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# Developer Contributions Supplementary Planning Document

## 1. Introduction

- 1.1 This Developer Contributions Supplementary Planning Document (SPD) sets out North East Derbyshire District Council's approach to securing developer contributions in relation to development within the remit of Section 106 of the Town and Country Planning Act 1990.
- 1.2 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, sub-regional and local objectives for sustainable development.
- 1.3 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

- 1.4 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 (i.e. prior to the Planning and Compulsory Purchase Act 2004). SPGs will continue to exist as non-statutory documents whilst the relevant saved policies they supplement are in place.

- 1.5 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.
- 1.6 The SPD forms part of the North East Derbyshire Local Development Framework and is intended to complement and provide further guidance on the planning obligations policy approach set out within the saved North East Derbyshire Local Plan 2001-2011. It is also expected that the SPD will remain in conformity with the emerging North East Derbyshire Core Strategy and other Local Development Plan Documents within North East Derbyshire's Development Framework.
- 1.7 The SPD has been prepared in accordance with the Town and Country Planning (Local Development) (England) Regulations 2004.
- 1.8 How to contact the Council for further information:

LDF Team  
Forward Planning  
North East Derbyshire District Council  
Council House  
Saltergate  
Chesterfield  
S40 1LF

Tel: 01246 217169

Email: [ldfteam@ne-derbyshire.gov.uk](mailto:ldfteam@ne-derbyshire.gov.uk)

Website: <http://www.ne-derbyshire.gov.uk/>

## Structure of Document

1.9 The SPD is set out as follows:

### Part One – Context

Part One sets out the national, regional and local policy context for the preparation of this SPD.

### Part Two – General Approach

Part two describes the Council's overall approach and procedures relating to securing planning obligations.

### Part Three – Areas requiring contributions

Part three provides details of specific planning obligations the Council is likely to seek and signposts relevant documents. Specific topics covered (in no order of priority) in Part three include:

- Affordable Housing
- Community Safety
- Education
- Highways and Transport
- Public Realm
- Public Art
- Open Space and Recreation
- Natural Environment
- Community Facilities
- Skills and Training
- Conservation of Historic Assets
- Flooding
- Other Contributions

**Appendix 1** - summarises national planning policy in relation to planning obligations.

**Appendix 2** - is a ready reckoner table summarising development type and floor area thresholds that will trigger contribution and the likely level of financial consideration in contribution categories that are calculable.

**Appendix 3** - is the Law Society's model S.106 agreement used for planning obligations.

**Glossary** - The final section is a glossary of technical terms used in this document.

## Sustainability Appraisal

1.10 Central to the new planning system is

the concept of Sustainable Development. All SPDs are required to undergo 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 this SPD has been conducted and the SA Report was published alongside the draft SPD for public consultation between 28th June and 9th August 2007.

## Consultation

1.11 Informal consultation on the scope of the Supplementary Planning Document took place between 9th March and 30th March 2007 and where appropriate comments were included in the preparation of the Draft document.

1.12 The Draft Supplementary Planning Document was subject to a statutory 6-week period of public consultation between 28th June and 9th August 2007. During this time a total of 17 consultation forms/responses were received. The Consultation Statement for the SPD, available from the Council, sets out a summary of each representation, an officer comment in response to the issues raised in the representation followed by confirmation of the Council's response. These changes have been incorporated into the document, which was adopted by the Council on 27th September 2007.

1.13 The Council's Statement of Community Involvement (SCI) was adopted on 22nd March 2007. The consultation on this SPD was undertaken in accordance with the SCI. The SPD and Sustainability Appraisal documents were sent to statutory and non-statutory consultees including national, regional and local interest groups, developers, landowners and planning professionals. The documents were made available for inspection at local venues including libraries and on the Council's website address: <http://www.ne-derbyshire.gov.uk/welcome>.



## 2. Policy Context

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

### National Policy Context

- 2.2 The statutory basis for developer contributions through planning obligations 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 with an interest in land to enter into a planning obligation enforceable by the local planning authority.

#### Definition

*A planning obligation is a binding agreement entered into between a Local Authority and a developer / landowner (a 'Planning Agreement') or the 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.*

- 2.3 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.
- 2.4 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.

- 2.5 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.
- 2.6 Current Government Guidance on "Planning Obligations" is contained in Circular 05/2005 (published 18 July 2005) supported by DCLG Planning Obligations Practice Guidance (2006).
- 2.7 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
- 2.8 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.



- 2.9 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.
- 2.10 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.

*“Local Authorities should work with developers, statutory agencies and other local stakeholders to produce delivery plans outlining the infrastructure requirements needed to secure the implementation of Local Development Documents. These should include guidance on the appropriate levels of developer contributions, and the mechanisms for securing the delivery of such contributions”.*

- 2.13 In order to secure the implementation of Local Development Documents the Council will ensure that with all major developments, delivery plans are produced, which define the need for additional facilities. Developer contributions shall be guided by such delivery plans.

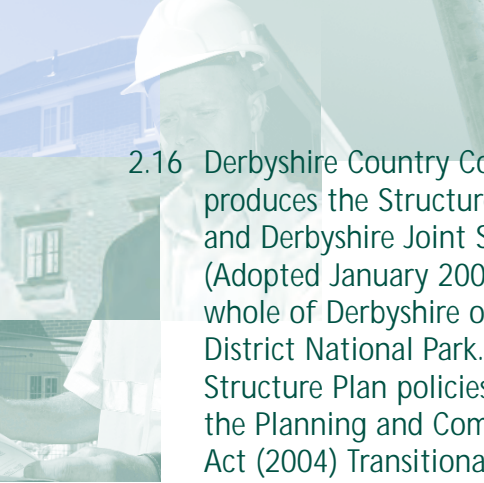
## Regional Policy Context

- 2.11 The East Midlands Regional Spatial Strategy (RSS) (adopted March 2005) is part of the development plan for North East Derbyshire. The document provides a broad development strategy within which local authorities' planning documents and local transport plans can be prepared. The RSS provides this broad development strategy for the East Midlands up to 2026. It identifies the scale and distribution of provision for new housing and priorities for the environment, transport, infrastructure, economic development, agriculture, energy, minerals and waste treatment and disposal. The Regional Spatial Strategy is currently under review and in its revised form will continue to provide a spatial context for the Council's planning policies. The revised RSS maintains the general policy stance of the current adopted version. All relevant documentation can be found at: <http://www.emra.gov.uk>
- 2.12 Policy 55. of the Draft East Midlands Regional Plan (September 2008) (RSS8) states that:

## Derby & Derbyshire Structure Plan

- 2.14 Derbyshire currently has a two-tier system of local government. In this case these two tiers are Derbyshire County Council and North East Derbyshire District Council.
- 2.15 Derbyshire County Council provides the following services:
- Education
  - Fire
  - Highways
  - Libraries
  - Passenger Transport
  - Social Services
  - Strategic Planning
  - Transport Planning
  - Waste Disposal

Derbyshire County Council advises North East Derbyshire District Council on requirements for developer contributions in these areas.



2.16 Derbyshire Country Council also produces the Structure Plan. The Derby and Derbyshire Joint Structure Plan (Adopted January 2001) covers the whole of Derbyshire outside the Peak District National Park. A schedule of Structure Plan policies is saved under the Planning and Compulsory Purchase Act (2004) Transitional Arrangements. These will be saved until such time as the Regional Spatial Strategy is adopted, expected Autumn 2008. After this time, it will cease to have any role in the planning system.

2.17 Reference to developer contributions within the structure plan is limited to the following policies on environment, minerals and waste. However more detail is provided in those areas for which the county council is responsible. This is set out in:

- Environment Policy 14: Sites and Features of Nature Conservation Importance
- Minerals Policy 3: Conditions on Mineral Development
- (Explanatory Memorandum part 1): paragraph 2.76 (Development in Greenbelt)

2.18 The Derby and Derbyshire Waste Local

Plan adopted in March 2005 states in section 1.1.4 that ' The waste planning authority can impose conditions or impose planning obligations to ensure that the impacts of development are limited and monitored and that the development accords with the permission'. The Derby and Derbyshire Minerals Local Plan adopted in April 2000, policy MP9 should also be taken into account when considering proposals involving mineral workings.

## Local Policy Context

### North East Derbyshire Local Plan Adopted - November 2005.

2.19 The Developer Contributions SPD will complement and provide further guidance on the policy approach set out within the 'saved' North East Derbyshire Local Plan 2001-2011. The Local Plan was adopted in November 2005 and is saved until November 2008 under the Planning and Compulsory Purchase Act (2004) Transitional Arrangements. It is expected that the Council will seek authority to save some of the Local Plan Policies beyond 2008 until they are replaced by new DPDs or until November 2011, whichever is the sooner.



2.20 It is also expected that the SPD will remain in conformity with the emerging North East Derbyshire Core Strategy and other emerging Local Development Plan Documents

comprising North East Derbyshire's Development Framework. Policies that outline the potential requirements for Planning Obligations cover the following topic areas:

| <b>NORTH EAST DERBYSHIRE LOCAL PLAN 2001-20011 (Adopted)</b> |   |
|--|---|
| <b>CHAPTER</b>   | <b>REFERENCE POINT</b>  |
| 1. General Strategy  | GS9 Planning Obligations<br>GS10 Crime Prevention (para. 1.64)  |
| 2. Natural Environment                                       | NE3 (para 2.19)<br>NE4 Sites of National Importance for Nature Conservation<br>NE5 Other sites of Importance for Nature Conservation<br>NE6 Development Affecting Nationally Rare Species                         |
| 4. Employment Development and Tourism                        | E3 Norwood Extension, Killamarsh<br>E4 Mixed Use Site at the Former Avenue Coking Works, Wingerworth<br>E5 Mixed Use Development: Former Biwaters Site, Clay Cross  |
| 5. Housing   | H3 New Housing Outside Settlement Development Limits<br>H6 Affordable Housing Provision in the Main Settlements<br>H9 Affordable Housing: Exception Sites in Rural Areas (para 5.55)<br>H10 Special Needs Housing |
| 7. Transport   | T2 Highway Access and the Impact of New Development (para 7.22)<br>T5 Walking & Cycling (para 7.26)<br>T6 Public Transport  |
| 8. Recreation and Leisure                                    | R5 Providing for Children's Play Space through New Development (para. 8.27)<br>R8 Specialist and Noise Generating Recreational Activities (para 8.36)   |
| 9. Community Facilities, Services and Utilities              | CSU2 Purpose Built Community Facilities   |

2.21 Whilst developer contributions may be sought in relation to the policies set out in the above table there may be other areas which merit developer contributions (as described in Part 3 of this document), such as percent for art, flood risk/drainage and housing policies H7 & H8. In addition new or varied policies may emerge in the future and be embodied in Supplementary Planning Documents

which make new or additional provisions in relation to S.106 obligations.

