the County Council into account and this will be balanced with local matters and available evidence;
- Where the proposed development triggers a County Council requirement in terms of education and highways infrastructure, the District/Borough Council will discuss with the County Council whether it would be appropriate to become a co-signatory of the Section 106 legal agreement;
- Where the County Council's requirements are part of an agreement, the District/Borough Council will inform the County Council when:
  - a) Planning Permission is granted;
  - b) The Section 106 agreement is signed;
  - c) When the monies are collected by the District/Borough Council (where appropriate).
- invite the County Council to participate in Development Team meetings where appropriate.



## **Other Bodies**

The District/Borough Councils and the County Council will work with other relevant public bodies<sup>4</sup>, including neighbouring authorities, relevant town/parish councils and neighbourhood forums, to ensure the effective planning of new infrastructure, that linkages between infrastructure are maximised and the opportunities for multiple or joint use of facilities are explored.

## **Monitoring of Obligations**

The District/Borough Councils and the County Council will work together to ensure that all Section 106 planning obligations and their trigger points are monitored as appropriate, before, during and after development takes place.

Information shall be shared between the authorities regarding stages of work on site and contact details of developers.

Each obligation shall be pro-actively monitored and each trigger point shall be brought to the attention of the developer by the District/Borough and County Council.

Information regarding payments received and other infrastructure requirements complied with shall be shared between the relevant authorities.

Once planning obligations have been agreed, it is important that they are implemented or enforced in an efficient and transparent way, in order to ensure that contributions are spent on their intended purpose and that the associated development contributes to the sustainability of the area.

The viability of development is likely to change over time. Specific developments may have stalled due to viability issues and District/Borough Councils are specifically required by regulations to consider amendments to affordable housing requirements. Equally, margins from a development may improve over time as markets change. The local planning authority will liaise with the County Council in relation to changes in viability and the infrastructure requirements arising from development under these circumstances.

## **Procedures**

Infrastructure requirements will cross administrative boundaries and it is important that all authorities work together to meet the infrastructure needs arising under these circumstances.

## **Pre-application discussions**

It is important that full use is made of pre-application discussions to develop draft heads of terms in agreement with the developer prior to submission of a planning application. Any pre-application enquiries will be considered by individual service departments to enable the

---

<sup>4</sup> Duty to co-operate bodies are set out in The Town and Country Planning(Local Planning)(England) Regulations 2012 or any subsequent amendments.

provision of a coordinated view on the respective infrastructure requirements and provide the context for early discussions with developers.

In considering major pre-application proposals, District/Borough Councils and the County Council will work together and will liaise closely with other relevant infrastructure providers including neighbouring local authorities, town/parish councils and neighbourhood forums.

The use of Planning Performance Agreements to cover the pre-application, application and post application stages provide for greater certainty and transparency throughout the process and are a useful focus for pre-application discussions which can assist both the District/Borough and the County Council.

Heads of terms produced at pre-application stage are draft, and the figures to be incorporated in the final Section 106 obligation may be updated to reflect changed data, changed costs or viability issues if there are delays in the period of time from initial enquiry to setting final heads of terms.

### **Development Team Approach**

A development team approach will be utilised in considering 'major' development proposals. Development teams within District/Borough Councils and the County Council will pull together the appropriate service resources depending on the particular development proposal and may also include appropriate representatives from other statutory bodies.

The development teams will meet as and when required and will discuss the likely acceptability of major proposals and their impact and mitigation measures required in terms of infrastructure provision. These development team meetings are a mechanism for sharing information and reaching agreement prior to preparing heads of terms and engaging in discussions with applicants and help to streamline the Section 106 process.

It may be appropriate to consider the use of a Planning Performance Agreement (PPA) to set out timescales for actions between the District/Borough Council, County Council and the applicant prior to the planning application being submitted. The PPA should cover the pre-application, application and post- application stages.

It is essential that information on implementation of planning obligations is shared between the relevant authorities and service providers as early as possible in the process to ensure effective and sustainable delivery of infrastructure.

### **Standard documentation**

The use of standardised obligation documents or standard clauses is encouraged, in order to ensure consistency and provide an efficient process.

