

SUFFOLK LOCAL PLANNING AUTHORITIES

SUPPLEMENTARY PLANNING GUIDANCE RELATING TO SECTION 106 OBLIGATIONS

1. Introduction

1.1. This document sets out the way in which the Local Planning Authorities (LPA) in Suffolk will seek to negotiate on Planning Obligations under Section 106 of the Town and Country Planning Act 1990.

1.2. It is intended that all LPAs will adopt this guidance as Supplementary Planning Guidance. This will ensure a uniform application of policy on Planning Obligations in Suffolk. The Protocol, set out in Section 4 of this Consultation Paper, should ensure that developers have a “one stop shop” approach to establishing the likely contributions which they will be expected to make towards providing services and facilities related to their proposed development.

1.3. The guidance is divided into three parts. These are;

- A statement about how LPAs will conduct themselves during negotiations set within the overall context of Government policy in Circular 1/97 entitled “Planning Obligations”.
- A policy statement about the types of facilities and services which LPAs will normally seek to provide through developer contributions, where appropriate. Wherever possible, the statement will set out thresholds and the scale of provision that will be required. The LPAs recognise that for most facilities it is not possible to apply countywide standards for this provision. In most cases advice on the scope and level of contribution required on a particular type or location of development will be set out in the Local Plan, Supplementary Planning Guidance or development briefs.
- A protocol between the authorities setting out how they will liaise and co-operate on planning applications where a Section 106 Agreement is likely to be needed. This will seek to ensure that there is early consultation between authorities and that each authority has mechanisms in place to provide information and advice in an expeditious manner. This will speed up the process of negotiation by providing a clear and justifiable statement about both the scope and level of contributions that are being sought in any particular case.

2. CODE OF CONDUCT FOR NEGOTIATING SECTION 106 AGREEMENTS

2.1. The Structure and Local Plans provide general policy guidance for developers to contribute, where appropriate, towards the infrastructure requirements generated by their development. This is based on the advice set out in Circular 1/97.

2.2. Paragraph 7 of the Circular sets out the tests which the Secretary of State expects to be met when entering into planning obligations and these will be respected by the Suffolk Local Planning Authorities. Obligations should be:

- necessary,
- relevant to planning,
- directly related to the proposed development,
- fairly and reasonably related in scale and kind to the proposed development, and
- reasonable in all other respects.

2.3. Policy CS14 in the Deposit Draft of the County Structure Plan Review contains the following policy relating to community facilities and infrastructure provision:

"Development will only be acceptable where the community facilities and infrastructure necessary to serve it already exist or can be made available at the appropriate time. In the latter case, conditions will be attached to planning permissions or legal agreements sought to ensure that the necessary provision is made".

2.4. All Local Plans in Suffolk have policies relating to the need for developer contributions. Some of these will need to be reconsidered during Local Plan reviews in the light of the proposed Structure Plan policy, advice contained in Circular 1/97 and this Supplementary Planning Guidance. Further advice on this is set out in Paragraphs 5.22 to 5.25 of PPG 12.

2.5. The LPAs will continue to expect high standards of layout, design, external appearance, landscaping and means of access irrespective of the level of developer contributions sought for other services and facilities. The payment of developer contributions should not therefore be offset against the overall quality of the development.

2.6. Principles or Ground Rules in Suffolk for negotiating Section 106 Obligations.

2.6.1. Prioritising competing bids

2.6.1.1. Local Plans and other Supplementary Planning Guidance will clearly spell out the requirements for developer contributions.

- 2.6.1.2. The costs of providing necessary community facilities and infrastructure relating directly to the development should normally be borne entirely by the development but the Local Planning Authorities appreciate that it may not be reasonable to seek the full contribution in all cases. However, the LPA would expect developers to justify why they should not be expected to meet requirements in full and to be prepared to work on “open book” accounting in order to substantiate their case. If a developer is unwilling to participate in this approach then the LPA will expect the full contribution to be made. The costs of validating the accounts will be borne by the applicant or exceptionally by the beneficiaries of the package. Information obtained through “open book” accounting will be treated as confidential.
- 2.6.1.3. It is accepted that on occasions the demands for developer contributions towards service enhancement, infrastructure etc. will be greater than the development is able to bear requiring some degree of “prioritisation”. For example, where a brownfield site is to be developed the costs of site preparation and the provision of other infrastructure may mean that it would be unreasonable to require contributions to other facilities if the development is to proceed.
- 2.6.1.4. The District Councils, as Local Planning Authorities, will make the final decision on what level of contribution to seek and how such contributions are apportioned. This Supplementary Planning Guidance will help this task both by providing an objective assessment of the need for contributions and to allow these to be considered against competing bids.
- 2.6.2. Sound planning principles will apply at all times - obligations will not be sought simply to extract “planning gain” but to meet the genuine costs imposed on the community by new development. Where the infrastructure requirements for a particular development have been clearly identified in Local Plans or Development Briefs then developers or landowners will be expected to make the necessary financial contributions.
- 2.6.3. No amount of inducements, facilities or payments will make a bad planning proposal acceptable and merit granting planning permission. Where possible the LPA will seek to impose conditions on planning permissions rather than seek to enter into a Planning Agreement. There will however be occasions where this is not practicable. Developers may also choose to make a Unilateral Undertaking. This is a legally binding document, which may cover the same issues as a Planning Agreement. As its name implies the LPA is not a party to such undertakings. Unilateral Undertakings may be made by developers at any time but are usually only relevant on appeal or when negotiations on agreements have become protracted and are unlikely to be resolved by agreement.
- 2.6.4. The principles set out in the *Tesco Stores Ltd v Secretary of State for the Environment 1995* case will apply (1 W.L.R. 759). It is a matter of law whether the LPA’s requirements for developer contributions (or something which is being offered by a developer) is material to the consideration of the planning

application. The weight given to any contribution in coming to a decision on any particular application will be a matter for each Local Planning Authority to determine on the merits of each case.

- 2.6.5. The extent of what is sought will be reasonably related in scale and kind to the proposed development. It will often be appropriate to phase contributions and commuted sums. The phasing arrangements will be clearly set out in the legal agreement.
- 2.6.6. Developers will not be required to make any contribution for facilities that are needed solely in order to resolve existing deficiencies. It should be noted however that development that will exacerbate the existing deficiencies may be unacceptable and planning permission may be refused.
- 2.6.7. Planning obligations will not be used as a means of securing for the local community a share in the profits of development for example as a means of securing a “betterment levy”.
- 2.6.8. Planning obligations will be made available for public inspection once they have been sealed. However, during negotiations and particularly where commercially sensitive information is being discussed the details of such obligations will be treated in confidence. Where practicable authorities will normally include the “heads of agreement” in planning committee reports.
- 2.6.9. Money obtained through Planning Obligations will only be used for the purposes that accord with the terms of the Planning Obligation. In particular, the Planning Obligation should specify the time limit within which the Council may use the money and include provisions requiring its repayment to the developer with interest. However, in some cases the Obligation will offer alternative uses for the money (e.g. it might refer to the construction of a road or contributions to improvements to a number of junctions); equally the Obligation may refer to general improvements in a particular area.
- 2.6.10. In addition to the need for new facilities to be provided where necessary, developers may, where appropriate, also be required to adequately replace any features or facilities to be lost.
- 2.6.11. Where all, or part, of a developer contribution has not been used within any time limit set out in the planning obligation the money will be repaid to the developer with accrued interest.
- 2.6.12. Developers will be required to pay the LPAs reasonable legal and accountancy costs resulting from preparing and sealing a Section 106 Planning Obligation.

3. IMPROVEMENTS, FACILITIES AND SERVICES WHICH MAY BE REQUIRED AS PART OF A SECTION 106 OBLIGATION.

3.1. Affordable Housing

3.1.1. Advice on the need for affordable housing is given in Circular 6/98 and policies relating to its provision are set out in Local Plans. LPAs will seek to achieve a mix and balance of dwelling types to cater for a range of housing needs. This mix and balance will vary across the County depending on the requirements of a local community.

3.2. Archaeology

3.2.1. In some instances archaeological requirements may be included in a Section 106 Agreement. Where a development site may contain archaeological information the Planning Authorities will normally impose a condition on the planning permission requiring the submission of a programme of archaeological evaluation. They will require the approved programme to be implemented before development commences.

3.3. Community facilities.

3.3.1. This could include a wide range of facilities but is likely to refer mainly to community/village halls, sports facilities both indoors and outside, libraries (both static and mobile) and other social and community facilities.

3.4. Commuted Sums.

3.4.1. There will be occasions where the developer is unable to provide certain required facilities on site. In some cases the "normal" provision may be undesirable because it impinges on some other area of acknowledged planning importance. For example, the provision of car parking within town centres or in Conservation Areas may detract from the quality of the built environment. In either case, the developer may be required to fund their provision off-site or pay a commuted sum towards their provision by the LPA.

3.4.2. Commuted sums will also be required for the maintenance of certain facilities. For example, such sums are often required for the maintenance of open spaces, landscaped areas and children's play space.

3.4.3. Different authorities have different policies and practices on the use of commuted sums and the relevant local authority will provide appropriate information. Further advice is contained in paragraph B14 of Circular 1/97.

3.5. Education provision

3.5.1. Developer contributions for education provision, including both land and capital costs, will be required, where justified and where directly related to the proposed development, on residential development proposals of 15 or more

dwellings and the LPA will provide written justification for the contribution sought.

3.5.2. Affordable housing will be exempt from the requirement to contribute towards the provision of school places. The LPA will also have regard to the type of development proposed in determining whether a contribution will be sought. For example where development includes sheltered accommodation then no contribution towards education provision would be sought for this element of the development

3.5.3. Detailed advice on the methodology for identifying the need for, and calculating the amount of, developer contributions required for the provision of school places is set out in the Appendix.

3.6. Environmental improvements

3.6.1. The refurbishment and restoration of historic buildings and features, as well as improvements to street and pavement surfaces, street furniture and wirescape may be required in certain cases.

3.7. Highway improvements

3.7.1. Notwithstanding the increasing emphasis on public transport provision, the highway authority will ensure that the access to the site and the network serving it are capable of accommodating the traffic generated by the proposed development in a safe and efficient manner. Improvements may be required to junctions, the width of adjoining roads, visibility splays, traffic signal controls and other traffic management measures. This may entail enhancing existing provision or providing new facilities.

3.7.2. New development will need to provide adequate facilities for pedestrians, cyclists and on occasions horse riders. Links between new development and existing pedestrian and cycleways or Public Rights of Way may be required which may involve land outside the application site. Where this occurs the Local Planning Authority may require the developer to pay a commuted sum. The LPAs will expect these links to be provided at the developer's expense where the new links are required by and related to the development.

3.7.3. In some situations developers will be required to meet the legal and administrative costs associated with any orders which need to be implemented by the County or District Council as a result of the new development. This might relate for example to the imposition of weight limits, speed limits or Traffic Regulation Orders.

3.8. Landscaping, planting and other screening.

3.8.1. Landscaping will normally be covered by a landscaping condition on a planning permission: if in exceptional circumstances the scale or nature of the development justifies works outside the application area this will be secured by a Section 106 Agreement.

3.9. Lorry Routeing

3.9.1. Some developments may generate HGV movements on poor quality roads or through residential areas or Conservation Areas. In some cases a suitable alternative route may exist. Circular 11/95 indicates that it is not appropriate to impose lorry routeing conditions on any planning permission. This is because once on the highway users have the right to pass and repass in accordance with the Highways Act.

3.9.2. However, the LPAs consider that provided the developer is willing to enter into a lorry routeing agreement and uses best endeavours to enforce its terms, for example by issuing instructions to its own drivers and contractors, then such agreements may be a suitable way of overcoming objections to the development on traffic/environmental grounds. This may be supplemented by physical changes to the access to such sites, or signage.

3.10. Public Open Space/Parks/Children's Play Space

3.10.1. To meet the needs of the development developers will be required to provide new facilities or enhance existing ones.

3.11. Public transport

3.11.1. The LPAs are seeking to improve public transport provision, both in terms of physical infrastructure such as bus lanes, guided bus ways, bus shelters, bus stops etc. and in the provision of bus services. Major new development will normally be located in areas which are or have the potential to be served by public transport. The layout of major development will therefore need to ensure that it is accessible to public transport and that the requisite facilities are provided.

3.11.2. In major developments where new public transport services need to be established, developers may be required to contribute to the revenue costs of providing these services. In such cases this will normally be for a limited period of not more than 5 years. Where the developers are required to contribute to such costs for a period exceeding 5 years, the LPA will provide written reasons as to why such contributions are required for the specified period.

3.12. Wildlife Areas

3.12.1. Measures to create new habitats, or protect and manage existing areas of wildlife interest may be required.

4. PROTOCOL BETWEEN THE DISTRICT AND COUNTY COUNCILS

4.1. District Councils determine most planning applications. In appropriate circumstances, developer contributions towards the provision of local services and facilities will be required, some of which might relate to services provided by the District Council. This might include, for example, the provision of affordable housing, recreation and sports facilities, public open space and parks, public art, environmental enhancement measures and children's play areas. In addition many proposals also have implications for County Council services. For example the County Council is responsible for Education, Social Services, Libraries the Fire Service Highways and Strategic Planning. There is therefore a need for close liaison between the County and District Councils.

4.2. The need for a contribution to Local Authority services will vary depending on the size, type and location of the development and the adequacy of existing service provision in that area. In most cases it is not possible to define thresholds in advance. However, generally, the larger the development the greater the need for contributions.