The use of S.106 obligations will not therefore be restricted to the policies specified in the table.

2.22 Paragraph 1.61 of the Local Plan sets out the Council's general stance on developer contributions:



*“Some proposals for development by virtue of their size or location will make specific demands for related infrastructure to ensure that it can proceed. In such circumstances the Council will normally seek to impose conditions on a planning permission or under the powers conferred by the Town and Country Planning Act 1990, Section 106, will negotiate legal or other agreements to meet those demands.” (paragraph 1.61)*

2.23 The plan then sets out the conditions on which the planning obligations can be agreed to ensure they are fair to the applicant/developer, i.e. they must be: necessary to the granting of permission, directly related to the proposed development in scale and kind and related to planning and reasonable in all other ways. (paragraph 1.62)

2.24 The plan then summarises what the obligations can do:

*“Those Planning Obligations may; restrict development or use of land; require operations or activities to be carried out; require land to be used in a specific way or require payments to be made to this or another authority for the provision of off site facilities, such as affordable housing, education provision, community facilities and public open space.” (paragraph 1.63)*

2.25 Policy GS9 ‘Planning Obligations’ states clearly the Council’s intention to use planning obligations to the full advantage of the area, wherever necessary and appropriate:

*“The Council will impose conditions on planning permissions or seek to negotiate an agreement with the applicant under Section 106 of the Town and Country Planning Act 1990, where appropriate, to secure the infrastructure and facilities that are necessary and required for the development to proceed.” (Policy GS9)*

2.26 Details of these policies can be found on the Council’s website: [www.ne-derbyshire.gov.uk](http://www.ne-derbyshire.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

2.27 The Chesterfield and North East Derbyshire Community Strategy, 2005-2015 sets out a strategic vision for the area. The strategy has a ten-year vision:

*“To improve the quality of life for people in Chesterfield Borough and North East Derbyshire so that residents, workers and visitors can benefit from what the area has to offer.”*

2.28 The strategy sets out four guiding principles, which are vital to achieving the vision. They are summarised as follows:

### ● Active Citizenship by Social Inclusion

This includes:

- Actively supporting voluntary groups from all communities
- Working with representative groups to ensure that The Partnership and Community Strategy activity has clearly identified how it meets the varied particular needs of the area
- Providing opportunities for everyone to play a part, big or small, in the decision-making process
- Building cohesive communities



## ● Continuous Service Improvement

This can be achieved by:

- Challenging what we do now so it can be done better in the future, by monitoring and evaluating the impact and success of activity delivered through this Community Strategy
- Finding out how other people do things well so that we can learn from them
- Identifying with the diverse communities of Chesterfield Borough and North East Derbyshire what it needs and wants, so services meet these demands
- Developing and improving new and existing ways for local people to access services and information at a time and place that is convenient to them

to understand their perspective, by consulting with young people on an on-going basis

- Supporting them to develop their own ideas and initiatives
- Empowering young people to be directly involved in decision making
- Helping to support parents and carers wherever possible to voice the needs of their children

(Community Strategy, 2005)



## ● Sustainability

Through finding solutions to the challenges that face communities, which:


- Reduce any negative impact on the environment we live in
- Develop long-term solutions that will also provide short-term benefits
- Ensure a better quality of life, both now and for generations to come

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

## ● Youth

The Council will make a special effort to ensure that the needs and aspirations of young people are identified and addressed by:

- Hearing what they say and trying



## 3. General Approach to Securing Developer Contributions

### Approach to Securing Developer Contributions

- 3.1 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.
- 3.2 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 normally be either in cash or in kind.
- 3.3 In accordance with the above policies the Council may seek contributions in the following areas:
- Affordable Housing
  - Biodiversity
  - Community Safety
  - Community Facilities
  - Education
  - Environmental Improvements including flood defence
  - Highways and Transport
  - Open Space and Recreation
  - Public Realm
  - Public Art
  - Skills and Training
- 3.4 The list is not exhaustive, nor establishes any order of priority. There may 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.

### Pooling & Cumulative Effects of Development

- 3.5 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 developments 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.
- 3.6 Where individual 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), the Council may seek contributions towards specific future provision.
- 3.7 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.

- 3.8 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.

### **Planning Obligations Procedure - (How contributions will be negotiated)**

- 3.9 In the past Planning Obligations have been seen as major causes 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 more effective and efficient.
- 3.10 To ensure the process is carried out effectively and efficiently the Council strongly advises that applicants seek professional planning advice and Planning Officer advice during the pre-application discussion stage to prevent delays. Officers of the Council will be able to provide advice on proposed 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. The Planning Committee of the local authority retains the right to alter any agreement in any specific case.
- 3.11 In addition the Council will undertake any necessary and appropriate consultation and discussion with consultees and stakeholders such as the County Council, town and parish councils to expedite the scoping of requirements for developer contributions.