Heads of terms should also be standardised where possible.

### **Payment of monies**

Where agreed by District/Borough Councils, funds payable in relation to the County Council's requirements will be paid directly by the developers to the County Council.

In other cases, the sums will be forwarded by the District/Borough Councils to the County Council when the terms and conditions set out in the Section 106 agreement are met and the monies have been received by the District/Borough Councils. In these cases the County Council will expect the District/Borough Council to:

1. Commit to the payment of developer contributions to identified County Council projects, as set out in the S106 agreement (once monies have been received by the District/Borough Council for those identified projects); and
2. Pay the required developer contributions once the funds have been spent on the identified project.

Example forms for these instances are contained within Appendix 1 and 2.

## **Enforcement**

Where it becomes necessary to enforce the terms of a Section 106 Planning Obligation involving the County Council and District/Borough Councils the authorities will work together to coordinate the enforcement of the Section 106 Planning Obligation.

**REQUEST FOR COMMITMENT OF DEVELOPMENT CONTRIBUTIONS (Section 106 funds)**  
**FORM 1**

I request the commitment of development contributions which are held by xxx District/Borough Council for the purposes set out below (where the development contribution **has already been paid to xxx District/Borough Council** and are ring fenced for the purposes set out in the legal agreement)

I confirm that:

1. I am authorised to make this request to xxx District/Borough Council on behalf of Nottinghamshire County Council
2. The funds will be spent on the scheme as set out and in accordance with the terms of the relevant legal agreement
3. That in the event that the funds are not spent on the scheme as set out or in accordance with the terms and/or timescales set out in the legal agreement the funds and interest accumulated will be returned to xxx District/Borough Council (or the developer as may be deemed most appropriate)
4. That in the event that the committed/earmarked development contributions are not submitted to xxx District/Borough Council there will be no call on xxx District/Borough Council to make any payments

**Details of scheme that funds are requested for:****Location****Description of scheme (attach plans if available)****Links to strategy ( Please name)****Links to Council objectives****Links to the development / justification for proposal****Estimated cost and construction timescale****Amount of contribution required****Comments**

**Details of development contribution**

Developer	
Location of development (Attach plan where appropriate)	
Planning Application Reference Number	
Date of s106 Agreement	
Paragraphs of the Agreement under which the request is made	
District/Borough Council Cost centre (where already advised)	

Submitted by:  
Position in the Organisation:  
Date:

Tel:  
Address:

**REQUEST FOR PAYMENT OF DEVELOPMENT CONTRIBUTIONS (Section 106 funds)  
FORM 2 – To Be Accompanied by an invoice (or other agreed documents) for the amount  
being sought**

I confirm that:

1. I am authorised to make this request to xxx District/Borough Council on behalf of Nottinghamshire County Council
2. The funds have been spent on the scheme as set out and in accordance with the terms of the relevant legal agreement
3. That in the event that it is found that the funds were not spent on the scheme as set out or were not in accordance with the terms and/or timescales set out in the legal agreement the funds and appropriate interest accumulated will be returned to xxx District/Borough Council (or the developer as may be deemed most appropriate)

**Details of scheme that payments are requested for:**

<b>Location</b>
-----------------

<b>Description of scheme</b>
------------------------------

<b>Estimated cost and construction timescale (from Form 1)</b>
--

<b>Actual cost</b>
--------------------

<b>Amount of payment requested</b>
------------------------------------

<b>Comments</b>
-----------------

**Details of development contribution**

Developer	
Location of development (Attach plan where appropriate)	
Planning Application Reference Number	
Date of s106 Agreement	
Paragraphs of the Agreement under which the request is made	
RBC Cost centre (where already advised)	

I confirm that the scheme has been satisfactorily completed in accordance with the request set out in Form 1 dated .....; that the scheme has delivered value for money and that the whole of the funds were required for the scheme

Copies of invoices relating to the scheme that have already been paid are attached (please delete one)

YES invoices/documents attached. List of invoices/documents attached

- 1
- 2
- 3

OR

NO documents attached

Submitted by:

Position in the Organisation:

Date:

Tel:

Address: