
Newcastle-under-Lyme Borough Council

Supplementary Planning Document SPD for Developer Contributions

September 2007

This Supplementary Planning Document was approved by the Borough Council's Planning Committee on 25th September 2007 and subsequently adopted by Cabinet on 17th October 2007.

TABLE OF CONTENTS

INTRODUCTION	1
STATUS OF SPD	
STRUCTURE OF DOCUMENT	
CONSULTATION	
SUSTAINABILITY APPRAISAL	
PART ONE	4
CONTEXT	
NATIONAL POLICY CONTEXT	
REGIONAL POLICY CONTEXT	
STAFFORDSHIRE STRUCTURE PLAN	
LOCAL POLICY CONTEXT	
APPROACH TO SECURING DEVELOPER CONTRIBUTIONS	
POOLING	
PLANNING OBLIGATIONS PROCEDURE	
VIABILITY	
MONITORING	
FINANCIAL CONTRIBUTIONS	
PART TWO.....	13
INTRODUCTION	
STATEMENT OF CONSULTATION	
AFFORDABLE HOUSING	
COMMUNITY SAFETY	
EDUCATION	
HIGHWAYS AND TRANSPORT (Including Green Travel Plans)	
PUBLIC REALM	
OPEN SPACE AND RECREATION	
APPENDIX 1 – NATIONAL POLICY CONTEXT	20

INTRODUCTION

Introduction

This Developer Contributions SPD sets out Newcastle-under-Lyme Borough Council's approach to securing developer contributions as used in relation to development within the remit of Section 106 of the Town and Country Planning Act.

The SPD provides advice for all those involved in the preparation, submission and negotiation of planning applications where developer contributions may be required. It seeks to clarify the Council's approach for using planning obligations to seek developer contributions in policy and operational terms and helps explain how requirements will be prioritised. The SPD will help to achieve national, regional and local objectives for sustainable development.

It is important to note at the start of this document that the Council adheres to Planning Good Practice and National Planning Guidance in the manner in which it deals with planning applications by, wherever possible, using Planning Conditions to mitigate against the adverse impacts a development may have on surrounding environments and infrastructure, only turning to the use of Planning Obligations when the adverse impacts are such that Conditions are not sufficient to facilitate mitigation against them.

Status of SPD

Supplementary Planning Documents (SPDs) expand or provide further detail on policies contained within development plan documents. They replace Supplementary Planning Guidance (SPGs) prepared under the old planning system. SPGs will continue to exist as non-statutory documents whilst the relevant saved policies they supplement are in place.

SPDs do not form part of the statutory development plan, but are subject to rigorous procedures of community involvement. They are therefore an important material consideration in the decision making process.

The SPD forms part of the Newcastle-under-Lyme Local Development Framework and is intended to complement and provide further guidance on the planning obligations policy approach set out within the saved Newcastle-under-Lyme Local Plan 1996-2011. It is also expected that the SPD will remain in conformity with the emerging North Staffordshire Core Spatial Strategy and other Local Development Plan Documents within Newcastle-under-Lyme's Local Development Framework.

The SPD has been prepared in accordance with the Town and Country Planning (Local Development) (England) Regulations 2004.

Structure of Document

The SPD is set out in two parts as follows:

Part One – Part One sets out the national, regional and local policy context for the preparation of this SPD before describing the Council's overall approach and procedures relating to securing planning obligations.

Part Two – Part Two provides details of specific planning obligations the Council is likely to seek and signposts relevant documents. Specific matters covered in Part two include:

- Affordable Housing
- Community Safety
- Education
- Highways and Transport (Including Green Travel Plans)
- Public Realm
- Open Space and Recreation

Sustainability Appraisal

Central to the new planning system is the concept of Sustainable Development. All SPDs are required to undergo a Sustainability Appraisal (SA), to enable sustainable development to occur through the assessment of social, environmental and economic impacts of the SPD. A Sustainability Appraisal of the draft SPD was conducted and the SA Report was published alongside the draft SPD for public consultation. None of the changes made to the draft warranted a review of the Sustainability Appraisal.

Consultation

Early key stakeholder consultation took place to inform the development of this SPD. This took the form of meetings with each key stakeholder to discuss their views on how a Developer Contributions SPD should be formulated. The following is a list of those stakeholders consulted in October and November 2006:

- Newcastle-under-Lyme Borough Council Planning and Housing Strategy Services
- Newcastle-under-Lyme Borough Council Development Control Services
- Newcastle-under-Lyme Borough Council Economic Regeneration Services
- Newcastle-under-Lyme Borough Council Landscape Development Services
- Staffordshire County Council Development Services Directorate (Highways)
- Staffordshire County Council Education and Lifelong Learning Services Directorate
- Staffordshire Police

A draft SPD was prepared by **Scott Wilson** in 2006 and their work on this document is gratefully acknowledged. The draft was approved by the Council in February 2007 and formal consultation took place in accordance with the Council's Statement of Community Involvement. Many representations were received and reported to the Planning Committee in June 2007. Further discussion then took place with a number of key stakeholders and the final amended version of the SPD was reported to Planning Committee in September 2007.

**If you would like any further information on this SPD,
please call 01782 742477 or 01782 742458**

PART ONE

Context

This section sets out the national regional and local context that has informed the preparation of this SPD, together with the Councils approach to securing developer contributions.

National Policy Context

The statutory basis for developer contributions is contained in Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the 1991 Planning and Compensation Act. This enables a person interested in land to enter into a planning obligation enforceable by the local planning authority.

A planning obligation is a binding agreement entered into between a Local Authority and a developer / landowner (a 'Planning Agreement') or offer of a specific undertaking by a landowner (a 'Unilateral Undertaking'). Such an obligation may require the developer / landowner to carry out certain works, or to provide, or contribute towards the provision of measures to mitigate the negative impacts of their development and to ensure that the development contributes towards the sustainability of the area.

Planning obligations can also be used to restrict the development or use of land. However, this SPD deals primarily with the practice of using planning obligations as a means of securing developer contributions.

Planning Obligations run with the land. They are legally enforceable against the owner(s) (including their successors in title) of the land to which they relate. This means that typically only the owner can enter into a planning obligation even if another person (for instance the developer) has submitted the application.

Sections 46 and 47 of the Planning and Compulsory Purchase Act 2004 give the Secretary of State power to make regulations to replace Section 106, but as these powers have not yet been taken the latest guidance is based on the delivery of obligations through the existing Section 106 regime.

Current Government Guidance on "Planning Obligations" is contained in Circular 05/2005 (published 18 July 2005) supported by DCLG Planning Obligations Practice Guidance (2006).

Circular 05/2005 sets out the policy tests that must be met by local planning authorities in seeking planning obligations. Planning obligations must be:

1. Relevant to planning
2. Necessary to make the proposed development acceptable in planning terms
3. Directly related to the proposed development
4. Fairly and reasonably related in scale and kind to the proposed development; and
5. Reasonable in all other respects

The Circular reiterates the principle that it would not be legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer, which are not necessary to make the development acceptable in planning terms. Likewise, planning obligations should never be used as a means of securing for the local community a share in the profits of development.

The Circular advises that Local Planning Authorities should include high level planning policies on developer contributions in their Development Plan Documents - if these are not already included within their saved plans. More detailed policies applying the principles set out in the high level policies should be included in Supplementary Planning Documents.

In addition to Circular 05/2005, policy guidance in relation to specific planning obligation requirements for specific types of development is set out in Planning Policy Statements (PPSs) and Planning Policy Guidance notes (PPGs). These are summarised in **Appendix 1**.

Regional Policy Context

The West Midlands Regional Spatial Strategy (adopted June 2004) became part of the development plan for Newcastle-under-Lyme on the commencement of the Planning and Compulsory Purchase Act in September 2004. The document provides a spatial strategy to guide local authority development plans within the region. Policy UR4 (Social Infrastructure) highlights the need for local authorities to coordinate the land use and investment decisions of service providers with improved service delivery. The Regional Spatial Strategy is currently being reviewed and can be viewed on the following website: <http://www.wmra.gov.uk/>.

Staffordshire Structure Plan

The Secretary of State in exercise of the powers conferred by Para 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004 has directed that a number of policies in the Saved Structure Plan are to be saved beyond 28th September 2007. This includes Policy D8 (Providing Infrastructure Services, Facilities and/or Mitigating Measures Associated with Development) which makes clear the requirement for local plans to include policies on planning obligations with the aim of securing benefits where these are necessary, relevant to planning, directly related in scale and kind to the proposed development and reasonable in all other respects. The provisions to be negotiated to make the impact of development acceptable may include:

- (a) pedestrian routes, cycleways, public transport facilities and services, highway infrastructure and appropriate parking;
- (b) utility services, including surface water and foul drainage;
- (c) educational and community facilities, open space and other recreational facilities;
- (d) affordable housing;
- (e) high quality landscaping and/or woodland planting;
- (f) where damage to protected habitats or those frequented by protected species is unavoidable, the replacement of significant natural habitats or introduction of other appropriate mitigation measures.

Local Policy Context

Newcastle-under Lyme Local Plan

The Developer Contributions SPD will complement and provide further guidance on the policy approach set out within the 'saved' Newcastle-under-Lyme Local Plan 1996-2011. The Secretary of State for Communities and Local Government has allowed the Council to save 90 policies in the Local Plan as provided for by the Planning and Compulsory Purchase Act 2004. It is also expected that the SPD will remain in conformity with the emerging North Staffordshire Core Spatial Strategy and other emerging Local Development Plan Documents comprising Newcastle-under-Lyme's Local Development Framework. The saved Policies that outline the requirements for Planning Obligations cover the following topic areas:

NEWCASTLE-UNDER-LYME LOCAL PLAN 1996-2011 (ADOPTED)	
Affordable Housing *	Policies H12 and SPG on Affordable Housing
Public Open Space & Recreation	Policy C4
General	Policy IM1

* Policy H11, the general policy on affordable housing, was not amongst those that DCLG allowed to be extended, because it made specific reference to PPG3, which has now been superseded. Similarly Policies T1, T13 and T14 were not amongst those that DCLG allowed to be saved as they were seen to repeat national guidance. However, DCLG has made it clear that national guidance takes precedence and "the emergence of new national and regional policy and also new evidence, will be afforded considerable weight in decisions". (Quoted from the direction letter issued 7th September 2007.)

Policy IM1 of the adopted Local Plan sets out the Council's overarching Policy for developer contributions. This states:

"Where a development proposal would require improvements to infrastructure or essential facilities to make it acceptable then the developer will be required to carry out or contribute to the funding of appropriate works"

Details of these policies can be found on the Council's website: www.newcastle-staffs.gov.uk.

It is considered that the SPD has been prepared in conformity with the saved policies and is consistent with National and Regional Policy.

Community Strategy

The Newcastle-under-Lyme Community Strategy, April 2005, sets out a strategic vision for the Borough. It sets out six priorities, which, if achieved successfully, will bring about significant improvements for people living and working in the Borough. These are as follows:

- Safer communities should experience less crime and fear of crime, where vulnerable people are protected and the stigma attached to perceived high crime areas is reduced.
- Everyone should have equal access to good education, learning and cultural opportunities that will enable them to contribute fully to a thriving economy and benefit from increased prosperity
- Communities should be fully engaged and involved in planning and decision making, resource allocation and service development and delivery
- Services, information and advice should be more accessible, integrated and responsive to the needs of local neighbourhoods
- Everyone should have an equal opportunity and the necessary resources to improve their health, well being and quality of life
- Every resident in the Borough should have an affordable home suitable to his or her needs and live in a high quality environment.

The Council's approach to negotiating and securing developer contributions will be set within the context of delivering these key priorities.

Approach to Securing Developer Contributions

The Council acknowledges that not all new development creates the need for significant new or improved infrastructure, services or facilities and wherever possible the Council will seek provisions by the imposition of planning conditions.

In some cases however, Planning Obligations will be required as a means of ensuring that developers contribute towards the infrastructure facilities and services necessary to mitigate the impact caused by their proposed developments. Contributions will be either in cash or in kind.

In accordance the above policies the Council may seek the following types of contribution:

- Affordable Housing
- Community Safety
- Education
- Highways and Transport (Including Green Travel Plans)
- Public Realm
- Open Space and Recreation

The list is not exhaustive, nor establishes any order of priority, but deals with matters which the Council is most frequently likely to require contributions for. There may, from time to time, be other issues for which the Council will seek developer contributions. Any requirement will be tailored to individual site circumstances and its particular impact on the surrounding social and physical environment. Where there are multiple requirements for contributions towards different types of social or physical infrastructure, the Council may need to prioritise these having regard to a detailed assessment of the financial viability of the proposal (described below) and the greatest opportunities and needs identified in the particular locality.

The Council will endeavour to advise applicants of any requirements during pre-application discussions.

Guidance prepared by the Home Builders Federation in conjunction with the Planning Officers Society and the British Property Federation provides detailed advice on best practice in pre-application discussions. 'Constructive Talk – investing in pre-application decisions' is available for download from the following website:

http://www.hbf.co.uk/fileadmin/documents/planning/National_Planning/Constructive_talk_-_pre-application_discussions.pdf

Pooling

Where the combined impact of multiple developments is likely to result in the requirement for additional infrastructure, services or facilities there may be circumstances in which the Council will seek to pool the contributions of the associated developers to allow the infrastructure to be secured in a fair and equitable way. Where this occurs the Council will set out in advance and make available the justification (demonstrating the relationship between the development and the infrastructure) for this joint supporting infrastructure, facility or service and the likely requirement for seeking a fair and reasonable contribution from developers.

A similar situation may exceptionally arise where individual, unrelated, small-scale developments are likely to have a cumulative impact on existing infrastructure, services or facilities (but which are not in their own right sufficient to justify the need for that piece of infrastructure, facility or service). In such cases, the Council may seek contributions towards specific future provision, though it would be particularly important for the justification to be set out in advance of any such requirement. This could be as an SPD or non-statutory document, depending on circumstances and would need to define clearly the scope of development proposed or envisaged that would come within it.

The Council or relevant body may provide the item of infrastructure before all the developments have come forward. Where this is the case later developments may still be required to contribute the relevant proportion of the costs. Spare capacity in existing infrastructure will not be credited to developers. However, in accordance with Circular 05/2005, in the event that contributions are made towards infrastructure which is not provided within an agreed timetable, arrangements will be made for contributions to be returned.

The Council considers that developers may reasonably be expected to pay for, or contribute to, the cost of infrastructure, which would not have been necessary but for their development. The same guidance applies as in other issues of developer contributions - i.e. that requirements would be directly related to the proposed development.

Planning Obligations Procedure/Protocol

In the past Planning Obligations have been a major cause of delay in the delivery of planning permissions relating to major schemes. The procedures set out below are intended to reduce such delays and make the process much more effective and efficient. They follow guidance (a *Guide to Understanding and Completing Planning Obligations*) that, together

with other Staffordshire Districts and Staffordshire County Council, the Council has published in an attempt to rectify this situation.

To ensure the process is carried out effectively and efficiently the Council strongly advises that applicants seek Planning Officer advice during the pre-application discussion stage to prevent delays or the refusal of the application. To facilitate these discussions, the Council will appoint one of its Senior Planning Officers as a nominated Section 106 Agreement Officer, who will be able to provide advice on such Agreements in all cases where Planning Obligations may be required. Applicants should also refer to the related policies in the Development Plan as appropriate and any other relevant supplementary planning documents. Please note that the Planning Committee may change the requirements of the agreement.

The Council would strongly suggest that applicants adhere to the following basic procedures:

1. Pre-application Discussion/Application Stage

This should take place as early as possible during the formulation of development proposals. Prospective applicants who come forward with proposals during this stage will be advised by the Planning Officer of the merits of the case and the requirement to provide a Section 106 Agreement or a Unilateral Undertaking. With advice from the Planning Officer (including statutory and other consultees as appropriate) and relevant policy, it will be possible to specify the nature of the Obligation and what is required.

2. Submission of planning application

Once it has been agreed with the Planning Officer (and statutory and other consultees, as required) and the applicants are in a position to submit a full planning application, which requires a Planning Obligation, the following documents should be provided along with the application. (This has been formulated with reference to draft guidance from the DCLG: "the validation of planning applications" published in August 2007.)

- A draft Undertaking or Agreement

- An agreed draft Undertaking or Agreement should be submitted along with the full planning application in order for the application to be validated. **Unless there are special mitigating circumstances, without such an agreed draft Undertaking or Agreement, the application will not be validated**, resulting in a significant delay to the processing of the planning application.
- Please note that as the Undertaking or Agreement is in the form of a deed it is essential that it is drafted properly. Your Solicitor can assist you with this. Advice can be obtained from the Council's Legal Services or the Planning Officer.

- Evidence of Title to the Land

- Evidence of title to the land, together with confirmation of all signatories to the agreement. If the title is registered at HM Land Registry, an up-to-date office copy of the registers and filed plan must be obtained. If the title is

unregistered, full and complete title must be submitted ensuring that any plans within any title documents are coloured as the original.

- **Abortive Costs Undertaking**

- An undertaking to cover any abortive costs the District Council/County Council commit in finalising the agreement in the event that the application is not pursued.

3. Receipt of the Undertaking / Agreement

Upon receipt of the Undertaking / Agreement and title will be forwarded to the Council's Legal Services for approval and you will be required to pay the Council's Legal fees, which are charged on a time recorded basis or as a flat rate, as appropriate.

- Unless the above documentation is received within the stipulated timeframe then it could cause delays in the registration/application process or refusal of consent.
- If the application is to be considered by Council's Planning Committee then the Committee may resolve to modify the extent and nature of the matters to be dealt with by the Planning Obligation.

Viability

Any developer contributions required will need to comply with the tests set out in the circular, as quoted on page 4. It is implicit in this that whatever the Council is asking for is considered by the Council to be reasonable. However, it is acknowledged that in some circumstances, an applicant may believe that what is being asked for will render a development unviable, probably in financial terms, but sometimes in practical terms.

In such circumstances, for the Council to be persuaded to reduce its requirements, the onus will be on the applicant to justify why and how special circumstances apply. Where the issue is purely financial, it is acknowledged that there are issues of confidentiality. However, to ensure fairness and transparency any information provided would have to be made available to the public. The final decision will be made by the Planning Committee and its deliberations must be carried out in the public arena.

In such circumstances, it would be for the applicant to determine what level of information would be needed to make the case. It is unlikely that detailed tender-based construction cost information would be either required or available at this stage of the development process but supporting estimated cost breakdowns, including assumptions made, might be considered helpful. The list below is intended as a guide to the type of information that an applicant could consider useful to demonstrate why the Council's requirements are too onerous.

1. Completed project development value including rental values, investment yield and any other income producing elements, e.g. freehold serviced site values
2. Development costs including:
 - a) Current site value/acquisition cost
 - b) Reclamation cost
 - c) Construction cost
 - c) Professional fees
 - d) Finance charges
 - e) Developer's profit
 - f) Other fees or costs e.g. marketing, local authority fees, s.278 requests
 - g) Allowance for s.106 contribution
 - h) Details of any third party contributions to costs such as capital grant assistance must also be acknowledged.

The Council may seek independent third party advice and the cost of this is expected to borne by the developer.

Negotiation over the level of and nature of contributions will be assessed on a site-by-site basis, having regard to the financial appraisal. It will take account of the economics of the development and other national, regional and local planning objectives that may affect the economic viability of the proposal. Ultimately, the Elected Members of the Planning Committee will take the decision on the appropriate scale and nature of contributions.

Monitoring

Circular 5/05 B50 provides that:

“Once planning obligations have been agreed, it is important that they are implemented or enforced in an efficient or 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. This will require monitoring by local planning authorities, which in turn may involve joint-working by different parts of the authority. The use of standardised systems is recommended, for example, IT databases, in order to ensure that information on the implementation of planning obligations is readily available to the local authority, developer and members of the public”.

The Council’s Development Control Service, in conjunction with the County Council and other relevant service providers, will oversee the monitoring of Planning Obligations. The purpose of this monitoring will be:

- To review the effectiveness of the SPD;
- To review available resources;
- To ensure Section 106 agreements are implemented
- To ensure the fair and consistent application of the requirements for developer contributions
- To ensure linkage between Section 106, this SPD and corporate objectives and priorities.

In general, there are two elements of Developer Contributions that require monitoring:

1. Whether the contributions have been received or, in cases where contributions are works to be carried out by the developer in lieu of financial contributions, whether they have been implemented as agreed in the Section 106 Agreement / Undertaking.
2. How the financial contributions have been spent.

Responsibility for co-ordinating the monitoring of the receipt, expenditure and implementation of Developer Contributions will lie with the appointed Section 106 Officer within the Council's Planning Team.

Where significant monitoring will be required, the cost towards the compliance and monitoring, project management and implementation of Planning Obligations will be included in the total sum that is referred to in the Section 106 Agreement. Where there is no direct financial element in the developer requirement, the cost of monitoring will be assessed by the Council.

Financial Contributions

Financial contributions due under any obligations must be paid to the Borough Council as the Local Planning Authority, or other relevant parties as required, in order that the needs and impacts arising from new developments are addressed before they arise. Payments would normally be expected to be paid on the commencement of development (or as otherwise stated in the relevant Guidance or Policy Documents). In the case of major phased developments, contributions may be paid in instalments on the commencement of each phase. Trigger dates for payments and time periods for the contribution to be spent will be set out in the Planning Obligation agreed by the applicant and the Borough Council.

Financial contributions will be indexed in legal agreements to allow for changes in costs and prices over time, using the most appropriate index from the All Items Group of the Retail Prices Index, as published by H M Government Office for National Statistics.

PART TWO

Introduction

Part Two provides further guidance on the types of developer contribution the Council is likely to seek, with signposts to relevant documents. The list of requirements is not exhaustive, but provides details of many of the possible requirements. The Guidance set out in Part One of this document will also apply to any future documents in which the Council seeks developer contributions.

Affordable Housing

Policy Justification

Circular 05/2005, PPS3 Housing, The Governments Affordable Housing Policy Statement: Delivering Affordable Housing, the Regional Spatial Strategy and the adopted saved Local Plan Policies:H12 and IM1 provide the context for seeking planning obligations in respect of affordable housing.

Developer Contribution Requirements

Affordable Housing Obligations will apply to any new housing on sites of 15 or more dwellings, in accordance with PPS3, though this threshold may be lowered in specific situations if justified by the evidence.

Detailed Local Affordable Housing requirements are currently set out in Supplementary Planning Guidance (SPG) on Affordable Housing 2004. The provisions set out in the SPG will remain in force until such time as a DPD Policy or Supplementary Planning Document on Affordable Housing updates or replaces it in light of PPS3. Where there is a difference between the approach set out in the adopted SPG and that in more recent National and Regional Policy, National and Regional Policy should take precedence. It is not intended to repeat the requirements set out in the SPG or PPS3 in their entirety here. Reference should be made directly to the SPG and PPS3 or the updated SPD.

Further Information

Copies of the SPG on Affordable Housing can be obtained from Newcastle-Under-Lyme Strategy, Development and Regeneration Directorate or on the Council website: www.newcastle-staffs.gov.uk. Copies of PPS 3 and the Governments Affordable Housing Policy Statement can be viewed on the Department for Communities and Local Government website www.communities.gov.uk. For further information contact the Council's Housing Strategy Team.

Community Safety

Policy Justification

The Policy Justification for seeking developer contributions in respect of community safety is provided by Circular 05/2005 and the adopted saved Local Plan Policy: IM1.

Ensuring safer communities and reducing crime and fear of crime is also one of the six priorities of the Newcastle-under-Lyme Community Strategy.

Developer Contribution Requirements

The requirement for developer contributions towards community safety will be assessed on a site-by-site basis in accordance with the policy tests set out in Circular 05/2005. Where possible the Council will seek to ensure that the negative impact of development on crime or fear of crime is mitigated by design of the proposed development or by the use of planning conditions. Often where this cannot be achieved the application will be refused. There will however, be circumstances where developer contributions will be required.

Within Newcastle Town Centre, developers may be required to provide contributions towards community safety for Class A3 (Restaurants, snack bars and cafes), A4 (Drinking establishments) and A5 (Hot food takeaway) developments (prior to 21 April 2005 Classes A4 and A5 were included in Class A3). Contributions will be targeted towards community safety needs (such as town centre surveillance and security measures – e.g. improved lighting, late night bus services), which are directly related to the development. The justification for/ use of the contribution will be specified in the Planning Obligation. The level of the contribution will be calculated by the Council on the basis of the required measures.

Any requirement for community safety measures, and financial contributions towards them, would be based on discussions with the Police, largely through the CDRP (Crime and Disorder Reduction Partnership.) The Council would set out the justification for such a requirement in advance and this would be based on an assessment of the impact of development in the area on police resources, crime and fear of crime and the costs of mitigating that impact. Any contributions would be for tangible measures rather than revenue costs. In exceptional cases, where a significant amount of development is to take place, this could include physical development to accommodate policing services.

For Further Information

For further information contact the Regeneration and Development Directorate or the Council's Community Safety Officer. Alternatively, for advice on designing out crime and policing contact the Staffordshire Police Architectural Liaison Officer/Property Development Manager.

Education

Policy Justification

The Policy Justification for seeking a planning obligation in respect of education is set out in paragraph B15 of Circular 05/2005, Saved Local Plan Policy IM1 – and policy D8 of the Structure Plan which requires that “The Council will require major new housing, commercial and industrial development to provide for new social, recreation, education, community and health facilities, the need for which arise from the development and which are commensurate with the scale and nature of the proposals. This could be by way of direct provision on the site and/or by contribution to be made for the provision of facilities elsewhere”.

