

Supplementary Planning Guidance: Planning Obligations



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Policy and Performance Unit, Environmental
Service, Regulatory Department
(Planning, Transportation and Public Protection),
Gwynedd Council



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Statement regarding consultation

1. The draft version of this Supplementary Planning Guidance (SPG) was subject to public consultation between 19 March 2009 and 24 April 2009. A public notice was published in the Caernarfon and Denbigh Herald and the Cambrian News on 19 March 2009 in order to raise awareness about the public consultation. Copies of the SPG were available to view in the main Council offices, in the public libraries and on the Council's website during the consultation period. Comments were invited from numerous individuals and organisations, which included community councils and local builders and their representatives. A summary of the representations that were received and the response to them can be seen in a document entitled "Consultation statement – December 2009".
2. The representations and the response to them were scrutinised by the Environment Committee on 11 June 2009. The SPG was adopted in the Council Board meeting on 24 November 2009.

The purpose of supplementary planning guidance

3. This Supplementary Planning Guidance (SPG) is one of a series of guidance notes which support the policies of the adopted Unitary Development Plan (UDP). Although decisions on planning applications will be based on the Development Plan's adopted policies (as indicated in part 38(6) of the Planning and Compulsory Purchase Act 2004), the content of the SPG is a material planning consideration.
4. This planning guidance sets out the circumstances and the required actions by the Council and developers when they enter into a planning obligation. By providing this advice it is intended to make the process of negotiating, agreeing and monitoring a planning obligation fair and transparent to all participants of the planning system.

Background

5. The principal objective of planning is to deliver sustainable development, through which key social, environmental and economic objectives are achieved. Facilitating development that will assist in achieving these objectives may place additional burdens on the infrastructure and services in an area. Planning obligations are agreements negotiated, usually in the context of planning applications, between the local planning authority and an applicant/ developer and others that may have an interest in the land, and are intended to make a proposal acceptable in planning terms. The power to enter into a planning obligation (or section 106 agreement) is contained in **section 106 of the Town and Country Planning Act 1990** as substituted by the Planning and Compensation Act 1991. Circular 13/97 gives guidance on the proper use of planning obligations and further background advice is given in **Planning Policy Wales (2002)**.
6. A planning obligation usually relates to an aspect of development that cannot be secured by imposing a planning condition or by other statutory controls. The obligation should secure measures or contributions to address the likely impact of the proposed development on the physical or social infrastructure of the area. Planning obligations can both improve a development and help it go ahead and in addressing the impacts of the new development on the infrastructure of the area, can be viewed as being locally beneficial.

Use of Planning Obligations

7. An effective planning obligation system should be transparent to all stakeholders in the planning process including the local community. It should provide greater certainty to

those contemplating development and enable agreements to be concluded quickly and be monitored and accountable to public scrutiny. Obligations should only be sought in the first place where they meet the following tests;

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

Types of obligation – unilateral and bilateral

8. A planning obligation can be entered into unilaterally by a developer where only the developer needs to be bound by the agreement and it is possible to ascertain the likely requirements in advance to the presence of detailed policies and guidance. With such agreements there is no specific obligation on the Council and therefore they will not be party to signing the agreement. These agreements can be drawn up before the granting of planning permission and, where possible, the Council will encourage such agreements to speed up the planning process. It will be more usual however for the developer and the local authority to enter into early negotiations on an agreement which will be finalised after planning permission has been granted. Such agreements will place an obligation on both parties to implement and are therefore referred to as bilateral agreements.
9. In such circumstances Gwynedd Council will seek to negotiate obligations on individual planning applications that :-
 - restrict development or use of land
 - require operations or activities to be carried out
 - require land to be used in a specific way
 - require payments to be made to the authority either in a single sum or periodically
10. The planning authority will assess each application individually to determine if a planning obligation is needed and what matters it should address. Where it is decided that a planning obligation is necessary the Council will fully justify their reasons for seeking an obligation. It will 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. It will also ensure that an agreement will only be entered into where planning conditions cannot be used to prescribe the nature of the development, compensate for the loss or damage created by a development, or to mitigate a development's impact.

Types of development and planning aims

11. There are no hard and fast rules about the size of development that should attract obligations. It will normally be the case that the Council will seek to enter into obligations for the following types of development taking into account the policies of the development plan, supporting planning advice, national planning policy and any other material consideration. Each planning obligation will vary from development to development. The local authority, in the spirit of such agreements, will strive to deliver sustainable community benefits for social, environmental or economic improvements especially in the provision of affordable housing. Mitigation measures will be unique and site specific and in most instances developers will be prepared to seek agreements with the local planning authority to overcome any planning constraints. The following list of possible obligations is not

exhaustive but gives an applicant/ developer and other interested parties a preliminary indication of what kind of obligation will be sought and the planning aims behind seeking an obligation.