- 3.12 The Council would strongly encourage applicants adhere to the following basic procedures:

#### **A. Pre-application Discussion/Application Stage**


- 3.13 Pre-application discussion 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 likely 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. In conjunction with the applicant, the Council will consider the use of Planning Performance Agreements in relation to major applications.

#### **B. Submission of planning application**

- 3.14 The Council expects a clear statement from applicants as to the suggested heads of terms covering scope and value of contributions as part of the planning application submission. Once S.106 heads of terms have 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:

##### **A draft Undertaking or Agreement**

- 3.15 Once S.106 terms have been agreed a draft Undertaking or Agreement can be submitted along with the planning



application or shortly after an application is made.

- 3.16 The form of agreement should be discussed and agreed with the Council's solicitor. For reference the Law Society's model agreement for S.106 Obligations can be found at:

<http://www.communities.gov.uk>

- 3.17 The Law Society's agreement may not be appropriate in all cases. **Without such an agreed draft Undertaking or Agreement, the application is unlikely to be determined as quickly as if an agreement is submitted with the 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 also be obtained from the Council's Legal Services (a charge may be made for this) or the Planning Officer.

### Evidence of Title to the Land

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

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

## C. Receipt of the Undertaking / Agreement

- 3.20 The draft Undertaking / Agreement and title will be forwarded to the Council's Legal Services for approval and applicants will be required to pay the

Council's Legal fees, which are charged on a time recorded basis. The Council's solicitor will seek to ensure that the draft undertaking or S.106 agreement is properly drafted, precise and fully and accurately reflects the scope and content of agreed. S.106 terms.

- 3.21 Unless the above documentation is received at the submission stage or shortly thereafter then it could cause delays in the determination of the application.
- 3.22 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 of Proposed Development

- 3.23 The Local Planning Authority's approach to negotiations with developers is intended to be fair and reasonable. The approach will be to properly assess the immediate impacts and effects of proposals within a wider context of needs within the locality and across the district as a whole. This assessment will form the basis of pre-application discussions and the local planning authority will be receptive to reasoned argument for an alternative level of contribution or provision which in its view will be in accordance with the SPD and planning policy.
- 3.24 In many instances it may be the case that proposals give rise to several categories of developer contributions. Where it can be demonstrated that development viability is so affected as to make the development unviable and the Council accepts that this is the case, then the Council will seek to prioritise to try and enable development to proceed. The relative necessity and merits of the categories of contribution will be dealt with on a case-by-case basis in order to make a



recommendation to the Council's planning committee. This will take the form of a considered approach by Council officers as to the importance/value of section 106 requirements in social, environmental, economic and sustainable terms, and the needs and opportunities in each case. It is difficult to adopt a prescriptive approach since over time different circumstances may apply in different geographical locations. In some cases the decision of prioritization may be self-evident and straightforward e.g. essential off-site highway works.

3.25 If a developer feels that the Council is placing unreasonable burdens on a proposal, the Council will expect an open book approach to be adopted whereby the development finances are shared with the Council. The developer will be invited to submit a spreadsheet-based development appraisal to accompany the scheme proposal. Whilst commercially sensitive information and detailed figures will be treated in commercial confidence, it may be necessary to report the key issues and broad conclusions in reports to elected members at the time of the consideration of the planning application. If issues of viability arise and there is a need in the view of the local authority to obtain independent valuation advice, the developer would be expected to meet these costs.

3.26 This information is intended to support, validate and verify the amount of contribution that can be afforded. It is not expected that detailed tender-based construction cost information will be available at this stage of the development process but supporting estimated cost breakdowns, including assumptions made, would be required. Development appraisal information submitted should comprise the following:

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
  - d) Professional fees
  - e) Finance charges
  - f) Developer's profit
  - g) Other fees or costs e.g. marketing, local authority fees, s.278 highway improvement requests
  - h) Allowance for s.106 contribution
- 3.27 Details of third party contributions to costs e.g. capital grant assistance must also be provided.
- 3.28 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. The overall public benefits of the scheme must be sufficient to outweigh any shortfall in contributions as a result of viability issues.

## Monitoring

3.29 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”.*

3.30 The Council's Planning 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.

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

- 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.
- How the financial contributions have been spent.

3.32 Monitoring of the receipt, expenditure and implementation of Developer Contributions will be ongoing and will be reported annually in the North East Derbyshire Development Framework Annual Monitoring Report.

3.33 In order to provide for efficient and timely monitoring the Council will levy an administration charge towards the compliance and monitoring, project management and implementation of

Planning Obligations, equivalent to 1% of the total cost of the obligation. This is considered to be a reasonable sum allowing for officer time, travel time and administration including a fit-for-purpose IT system. The S.106 agreement will make provision for the administration charge which will usually become payable upon commencement of development.

## Financial Contributions

3.34 Financial contributions due under any obligations will be paid to the District Council as the Local Planning Authority and then distributed to 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). The Council will consider evidence of hardship and if appropriate an alternative arrangement may be considered to enable the development to proceed. 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 District Council.

Payment(s) should be sent to:

**North East Derbyshire District Council  
Council House  
Saltergate  
Chesterfield S40 1LF**

3.35 The relevant Planning Application Number and name of the Development should be clearly marked. Payments can be made by cheque and made payable to North East Derbyshire District Council or Derbyshire County Council (where appropriate).