4.3. The Protocol recognises that the final decision on whether or not a particular contribution is justified and the priority which County Council services should receive rests with the Authority determining the application who will have to balance competing requirements against the value of contributions which may be negotiated.

4.4. The aims of this protocol are to ensure that:

- There is effective consultation between the County and District Councils on applications that are likely to affect the provision of County Council services.
- District Councils are provided with adequate information to assist in negotiations with developers and that requests by the County Council for developer contributions are properly justified.
- Due account is taken in negotiations to requests for developer contributions for the provision of County Council services.
- The process of negotiation is expeditious.
- Developers are aware of the likely requirements for contributions as early as possible in the development process.

4.5. The District Councils will:

4.5.1. Ensure that Local Plans include policies which provide an adequate basis for addressing relevant County Council requirements associated with different types and locations of new development.

4.5.2. Consult the County Council at the earliest opportunity on development proposals that are likely to give rise to Planning Obligations for the provision of

services. Where possible the County Council will be involved in pre application discussions.

4.5.3. Involve the County Council in early discussions about likely policies and proposals in Local Plans and in the early stages of the preparation of design briefs where planning obligations may arise.

4.5.4. Take full account of the views expressed by the County Council on the need for additional County Council services and provide reasoned justification in cases where it is proposed not to include requirements in obligations.

4.5.5. Wherever practicable provide the County Council with a reasonable opportunity to respond to proposals to not include such requirements.

4.6. The County Council will:

4.6.1. Act in accordance with the council's policies as set out in the Suffolk Structure Plan and other policy documents and will have regard to national and regional Planning Policy Guidance.

4.6.2. Where planning obligations are likely to be necessary, provide a co-ordinated response to District Council consultations on all Local Plans, Supplementary Planning Guidance, Development Briefs and planning applications.

4.6.3. Nominate a single point of contact to deal with the co-ordinated response referred to above and introduce a mechanism to ensure that this officer is made aware of all direct contacts with County Council departments by developers wishing to discuss potential contributions towards the provision of County Council services.

4.6.4. Provide reasoned justification for contributions requested as part of obligations.

4.6.5. Will invite the District Council to be involved in any discussions with developers relating to the scale of developer contributions which may be sought This will allow the LPA to set these discussions in the context of other potential developer contributions being sought

4.6.6. Assess the suitability of location and available capacity of existing services and facilities and consider what scope there is to cope with the anticipated demand for services arising from development proposals. It will share any background information used at an early stage.

4.6.7. Where appropriate provide expert witnesses at appeals and local planning inquiries to support its requirements. In addition, in the unlikely event of costs being awarded against the District Council resulting from a requirement sought by the County Council it will be prepared to meet these.

APPENDIX

5. DEVELOPER CONTRIBUTIONS FOR THE PROVISION OF EDUCATION FACILITIES.

5.1. Introduction

5.1.1. This Appendix establishes a mechanism for calculating an appropriate level of developer contributions for Education provision. Where appropriate and justified, the Education Authority will seek contributions to cover both the cost of land and the capital costs of school buildings (both new schools and extensions to existing ones).

5.1.2. The final decision on whether or not this level of contribution is justified and the priority that the County Council service should receive, in any particular case, rests with the Local Planning Authority.

5.2. The Mechanism for Assessing Contributions to the Provision of School Places.

5.2.1. Information used

5.2.1.1. The County Council uses the most up to date information available to produce forecasts of future school rolls. This includes data from the latest census, Area Health Authority statistics on live births and information from health visitors and doctor's practices. Whilst it is recognised that this data may not be 100% accurate it is considered to be the best available. The County Director of Education (CDE) produces information on existing and projected school rolls each September. These are available to developers on request.

5.2.1.2. The CDE also assesses the amount of permanent and temporary accommodation at each school and this is included in the above document. These figures are used as the basis for seeking developer contributions. However, the data may vary from the published information as a result of movements of temporary classrooms and the construction of permanent accommodation during the year. Developers are advised to obtain the latest information from the CDE before submitting a planning application.

5.3. Need Assessment Criteria.

5.3.1. Contributions will only be sought where there is a demonstrable need. Where such contributions are sought the County Director of Education will provide the District Councils and, on request, the developer, with data on catchment areas, existing permanent and temporary accommodation and existing and projected school rolls. The presence of existing temporary accommodation should be taken as evidence that the school is already under pressure and should not figure in the calculations.