Type of obligation	Planning aim
Welsh language training	To ensure communities retain their Welsh speaking identity and vibrancy
Road infrastructure	Road improvements to improve access and free flow of traffic usually outside the application site and with larger traffic generating proposals
Improvements to cycling and pedestrian routes	Sustainable access improvements linked to existing networks to reduce car borne traffic and encourage healthy living
Public transport improvement	To support new or existing bus services and the provision of improved bus terminals/stops with the aim of providing more choice and the reduction of car traffic
Parking measures such as Off street parking in the development or elsewhere Management of off street parking Contribution to the introduction or maintenance of on-street parking controls	Overall aim is to manage parking spaces efficiently off and on street for the benefit of users and the free and safe flow of traffic
Contributions to town centre management	To ensure that existing town centres remain vibrant and integrated with new development
Provision of crèches/nurseries related to the need of the workforce	To ensure the provision of adequate, safe facilities close to new development in order to reduce journey time and frequency
Employment training schemes	To improve skills and allow access to the existing workforce to new employment opportunities. May include Welsh language training
Measures ensuring access to new jobs	Similar to the above.
Education provision in areas where a shortage of school places exists or where development will create a shortage	To ensure sufficient school places. Usually associated with larger developments
Provision of affordable housing	To ensure adequate housing to meet the needs of eligible households who cannot afford to buy or rent houses on the open market
Restricting the occupation of affordable housing	To ensure housing remains affordable in perpetuity for future eligible households
Provision of health facilities	To ensure adequate, diverse and modern health facilities.
Provision of community facilities	To ensure community facilities

	safeguarded or are provided with new development.
Improvements to the environment near to the development	To enhance the environment for the overall benefit of the community
Provision of CCTV or street lighting or road safety schemes	To improve community safety
Provision of new areas of open space or improvements to the access to existing open space	To ensure adequate access to open space for the health and enjoyment of young people.
Contributions to future upkeep and replacement of open space or community facilities	Similar to above
Retain and enhance areas of open space , natural habitats and trees	To ensure the protection and creation of wildlife habitats
Protect or reduce harm to designated sites of nature conservation	To maintain biodiversity
Provision of flood attenuation measures	To enable new development in areas prone to flooding. This measure could also benefit existing properties
Provision of sustainable drainage systems	To enhance biodiversity and to create natural habitats.
Provision of recycling facilities	To ensure facilities are available which may compliment or add to existing facilities
Carrying out of archaeological investigations or excavations	To protect and record sites of archaeological importance
Improvements to signage and street furniture	To improve the environment and access to urban areas
Provision of public conveniences	To enhance public facilities for the benefit of shoppers and tourists
Provision of public art	To enhance the creative and aesthetic environment

12. Circumstances will vary according to the exact nature of the development and its location. Where the need arises it may be necessary to seek contributions not listed above. In the case of major individual sites suitable for redevelopment any planning obligation deemed necessary will be set out in planning briefs.

Affordable Housing

13. Many planning obligations will involve the provision of affordable housing. The Council has published Supplementary Planning Guidance on Affordable Housing which outlines when and how the Council will seek the provision of affordable housing. Normally provision will be made on site in accordance with the relevant policies in the Gwynedd Unitary Development Plan which requires individuals to enter into a planning obligation to ensure a property is occupied in the first instance by an eligible household and remains affordable in perpetuity. Exceptionally the Council will accept payment or the provision of affordable housing on an alternative site where it proves unfeasible or unsuitable to have on-site provision. The financial contribution for an agreement will be set out in the Supplementary Planning Guidance on Affordable Housing.

Procedures for Negotiating Planning Obligations

14. If a planning obligation is considered necessary to allow a particular development proposal to go ahead then the planning case officer will raise this with the applicant during pre-application discussions which are strongly encouraged by the planning authority. Where these do not occur negotiations will take place as soon as possible after the planning application has been submitted. Before anyone enters into a planning obligation it is advisable they take legal advice.
15. The case officer will be the main point of contact for negotiations. It will be the case officer's responsibility to discuss, where appropriate, the scope of possible 'planning contributions' with, for example, community representatives, other services and with other officers such as the Affordable Housing Officer on any specific service or local area requirements. The case officer will normally conduct all negotiations unless a legal representative is needed to discuss a point of law. It should normally be the case that an understanding in principle on the substantive financial contribution and heads of agreement should be made before the application is reported to committee.