- 3.36 Financial contributions may be indexed in legal agreements to allow for changes in costs and prices over time (see Law Society template - web address at paragraph 3.16), using the most appropriate index. Typically this is the All Items Group of the Retail Prices Index, as published by H M Government Office for National Statistics or the All In Tender Price Index of the Royal Institution of Chartered Surveyors (see S.106 Law Society Template at Appendix 3 for operation of indexation within S.106 agreements).
- 3.37 The negotiation of terms for S.106 Contributions will include the period for which they will be held and then returned if not used. This period will vary to allow the reasonable prospect for use and may be longer in relation to for example highways schemes. As a broad guide the likely period will be between 5 and 10 years.

## Maintenance Payments

- 3.38 Circular 5/05 states: *“Where contributions are secured through planning obligations towards the provision of facilities which are predominantly for the benefit of the users of the associated development, it may be appropriate for the developer to make provision for subsequent maintenance (i.e. physical upkeep).”*
- 3.39 North East Derbyshire District Council will normally calculate such costs in order that a single payment or commuted sum is agreed and in most cases will allow for inflation.
- 3.40 Typically Maintenance Payments will be appropriate where a public authority will need to maintain a facility in perpetuity e.g. highway works, open space recreation provision or flood defence measures. Developers should be aware that maintenance payments might be calculated using prescribed



formulae in forthcoming Supplementary Planning Documents e.g. the Recreation and Open Space SPD (adoption expected October 2007).

- 3.41 Supplement to PPS' Delivering Sustainable Development, Planning and Climate Change is due to be published later in 2007. The consultation draft sets out planning policies advocated to tackle climate change including for example designing for environmental performance – Sustainable Urban Drainage, sustainable waste management and low or neutral carbon producing energy supplies. The supplement states in paragraph 38 that,
- ‘Planning conditions or planning obligations should be used to secure the longer term management and maintenance of those aspects of a development required to ensure compliance with policies in this PPS’.*
- 3.42 Whilst this PPS supplement is yet to be published developers should be aware that maintenance payments may in future extend into areas such as energy supply and water supply/ waste treatment.

## 4. Areas Requiring Contributions

### Introduction

- 4.1 This part of the document 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 Sections Two and Three of this document will also apply to any future documents in which the Council seek developer contributions.
- 4.2 Appendix 2 – a Ready Reckoner Table summarises the relevant thresholds and contribution requirements for certain contribution areas dealt with below.

### Affordable Housing

#### Policy Justification

- 4.3 Circular 05/2005 Planning Obligations, Planning Policy Statement (PPS) 3: Housing, Department of Communities and Local Government publication, Affordable Housing Policy Statement: Delivering Affordable Housing (<http://www.communities.gov.uk>), the East Midlands Regional Spatial Strategy (RSS8) and the adopted North East Derbyshire Local Plan (Policies H3, H6, H7, H8, H9, H10) provide the context for seeking planning obligations in respect of affordable housing. The Council is preparing an Affordable Housing SPD that is scheduled for adoption in January 2008.
- 4.4 PPS3 Housing states “The Government is committed to providing high quality housing for people who are unable to access or afford market housing...” PPS3 requires that the Local Authority should “Set out the approach to

seeking developer contributions to facilitate the provision of affordable housing.” PPS3 also states relevant thresholds.

- 4.5 The Council's Local Plan Policy H6 states that, ‘ .....the Council will seek to enter into a S.106 Obligation to secure the provision of an element of affordable housing on suitable sites of 0.5 hectares and above, or where the number of dwellings proposed is 15 or more’. This approach is in line with the national indicative minimum site size threshold of 15 dwellings set out in PPS 3.

Local Plan policies H6 ‘Affordable Housing Provision in the Main Settlements’ and H7 ‘Affordable Housing in Settlements With a Population of 3000 or Fewer’, both state that:

*“The precise proportion and type of affordable housing provided on individual sites will be the subject of negotiation and will be determined with regard to the following criteria:*

- (a) housing needs within the local area;*
- (b) the proximity of local shops and services;*
- (c) access to public transport services;*
- (d) the economics of developing the site; and*
- (e) the need to achieve a successful housing development.”*

#### Developer Contribution Requirements

- 4.6 In January 2007 Sheffield Hallam University produced an independent report for The District Council - The



State of the District of North East Derbyshire. This report presents an analysis of the key social, economic and environmental conditions in North East Derbyshire. Its purpose is to help elected members and officers to shape a more detailed vision for the area. It will inform policy, planning and prioritisation and the Council's joint work with partners. Page 21 of the report states that access to affordable housing has been highlighted as a key issue for low-income residents in the district, including those living in the more rural areas.