Developer Contribution Requirements

Developments of 7 or more dwellings or sites greater than 0.2 hectares may be required to provide a financial contribution towards education provision.

As the Authority responsible for education, the County Council will be consulted on relevant planning applications. The Borough Council will, in consultation with the County Council as Local Education Authority, in appropriate situations, seek to secure contributions towards education facilities in accordance with Staffordshire County Council’s adopted Education Planning Obligations Policy. It is not intended to repeat the requirements set out in the Education Planning Obligations Policy in their entirety here. Where education contributions are likely to be required reference should be made directly to the Education Planning Obligations Policy or any document, which updates or replaces it.

Further Information

Copies of the Staffordshire County Council’s current adopted Education Planning Obligations Policy can be obtained on the Staffordshire County Council website: <http://www.staffordshire.gov.uk/NR/rdonlyres/5F394C60-479A-448E-B4EB-06CBBB8BDF86/31940/PlanningObligationsPolicyJune2006.pdf>

Highways and Transport

Policy Justification

The Policy Justification for requiring contributions towards highways and transport provision is set out in paragraph B15 of Circular 05/2005 and Saved Local Plan Policy IM1.

Developer Contribution Requirements

Staffordshire County Council is the Highway Authority for the Borough and is responsible for the preparation and implementation of the Staffordshire and North Staffordshire Local Transport Plans. The County Council is consulted on planning applications that are likely to have transport implications. For some developments Transport Assessments will be required and the County Council has produced detailed Guidance on Transport Assessments and Travel Plans which can be viewed on the following website:

www.staffordshire.gov.uk/environment/developmentcontrol/highwayscontrol/TransportAssessment

Further 'Guidance on Transport Assessments' has been produced by the Department for Transport and can be viewed on the following website:

<http://www.dft.gov.uk/pgr/regional/transportassessments/guidanceonta>

This document is intended to assist stakeholders in determining whether an assessment may be required and, if so, what the level and scope of the assessment should be. It provides guidance on the content and preparation of Transport Assessments and Transport Statements.

The Council will support the County Council in seeking to ensure that developers fund any improvements required as a consequence of their developments. In the context of highway and transport matters, S106 agreements tend to be used for:

- Requiring sums to be paid for the provision of offsite transport infrastructure;
- Travel Plans involving modal split or shift targets, the monitoring of targets, bus subsidies and penalties.

Highway provisions will commonly be dealt with either by the simple payment of a Commuted Sum to allow the County Council (as highway authority) to carry out the works or by the developer entering into a highway agreement with the County Council. Applicants should contact the County Council as soon as possible in the formulation of proposals in order to establish their requirements so that they can be properly dealt with in any section 106 or other relevant agreement.

While Staffordshire County Council is the responsible Local Authority for transport planning, the Highways Agency maintains responsibility for strategic national routes. Within Newcastle under Lyme Borough Council, this incorporates the M6 and A500. In circumstances where development may impact the network of strategic national routes, Newcastle-under-Lyme Borough Council will negotiate developer contribution requirements in partnership with the Highways Agency.

Highways agreements between developers and highway authorities are made under section 278 of the Highways Act 1980. In the case of the Agency they provide a means through which the developer can pay for measures to mitigate the impact of the development on the strategic road network. Where improvements are required both on the strategic and the local road networks, there may be opportunities for joint agreements between the Secretary of State and the local highway authority. The process for securing these agreements is set out in *Guidance on Agreements with the Secretary of State for Transport under section 278 of the Highways Act 1980*.

Where multiple development proposals may have a significant impact on the strategic road network, proportional investment may be required in the necessary improvements to the network. In such circumstance it may be beneficial for a 'ringmaster' to act as a broker for the public sector and developers to invest in improvements to the network. The ringmaster is an organisation or public body that will co-ordinate investment commitments for a particular development or series of developments. It will be responsible for ensuring that developers' contributions allow the infrastructure to be secured in a fair and equitable way. The Highways Agency does not act as a ringmaster, but works with the designated ringmaster to facilitate the delivery of appropriate schemes.

For Further detailed guidance, Circular 02/2007 – Planning and the strategic road network is available to view from the following website:

<http://www.dft.gov.uk/pgr/regional/strategy/policy/circular207planningandstrategic>

There may be some items for which contributions will be required which will be strategic in nature and it is likely that contributions from individual developments could be pooled where appropriate, but in all such cases the nature and scale of contributions sought will be in accordance with national guidance and regulations.

In the event that the County Council prepares an Area Transport Strategy for the Borough, or areas within the Borough, the County may seek contributions to the delivery of those strategies.

Further Information

Further information can be obtained from the Staffordshire County Council Highways Development Control Team at:

Development Services Directorate
Staffordshire County Council
Riverway
Stafford
ST16 3TJ

Tel: 01785 223121

Fax: 01785 276699

Public Realm

Policy Justification

Developer contributions towards public realm improvements will be sought in accordance with Circular 05/2005 (B15). The saved policies in the adopted Local Plan and the emerging Local Development Framework require development to demonstrate a high quality of design, which will make a positive contribution to the public realm.