The planning process and financial appraisal

16. The development plan sets out the overarching policy objectives, such as the percentage target of affordable housing, and the scope and scale of additional planning obligations. Other Supplementary Planning Guidance provide more detailed information about individual topic areas, e.g. contributions to educational facilities.
17. It is recognised that all sites and projects will differ in terms of their context and characteristics. In some cases abnormal development costs may limit the opportunity to deliver against policy requirement. There is a clear need to share an understanding of the financial facts and assumptions that provide the context for each individual proposal at the planning application stage and development stage. This assessment will include a thorough appraisal of the site economics and will require co-operation and an open book approach between the applicant, developer or landowner and the Council.
18. The Council is anxious not to jeopardise the viability of development schemes by seeking too great a contribution from developers. It is also mindful that when assessing the appropriate level of contributions allowance should only be made for genuine abnormal development costs. The Council will assume that any costs associated with developing a particular site have been taken into account when land has been purchased (land purchase agreements). Therefore allowance will usually only be made where applicants can demonstrate genuine post-purchase abnormal costs. In some cases, particularly large scale development projects, after taking account of site development costs, an appropriate 'planning balance' will have to be reached to address competing policy and financial objectives. The balance between, for example, affordable housing and all the other Planning Obligations will be determined within the Council, so that it does not become part of the negotiations with the applicant/ developer. Nonetheless, it should be stated that it is the Welsh Assembly Government's view that, provided the infrastructure necessary to allow development to proceed has been secured, affordable housing should be the priority. While scheme viability may require that the total contribution has to be less than the Council would wish for, the balance between 'other' contributions and affordable housing will be agreed in advance of any further discussions with the applicant/ developer, including setting out the proportionate reduction in requirement that may have to be made in order to ensure the scheme goes ahead.

Seeking, storing and using confidential information

This section seeks to set out the procedures that should provide both the applicant and the planning case officer with the confidence that the matter will be handled appropriately.

19. Seeking information – Applicants/ developers will be expected to show evidence that they have taken known development costs into account in agreeing realistic land values, and only costs that were unforeseeable at the time of acquisition will be considered abnormal for the purpose of the appraisal. Appendix 1 to this Guidance sets out what will not be considered as abnormal development costs.
20. The following list sets out the typical information required in order for the Local Planning Authority, or an independent expert appointed by the Authority, to undertake a financial appraisal:
 - Details of the proposed development (site layout plan, unit descriptions and areas (GIA)
 - Details of affordable content (identification of units, tenure, type for each and areas (GIA)
 - Details of any RSL bid for the affordable content or likely bids
 - Details of S106 obligations provided
 - Acquisition price of the site and date price agreed or price under option agreement
 - Applicant's opinion/ evidence of final sales values unit by unit
 - Applicant's opinion/ evidence of construction costs on a price per m²GIA
 - Applicant's opinion/ evidence of additional costs – fees, contingency, abnormalities, finance
 - Applicant's profit requirements as a % of a Gross Development value and of Costs
21. The information should be provided during the pre-application discussion stage so as not to unduly delay the planning approval process. It should be delivered to the relevant Area Planning Office and marked 'Confidential' for the attention of the Area Planning Manager. It will be seen only by the following, as necessary:
 - Area Planning Manager;
 - Head of Planning and Transportation;
 - The planning case officer.
22. Using the information - Where any of the above officers consider that another party needs to review the information, for example, the Council's Property Officer or another suitably qualified professional, the officer receiving the information will be required to sign a confidentiality statement in advance, which would confirm the following:
 - the nature and purpose of the information
 - the names of the individuals entitled to see the information,
 - the Area Planning Manager had, by his signature, authorised the individuals to receive the information, and that
 - the officers would, by their own signature, return the information to the Area Planning Manager without any copies (paper or electronic) being retained.
23. The Council will refer to an established viability appraisal model. It may also refer the information to the District Valuer Services (DVS), as an independent and qualified service, for the purpose of assisting in the financial appraisal process, for example,
 - if the applicant is making a case for a reduction from the normal level of affordable housing provision;