- 4.7 North East Derbyshire District Council undertook a Housing Needs Survey in 2002 involving 13,000 households and this was updated in 2006. The update suggests that there is a need to provide 442 affordable houses p.a. from 2006 for a 5-year period.
- 4.8 Historically the rate of completions falls well short of the need identified. The Council's Housing Strategy 2006 –2009 (page 32) records the number of affordable housing units completed in previous years. For the four-year period 2002 to 2006 the average annual number of completions within the district was only 38.
- 4.9 In addition a Housing Market Assessment 2007 (Fordham Research, (2006) *Housing Market Assessment; Sub-Regional Report*. Draft Report for Bassetlaw DC, Bolsover DC, Chesterfield BC & NEDDC) undertaken for the Northern sub region of the East Midlands has calculated an annual need for 311 units of affordable housing. The Assessment recommends a 75% provision of socially rented homes and 25% of a shared ownership nature.
- 4.10 The need to provide truly affordable housing in line with the above Survey and Market Assessment has therefore been established. Accordingly, the use of the existing minimum threshold of 15 or more dwellings or sites of 0.5 ha will be used across the district. The element of affordable housing required in new residential developments will be assessed in accordance with local plan and will also be informed by the Affordable Housing SPD (Scheduled for adoption in January 2008). The Council will seek the provision of up to 40% of new dwellings as affordable on allocated sites and others sites of 0.5 hectares and above, or within Settlement Development Limits set out in paragraph 5.44 of the Local Plan. In areas where the Housing Needs Survey (2002) has identified a particularly high need, this requirement may be higher.
- 4.11 In determining the requirement for rate of provision of socially rented units the District will place some weight against the recommendation of the Housing Market Assessment 2007 but will also take into account the circumstances of each application.
- 4.12 Developers are strongly encouraged to involve a Registered Social Landlord (RSL) in relation to proper provision of affordable housing. They should contact the Council to discuss possible partners if in doubt.
- 4.13 The Council will normally seek to control future occupation through a S.106 agreement to ensure all dwellings remain permanently, solely and exclusively available to those in need.

### Financial considerations

- 4.14 Council funding for affordable housing is severely constrained. Social Housing Grant (SHG) is allocated via the Housing Corporation. Where a S.106 agreement is appropriate the addition of SHG has to show 'additionality', for instance by providing additional affordable housing on site, better design or eco-homes standard.
- 4.15 The assumption is that the land for the affordable housing will pass from the developer to the RSL at no cost. The



price to be paid will equate to the costs the RSL would have incurred if it employed a contractor itself. Transfer of land should take place before any dwellings are occupied. On larger sites delivery should be phased throughout the development of the site, with the land transfer taking place prior to the time of the first occupation of the open market units within that phase of the development.

- 4.16 It is essential that units secured are affordable to those in need. In relation to shared ownership, developers must discuss the likely rent/price (for the dwellings themselves) at an early stage to ensure they are acceptable.
- 4.17 Units are to be tenure neutral or tenure blind, well integrated and the Council expects schemes to meet Housing Corporation scheme development standards/latest guidelines or equivalent and to include as many features of 'lifetime homes' as possible.
- 4.18 Where on site provision of affordable housing is not deemed appropriate, e.g. on the smallest sites or in more rural locations, developers will be required to make contributions to the local planning authority to address needs in other parts of the district. A financial contribution as set out in the Affordable Housing SPD (Scheduled for adoption in January 2008) will be required. If a contribution is not used within 10 years it will be repaid.

## Community Safety

### Policy Justification

- 4.19 The Policy Justification for seeking developer contributions in respect of community safety is provided by Circular 05/2005 ('Examples of the use of Planning Obligations'), Planning Policy Statement 1: Delivering Sustainable Development and the adopted Local Plan (Policy GS10).

4.20 PPS 1 emphasises that access and design in new developments have an important role in creating safe and accessible environments where crime and disorder or fear of crime does not undermine quality of life or community cohesion.

4.21 Local Plan Policy GS10 'Crime Prevention' states:

*"The Council will require proposals for residential, commercial and recreational development to include crime prevention measures."*

4.22 The explanatory text elaborates on this:

*"Crime prevention through design is a prominent issue...Local Plan policy can establish the principles of design, layout, lighting and landscaping of new residential and commercial development. It is possible, through negotiation with developers, to ensure that measures are incorporated to ensure that new schemes will add to the security and safety of occupiers."* (Crime Prevention, paragraph 1.64)

4.23 Ensuring safer communities and reducing crime and fear of crime is also one of the priorities of the North East Derbyshire Community Strategy.

### Developer Contribution Requirements

4.24 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.

4.25 Contributions will usually be sought from:

- Proposals of 200m<sup>2</sup> or more for leisure and entertainment facilities, cafes/restaurants/takeaways, public houses and night clubs that are likely to operate beyond 8.00pm;
- Town centre developments of 2,500m<sup>2</sup> or more that will generate significant increases in visitor numbers, trip movements and use of public transport facilities;
- Supermarkets and petrol filling stations that operate at night; and
- Non-residential development of 2,500 m<sup>2</sup> or more that will result in intensification of uses and activity in isolated areas, e.g. industrial estates.

4.26 Some developments (in particular the types of development mentioned above) can have impacts beyond their immediate site, such as increased visitor numbers and traffic, late night activity, noise and other environmental effects. It is considered reasonable to look to developers to contribute to community safety schemes if they are considered essential to offset those impacts and make a scheme acceptable in planning and safety terms.