Developer Contribution Requirements

Proposals for the enhancement of Newcastle Town Centre are set out in the Newcastle Town Centre Public Realm Strategy (Taylor Young, March 2004), which was approved by Council in August 2004. Developments adjacent to and within the ring road are likely to be asked to contribute towards the improvements set out in the Strategy (in particular the Phase 1 elements of the Strategy, which were endorsed in principle as a priority by the Council on 18 August 2004), where it can be demonstrated that the development is reasonably related and meets the policy tests of Circular 05/2005 and Part 1 of this SPD.

The emerging Core Spatial Strategy also emphasises the importance of design quality and the public realm and embraces the Public Realm Strategy. The Core Strategy sets out the

vision and spatial framework for the Town Centre and this will help to inform the development of further environmental improvements.

For More Information

Copies of the Newcastle Town Centre Public Realm Strategy can be obtained from the Council's Regeneration and Development Directorate.

Open Space and Recreation

Policy Justification

The policy justification for seeking developer contributions in respect of opens space and recreation is provided by Circular 05/2005 (B15) and Saved Local Plan Policies C4 and IM1.

Developer Contribution Requirements

On sites of 10 or more dwellings or, at least 0.4 hectares developers will be expected to provide open space in accordance with the standards set out in the adopted Local Plan.

A North Staffordshire Green Space Strategy is being prepared on behalf of Newcastle-under-Lyme and Stoke City Council. On completion the strategy and local standards will provide a basis for reviewing the Councils approach to calculating planning obligation requirements.

Until the completion of the North Staffordshire Green Space Strategy, the Council will use the standards set out in the adopted Local Plan Policy C4 when calculating the level of open space and recreation facilities required through a planning obligation. Wherever possible the Council will seek to secure on site provision, however, the Council acknowledges that in some circumstances offsite provision or financial contribution are more appropriate. Where a contribution is required, it will be for an identifiable facility or improvement work and will be ring fenced.

Circular 05/2005 (para B18) allows payments in perpetuity to be required for maintenance of facilities that are "predominantly for the benefit of the users of the associated development". Though this may apply in some cases, it is usually difficult to identify precisely how limited the use of the facility will be. (For instance, a small play space enclosed by development will not be formally restricted to residents, even though outside users would be rare.) In most cases, contributions will be sought, in proportion to the increased demand, for an additional facility within an established open space, or even an upgrading of what is there already, again in proportion to the increased demand, The Circular also allows (para B19) for time limited "pump priming" to assist the early maintenance of additional facilities that are "intended for wider public use".

In the interest of clarity and consistency, contributions for maintenance will always be applied, and only for a time limited period of 15 years, even where "wider public use" is unlikely.

Further Information

Further information can be obtained from the Council's Landscape Manager in the Operational Services Directorate.

Other Contributions

The requirement for developer contributions will be assessed on a site-by-site basis and there may be circumstances where the Council will require contributions falling outside of the above categories. Where there is such a requirement, this will be sought in accordance with the guidance and regulations and the Council will provide justification (demonstrating compliance with the Circular 05/2005 Policy Tests).

APPENDIX 1 – National Policy Context

Policy	Name	Policy in relation to Section 106
PPS1	Delivering Sustainable Development	<p>Where the impact of development may adversely affect some people/groups, PPS1 states that, “<i>local planning authorities can use planning conditions or obligations to ameliorate such impacts.</i>” (DCLG (2004:paragraph 26) viii))</p> <p>Suggestions where such agreements may be useful include:</p> <p>“Ensuring that infrastructure and services are provided to support new and existing economic development and housing.” (DCLG (2004:paragraph 23) viii))</p> <p>With regard to the environment, PPS1 states, “<i>Where adverse impacts [of development] are unavoidable, planning authorities and developers should consider possible mitigation measures . Where adequate mitigation measures are not possible, compensatory measures may be appropriate.</i>” (DCLG (2004:paragraph 19)</p>
PPS9	Biodiversity and Geological Conservation	<p>The key principles of PPS 9 state: “... <i>planning decisions should aim to maintain, and enhance, restore or add to biodiversity and geological conservation interests.</i>” (DCLG (2005:paragraph 1) ii))</p> <p>A process of mitigation is explained in key principle number vi), where a proposed development may cause harm to biodiversity or geological conservation:</p> <p>Firstly, all alternative sites will be explored. If no alternatives are available, the local planning authority must ensure mitigation measures are in place</p> <p>Where mitigation measures are insufficient and a proposal will cause some harm to biodiversity and geological interests, suitable compensation should be sought.</p> <p>If suitable compensation cannot be sought, permission should be refused.</p>
PPG2	Green Belts	<p>PPG2 states that development in the green belt will only be permitted in ‘very special circumstances’. Therefore development will not be permitted unless the harm the development would cause is ‘<i>clearly outweighed by other considerations</i>’. (DCLG (1995: paragraph 3.2))</p> <p>PPG2 suggests where use of planning obligations and agreements would be suitable:</p> <p style="padding-left: 40px;"><i>“In the case where an amenity on a site adjacent to the Green Belt is lost as a result of development on that site, it may be reasonable for obligations to provide for offsetting benefits on land in the Green Belt, as long as there is a direct relationship between the two sites.”</i> (DCLG (1995:paragraph 3.14))</p> <p>Paragraph 3.19, with reference to design and layout of development, also supports the use of planning obligations: “<i>Local Authorities should make full use of planning conditions or obligations</i>” (DCLG (1995:paragraph 3.19))</p>