- if the scheme is particularly complex or unusual in nature;
 - if the applicant and the case office are unable to reach any sort of agreement on the appropriateness of the figures provided.
24. The Council will inform the applicant of its intention as soon at it becomes apparent that the services of the DVS will be required. **The review of the financial information by the DVS will be funded by the applicant.**
25. The purpose of obtaining external advice will be to provide either of these two alternatives:
- Confirmation that the amount and type of financial contribution that is being sought is justified, so the Local Planning Authority can be confident in determining the application accordingly;
 - The extent to which economic considerations would justify a reduced amount of contribution, so that the Local Planning Authority can be confident in agreeing to that reduction without the risk of either undermining policy or being unreasonable.
26. In order to provide either of the above the DVS will be required to:
- Review the financial information, including costs and values, supplied by the applicant and provide commentary on the appropriateness of each of the figures, with any suggested alternatives;
 - Provide evidence to support any suggested alternative figures, based on comparable developments;
 - Comment on the strength of that evidence in the context of potential cross examination at a planning appeal;
 - Comment on the potential for a form of development that would offer a greater potential for providing, for example, affordable housing.
27. Storing the information – the Local Planning Authority is required to make planning application files available for public inspection. However, apart from a file containing a reference that confidential financial information has been provided as well as a reference to the view that the case officer has taken and any other authorised person on the validity of that information, the file will not contain any of the actual figures. This information will be held on a sub-file that will be clearly marked as a confidential file that should not be made available to a member of the public.
28. The report received from the DVS will also be treated as confidential information, in exactly the same way as the information provided by the applicant. The conclusions of the advice would, however, need to be incorporated into the case officer's report, and care will be taken in compiling that report to avoid revealing any confidential information.
- ### **The legal service and planning obligations**
29. The Council's legal service will normally only be instructed to draw up the planning obligation once a resolution to grant planning permission has been made by a planning committee.
30. The Council's legal service will require two items from the applicant's agent/ solicitor:
- Details of the Title to the land to include information as to everyone with an interest in the land. Everyone with such an interest will be required to enter into the agreement;
 - A written solicitor's undertaking to meet the Council's reasonable legal costs in connection with preparation of the agreement, whether or not the agreement is

completed. The payment is a reimbursement of costs incurred. VAT is not payable on these costs.

31. When the planning obligation is finalised all relevant parties must sign the document. The decision notice granting planning permission will only be released when the agreement has been completed. A copy of the completed agreement will be placed on the Council's public planning register. It should be noted that depending on the nature and complexity of the case it can take a considerable time to conclude final agreement on the detailed terms, and developers are asked to ensure that sufficient time and resources are made available in their programme. The Council will however seek to deal with agreements as expeditiously as possible. In the case of affordable housing, the Council has prepared a standard obligation agreement which will speed up the process.

Content of a Planning Obligation

32. A valid planning obligation must include:

- identification of the land involved
- identification of the person entering the agreement and their interest in the land
- identification of the authority who will enforce the obligation

33. The planning obligation will also include:

- description of the development
- the type and amount of obligations the developer has agreed to, this may be in the form of actual works or financial contributions
- a trigger for when the benefits should be provided
- if financial requirements are provided the agreement may state a time limit within which the money should be spent
- definitions of terms used within the agreement
- provision for the legal costs of drafting the agreement to be met
- provision for an administration charge set for the monitoring and execution of individual obligations by the Local Planning Authority.

Implementing, monitoring and enforcement

34. Most agreements provide that financial contributions should be paid to the Council or that any physical works that relate to the agreement should commence at this point, i.e. start of development. However, in some cases the obligation may state that payments should be phased. Such cases will need closer monitoring to ensure that all payments have been made over the agreed period. It is important that planning obligations are logged, monitored and accounted for in order to provide information for interested parties on the outcome of any agreement. This will help to ensure that the process is open and fair.

35. When a planning agreement has been completed and a decision notice issued, copies will be sent to an officer appointed by the Head of Planning and Transportation Service who will enter information relating to the planning obligation into a database for the purposes of monitoring. The system will record information such as:

- A reference number
- Address
- Description of development
- Planning obligation heads of term
- Amount of financial contribution
- Date development started

- Date money received
 - Date money spent
 - Works completed
36. Relevant officers will conduct site visits as appropriate to ensure that the developer carries out any physical works required by the planning obligation. The onus will be on the developer to ensure that any financial contribution is made at the appropriate time as set out in the planning obligation. Where financial contributions are made steps will be taken to liaise with the Environment Directorate's finance section to ensure that monies have been received and paid into a planning obligations account. A specific code will be set up relating to each planning obligation to enable the money to be tracked. The Council Services for which the money is intended will be made aware that the money has arrived and of any time limits within which the money must be spent. Some planning obligations agreements require that if financial contributions are not spent within the specified time period then the Council will refund the developer with interest, so the Council will be proactive in seeking the completion of relevant projects. To obtain the money to complete the agreed works the relevant Council Service will first provide a description of the proposed works in keeping with the agreement before money is released from the account. This will ensure that money was spent on what was agreed in the planning obligation. Copies of all receipts and records relating to a planning obligation will be kept to aid monitoring. In this way the Council can ensure that planning obligations are complied with.
37. The monitoring system will indicate when all the money in connection with a planning obligation has been spent. At this point a closing statement can be sent to the developer and also placed on the planning register. This will increase the transparency of the system and inform developers and the public that the money was spent on what was set out in the planning obligation.