4.27 Where developer contributions are required the Council will specify their use to ensure that they are applied towards specific local community safety needs. These may include:

- CCTV, whether supplementing existing systems or new schemes, including as appropriate, commuted sums for management and maintenance;
- Provision of lighting particularly to established or proposed pedestrian and/or cycle routes serving the

development - such lighting to be designed to be energy efficient and ensure that no unnecessary light spillage occurs;

- Safety improvements to public transport interchanges, facilities and car parks;
- Environmental improvements that contribute towards safer town centres and other areas affected by a development;
- Enhanced night bus networks or specially created services to provide safe forms of travel to and from major new facilities and leisure uses; and/or
- Community initiatives, which may contribute to crime prevention e.g. youth projects.

## Financial considerations

4.28 The type and level of contribution will be based on the location, nature and scale of the proposal, and the cost of implementation and subsequent operation/monitoring of the relevant element of the particular initiative to which contributions will be directed.

## Education

### Policy Justification

4.29 The Policy Justification for seeking a planning obligation in respect of education is set out in paragraph B15 of Circular 05/2005 and Chapter 9 (Introduction paragraph 9.1) of the Local Plan. Chapter 9 'Community Facilities, Services & Utilities', of the Local Plan states:

- a) "The provision of education, community and health facilities conveniently located throughout the District is essential to serve the needs of the population. ... The North East Derbyshire Local Plan has a facilitating role to play in the provision of community facilities by:

- 
- b) *negotiating with developers for the provision of, or contribution towards, community facilities needed as a result of large developments; ..."*

4.30 Circular 5/05 also makes it clear that if a proposed development would give rise to the need for additional or expanded community infrastructure, such as a new classroom, which is necessary in planning terms and not provided for in an application, it might be acceptable for contributions to be sought towards additional provision through a planning obligation.

### **Developer Contribution Requirements**

- 4.31 Following the requirements of Circular 5/05 and local plan Chapter 9 'Community Facilities, Services & Utilities', the Council expects developers to make an appropriate contribution towards enhancing existing education facilities where there is insufficient capacity to support the development.
- 4.32 New residential development is likely to result in an increased demand for school places, either because of the scale of development itself or through the cumulative effect of a number of smaller developments. Where existing facilities do not have sufficient capacity or require investment to meet the extra demands placed upon them, developers will be expected to provide or contribute to new facilities or make a contribution towards improvements of existing ones.
- 4.33 Where there is no direct link in housing resulting in increased demand for school places e.g. in the case of retirement developments then this will be taken into account in determining the level of contribution.

### **Financial Considerations**

- 4.34 Derbyshire County Council (DCC) as Education Authority applies a formula driven approach to determine

developer contributions. Based on a development of 100 dwellings (including all house types) DCC assess the need arising for 20 primary places, 5 secondary places and 6 post 16 places. This is based on the 2001 Census and will be updated at each census.

- 4.35 The application site and number of dwellings are then referenced against the normal or catchment area in which it falls. If places are available then there is no need for a S.106 contribution, however, if there is a deficiency in the number of places within the categories then a contribution is assessed using DfES cost multipliers, found at the following website address:  
[www.teachernet.gov.uk/costinformation](http://www.teachernet.gov.uk/costinformation).
- 4.36 The process takes into account projections including current numbers in schools and health authority data that helps to define secondary and pre school numbers.

## **Highways and Transport**

### **Policy Justification**

- 4.37 Most developments generate new travel movements and they should, as a first principle, provide the transport infrastructure to cope with these movements. Any necessary alterations to the highway and transport system within or in the vicinity of new development will be expected to form part of development proposals, and permission will be refused if the developer is unwilling or unable to provide the necessary solutions.
- 4.38 New developments also have impacts on the transport infrastructure of the District as a whole in terms of traffic movements and the need for people to gain access via other means of transport. In line with national guidance (set out in greater detail below) contained in Circular 2/2007 and Planning Policy Guidance 13:

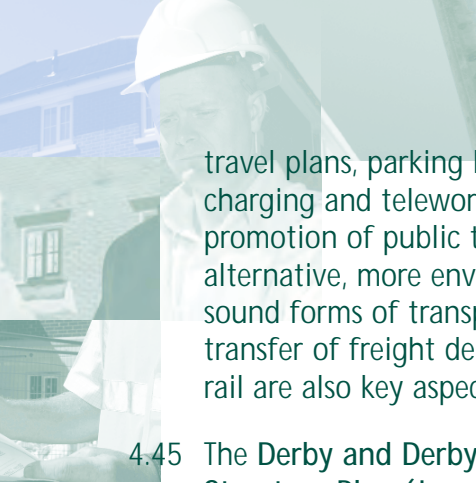


Transport. It is considered that the answer to transport problems lies not only in new road building, but in facilitating a shift towards public transport, cycling and walking, wherever it is, or has the potential to be a practical alternative to the car.



- 4.39 A key element in achieving this shift is by 'Smarter travel choices'. These are techniques for influencing people's travel behaviour towards more sustainable options such as encouraging school, workplace and individualised travel planning. They also seek to improve public transport and marketing services such as travel awareness campaigns, setting up websites for car share schemes, supporting car clubs and encouraging teleworking. Developers will be expected to fully consider ways to achieve smarter travel choices, implemented if considered necessary through S.106 agreements.
- 4.40 Department for Transport circular 2/2007 Planning and the Strategic Road Network sets out how the Highways Agency will work in partnership with regional and local planning and transport authorities, public transport providers and developers to participate in all stages of the planning process to produce sound and deliverable strategies.
- 4.41 Circular 2/2007 sets out the possible need for the Highways Agency to act as a broker for the public sector and the developers to invest in improvements to the trunk road network. Where multiple development proposals may have a significant cumulative impact on the strategic road network it is considered prudent to adopt such an approach.