- 5.3.2. In assessing the need for developer contributions the Education authority will take account of any housing development already permitted but not yet constructed as it will be assumed that these developments may ultimately either soak up surplus places (where they exist) or exacerbate an existing shortfall.
- 5.3.3. Contributions may therefore be sought from development even where there is no actual shortfall at a school at present but where one is reasonably expected to occur either when existing approved development comes on stream or within the period for which forecast roll figures are available.
- 5.3.4. Where existing permissions have not been implemented and have lapsed this will be a material factor in deciding whether to repay contributions. Equally, where permissions are renewed it may be appropriate to seek contributions where previously none were sought if there is a demonstrable need for a contribution towards education facilities at the time that the permission is renewed.
- 5.3.5. Contributions will be ring fenced to the schools within the High School catchment area of the development. In most cases this will relate to only one school at each tier but in urban areas this may be widened to encompass a number of schools.
- 5.3.6. The decision on which school to expand to accommodate extra pupils from new development will rest with the Education Authority. This would depend on factors such as the scope for extension (physically and in planning terms), and trends in school rolls amongst schools in the catchment area. There would however need to be a clear link between the specific school development and the development that generated the contribution.

5.4. Thresholds

- 5.4.1. To date developer contributions for school provision have been limited to major developments and for site provision at no cost only. However, smaller scale developments can put pressure on school accommodation especially where there is reliance on temporary accommodation and where extensions are required. Contributions will therefore be sought where justified for both land and capital costs of providing new schools or extensions to existing ones. However, it is realised that it may not be reasonable to seek contributions from small developments that have only a marginal impact on school rolls. Therefore contributions will only be sought from developments of 15 or more dwellings.
- 5.4.2. The County Council will take into account the type of dwellings incorporated within the development proposals and will only seek contributions that are directly related to and required by the development proposals.

5.5. The Scale of Contribution.

- 5.5.1. The scale of contribution will be based on the Department of Education and Employment's cost multipliers for the capital cost of providing a school place, which are reviewed regularly to reflect changes in construction costs. At November 1998 prices these are £4455, £5177.5, £5900 and £7065 for Primary, Middle, Upper/High and Sixth Form places respectively
- 5.5.2. This covers all building and fitting out costs but does not include land costs. Where education facilities required by a particular development proposed can be accommodated within existing schools the County Council will not seek a contribution towards land costs.
- 5.5.3. For new schools the infrastructure costs are much higher and the cost multipliers will be increased by about 25%.
- 5.5.4. Where the scale of development is sufficient in itself to justify a new school the developer will be expected to provide the site free of charge in addition to the contribution referred to above.
- 5.5.5. Where the development is not large enough to require a new school, but is of sufficient size to trigger the need for a new school because existing schools cannot satisfactorily accommodate the pupils from the development, then a contribution to the land cost of a new school would be required in proportion to the number of pupils generated by that development. For example if the new development generated 50% of the pupils then a 50% contribution to the land cost will be sought.

5.6. Collection, Investment and Use of Contributions.

5.7. The following principles will apply to the way contributions are collected, invested and used.

- Contributions will be held by the LEA in a ring-fenced account and may only be used for the purpose for which it was taken as set out in the legal agreement.
- Payment will be required on commencement of development or in accordance with a phased arrangement, depending on the circumstances.
- If after a specified period (which is likely to be at least 10 years after the completion of the development) any of the following have occurred then the LEA will repay the money, with accrued interest, to the developer.
 - The LEA is unable to carry out the extensions or provide the new school for any reason
 - The increase school rolls have not materialised.
 - If the actual cost of providing the necessary infrastructure falls below the level of contribution taken. In this case the District Council may decide to negotiate the use of the surplus monies for other infrastructure which the developer

considered could not be funded at the original grant of planning permission. The circumstances where this would apply would be set out in the legal agreement.

5.8. Where land is being provided by the developer for a new school site the County Council will normally seek to obtain an option for the transfer of the site within a specified period of time. i.e. the land will remain the landowner's property until required by the County Council.

5.9. Role in Negotiation.

5.9.1. The LPA will negotiate with developers over the scope and scale of contributions required. County Council officers are willing to be involved in these negotiations and will be prepared to support the District Councils on appeal, if it is not possible to reach an Agreement and an appeal for non-determination is lodged. Developers will, where appropriate, be expected to pay the additional costs borne by the LPA of entering legal agreements.

5.10. Exemptions

5.10.1. Development by Housing Associations, or other forms of "affordable housing" developments will not be expected to contribute to the provision of school places. Clearly, development which does not place any demands on school provision, such as homes for the elderly, would also fall outside the scope of this Supplementary Planning Guidance