Enforcement

38. If it is evident that planning obligations are not being complied enforcement action will be instigated. Planning obligations can be enforced through the use of an injunction, which can stop the development proceeding and/or ensure compliance with the terms of the Agreement. The authority has the power to enter the land and carry out any works that were required and recover costs (must give 21 days notice of intention to do this). Anyone who obstructs the authority from doing this is liable to a fine of up to £1000. In addition the Council will consider charging developers interest for the late payment of financial contributions. This will be written into any planning obligation so that developers are aware of the implications of late payment and agree to the terms.
39. Quarterly reports will be produced for committee setting out the contributions agreed through planning obligations, progress towards their implementation and any enforcement action taken. The reports will indicate which planning obligations have been met and therefore the benefits that have been provided.

Modify or discharge a Planning Obligation

40. Planning obligations can only be modified or discharged by agreement between the applicant and the planning authority within the first five years following the date upon which the obligation was entered into. There is no statutory right of appeal to the assembly Government if the planning authority refuses to agree to such modification or discharge during the said initial five year period.

41. Following the expiration of the initial five year period, an application may be made to the planning authority to modify or discharge the obligation under section 106A(3) of the Town and Country Planning Act (as amended). There is a right of appeal to the Assembly Government if the planning authority refuses to discharge or modify the obligation under the said section

Appendix 1

Guidance note on what not be considered as “abnormal development costs”.

The following guidance is based upon the assumption that a developer has carried out “due diligence” in the acquisition of the proposed development site and has satisfied himself of matters associated with the site history and previous uses. This is usually done by means of an “environmental audit” and limited site investigation to identify any liabilities and development constraints before purchase of the site

The following development costs will not normally be considered as “abnormal”:-

- Demolition of existing buildings and clearance of the site.
- Removal or treatment of underground obstructions, cellars, basements and storage tanks.
- Diversion of existing services, sewers, culverted watercourses and overhead power lines.
- Extinguishment of highway rights and grubbing out of any existing highway infrastructure that may affect the development.
- Re-profiling of a sloping site.
- Provision of retaining walls and retaining structures on a sloping site.
- The provision of land drainage unless associated with leachate control measures from a former landfill or encapsulation location.
- Additional foundation and drain protection measures to safeguard buildings from the presence of trees.
- The eradication /treatment of Japanese knotweed or other invasive plant species.
- Any anticipated costs for area improvements by “planning gain”, Section 106 agreements
- Any anticipated minor decontamination costs

It should be noted that the above is not meant to be an exhaustive list and the applicant/developer should recognise and accept that each site will have its own constraints and the Local Planning Authority will have to look at the merits of each site carefully. In the event that a developer considers that abnormal development costs will be incurred, it will be the responsibility of the applicant to demonstrate how the costs have been derived.

APPENDIX 2

Contact Details

To receive further information, please contact the following:-

Planning Policy (Arfon, Dwyfor and Meirionydd)

Policy and Performance Unit
Regulatory Department
Shirehall Street
Caernarfon
Gwynedd
LL55 1SH
Phone Number: (01286) 679890
Fax Number: (01286) 673324
Email: PlanningPolicy@gwynedd.gov.uk

Development Control (Planning)

Arfon Area

Planning Service
Regulatory Department
Arfon Area Offices
Penrallt
Caernarfon
Gwynedd
LL55 1BN
Phone Number: (01286) 682765
Fax Number: (01286) 682771
Email: Planning@gwynedd.gov.uk

Dwyfor Area

Planning Service
Regulatory Department
Dwyfor Area Offices
Ffordd y Cob
Pwllheli
Gwynedd
LL53 5AA
Phone Number: (01758) 704118
Fax Number: (01758) 704053
Email: Planning@gwynedd.gov.uk

Meirionnydd Area

Planning Services
Regulatory Department
Meirionnydd Area Offices
Cae Penarlâg
Dolgellau
Gwynedd
LL40 2YB
Phone Number: (01341) 424414
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