PPS3	Housing	<p>Suggests that Local Authorities should set out the approach to seeking developer contributions to facilitate the provision of affordable housing. In seeking developer contributions the presumption is that affordable housing will be provided on the application site so that it contributes towards creating a mix of housing. Where it can be robustly justified, off site provision in lieu of on site provision maybe accepted as long as the agreed approach contributes to the creation of mixed communities in the local authority area.</p> <p>The national minimum site threshold for affordable housing is 15 dwellings.</p> <p>Housing should be developed in areas with good access to key services and infrastructure. This should be achieved by making effective use of available public and private investment. Sustainability Appraisal should be used to develop and test various housing options, considering for each the social, economic and environmental costs benefits and risks.</p>
PPG4	Industrial, Commercial Development and Small Firms	<p>PPG4 advocates the use of planning conditions and obligations in development proposals of this type in paragraph 27.</p> <p>The guidance states, <i>“Where an authority’s planning objectives cannot be achieved by imposing a planning condition..., it may be useful to enter into a planning obligation.”</i> (DCLG (1992:paragraph 31))</p> <p>‘Local Occupancy’ conditions are also mentioned. These may only be granted where; <i>“a local firms need to expand is sufficiently exceptional to justify a departure from general policy”</i> (DCLG (1992:paragraph 29)). Further information on Local Occupancy conditions is provided in paragraphs 28-29.</p>
PPG8	Telecommunications	<p>Where the local planning authority decide it would be preferable for mast development in an area to be confined to one particular site they can enter into a planning obligation:</p> <p style="padding-left: 40px;"><i>“...the authority may wish to discuss with the operators and the relevant landowner the feasibility of entering into a planning obligation under section 106 of the Town and Country Planning Act 1990 in order to provide a binding and enforceable requirement that the mast site would be available for sharing.”</i> (DCLG (2001:paragraph 70))</p>
PPS12	Local Development Frameworks	<p>The provision of infrastructure is important in all major new developments. Paragraph B3. of Annex B states that ;</p> <p style="padding-left: 40px;"><i>“The capacity of existing infrastructure and the need for additional facilities should be taken into account in the preparation of all local development documents.”</i></p>
PPG13	Transport	<p>Paragraphs 82 and 83 encourage the use of planning conditions and obligations and give examples of when these might be used. The guidance also suggests that the local development plan should indicate the kinds of contributions, which will be sought towards transport improvements.</p> <p>Paragraph 85 states that;</p> <p style="padding-left: 40px;"><i>“Planning obligations, where appropriate in relation to transport</i></p>

should be based around securing improved accessibility to sites by all modes, with the emphasis on achieving the greatest degree of access by public transport, walking and cycling.” (DCLG (2001:paragraph 85))

The weight to be given to a travel plan in a planning decision can be made lawfully secured: A travel plan, or sections of it, may be made binding through the attachment of a planning obligation.

PPG16 Archaeology and Planning

PPG16 states,

“Agreements covering excavation, recording and the publication of the results may take different forms. For example, developers or their archaeological consultants and local planning authorities may wish to conclude a voluntary planning agreement under section 106 of the Town and Country Planning Act 1990 or other similar powers.” (DCLG (1990:paragraph 26))

Through these agreements the excavation and recording of sites, before development commences, can be arranged. These agreements also make clearer the extent of the developer’s responsibilities, whilst reducing uncertainty over the financial and time implications of the scheme.

PPG17 Planning for Open Space, Sport and Recreation

PPG17 states that;

“Planning obligations should be used where appropriate to seek increased provision of open spaces and local sports and recreational facilities, and the enhancement of existing facilities.” (DCLG (2002:paragraph 23))

Paragraph 33 explains that planning obligations should be used to improve quality and variety of open space, sports and recreation provision and encourages local planning authorities to do so, especially in areas that are deficient in these kinds of areas.

PPG24 Planning and Noise

Where it is not possible to separate development which involves noisy activities from other land uses, the guidance suggests:

“...planning authorities should consider whether it is practicable to control or reduce noise levels, or mitigate the impact of noise, through the use of conditions or planning obligations.” (DCLG (1994:paragraph 2))

PPS25 Development and Flood Risk

Paragraphs G4 and G5 of Appendix G discuss Developer Contributions in relation to works for providing flood risk management and flood defence and mitigation associated with new developments.

The developer, assuming the development meets other flood-risk management policies and the Sequential and Exception Tests, should generally fund such works.

For further information on this document or on the preparation of the Newcastle-under-Lyme Borough Council Local Development Framework, please contact a member of the Planning Policy team at:

Regeneration and Development Services.
Newcastle under Lyme Borough Council,
Civic Offices,
Merrial Street,
Newcastle-under-Lyme,
Staffordshire,
ST5 2AG

Any part of the Local Development Framework can be reproduced on request in large print, on CD or as spoken word on tape.

If you have difficulty reading this document or require further information, please call 01782 742408