- 4.42 PPG13 (published March 2001) explains the Government's principal policies relating to transport and planning. It ensures co-ordination between land use planning and transport. The aim of this is to reduce reliance on the private car, reduce the growth of motorised journeys and encourage the use of environmentally friendly transport. Full details of PPG13 are available on the Communities and Local Government web site. [www.communities.gov.uk](http://www.communities.gov.uk).
- 4.43 The Department of Transport has published several best practice guides in relation to travel plans including 'Using the planning process to secure travel plans'. It is aimed at local authorities, developers and occupiers. It sets out how to meet PPG13 requirements and the sequence of events needed for the transport assessment, as part of the planning application process. In addition, it provides information on target setting, key success factors, effective legal mechanisms, how to handle speculative developments and drafting conditions or planning obligations.
- 4.44 The Regional Spatial Strategy for the East Midlands (March 2005) (RSS8) includes policies which promote a greater, more sustained reduction in car usage, including the development of



travel plans, parking levies, road user charging and teleworking schemes. The promotion of public transport including alternative, more environmentally sound forms of transport and the transfer of freight delivery from road to rail are also key aspects of the Strategy.

- 4.45 The Derby and Derbyshire Joint Structure Plan (January 2001) contains detailed guidance on transportation issues. It reinforces national and regional guidance relating to the location of land uses in relation to the transport network to minimise the need to travel, and to encourage the use of public transport, cycling and walking as alternatives to the use of the car, and to encourage increased movement of freight by rail to help relieve congestion on the roads. Specific proposals for the provision of new transport infrastructure are also set out in the Joint Structure Plan, including road schemes and public transport.
- 4.46 The County Council has primary responsibility for transportation matters, and produces the Derbyshire Local Transport Plan in conjunction with all relevant district authorities. This document sets out key transport issues and outlines a number of transportation proposals for a five-year period.
- 4.47 The Derbyshire Local Transport Plan 2006-2011 has a framework of strategic transport aims and objectives on page 2.7 of the Plan. The Land Use Planning Chapter, includes in Table 11.1 relevant material such as 'seek developer contributions to offset maintenance commitment' and 'ensure new developments provide for accessible public transport services, including developer contributions where necessary.'
- 4.48 Maintenance requirements need to be considered as part of the design process, and where there are unusual maintenance requirements and costs, securing commuted sums from developers for maintenance costs for up to 20 years will be considered (Para 8.4.9 and R8.11 Well-Maintained Highways Code of Practice for Highway Maintenance Management DfT 2005).
- 4.49 The Council will seek to ensure that proposals for development are assessed in the light of environmental impact and road safety implications of traffic generation, and will seek specialist advice from Derbyshire County Council, as Highway Authority, in this respect.
- 4.50 Housing, retail, employment, leisure and recreation developments should be located in areas that are served by, or with the potential to be served by, frequent and reliable public transport services. Where it is clear that the proposed development would be likely to worsen traffic problems on the highway network, **planning permission will normally be refused unless the applicant or developer would be willing to provide the finances for the works necessary to alleviate the problem through a Section 106 Obligation, unless they can otherwise be dealt with through appropriate planning conditions.**
- 4.51 In line with Local Plan Policy T3:Traffic Management, the District Council will seek to secure, where appropriate, the provision of, or financial contributions towards the implementation of traffic management measures which arise from the impact of new development. These will seek to reduce congestion and pollution, increase road safety for all road users, giving greater priority to buses, pedestrians and cyclists and minimise the impact of traffic on the environment.
- 4.52 In Local Plan Policy T4: Travel Plans, the District Council will require applications for development to be supported by a travel plan in the following circumstances:

(a) for all \*major developments comprising jobs, retail, leisure and services;

(b) for smaller developments comprising jobs, retail, leisure and services which would generate significant amounts of travel in locations where there are local initiatives or targets set out in the Local Transport Plan or Development Plan for the reduction of traffic or the promotion of public transport, walking and cycling;

(c) for new and expanded school facilities which should be accompanied by a school travel plan which promotes safe cycle and walking routes, restricts parking and car access at and around schools, and includes, on site changing facilities and cycle storage facilities; and

(d) where a travel plan would help to address a particular traffic problem which would otherwise lead to a refusal of planning permission on local traffic grounds.

(\* Major Developments means retail and leisure developments over 1000 m<sup>2</sup> gross floorspace and employment developments greater than 2500 m<sup>2</sup> gross floorspace).

4.53 One way of achieving sustainable development is to encourage people to use alternative forms of transport to the car. Walking and cycling are cheap, healthy forms of transport, which also make a positive contribution to improving local and global environmental quality. In order to encourage a greater number of journeys to be undertaken by foot or cycle, the Council will continue to promote the development of a network of footpath and cycle routes throughout the district.

4.54 Measures to make walking and cycling safer and more attractive forms of transport will also be encouraged,

including cycle and pedestrian priority measures, secure cycle parking facilities and the provision of changing facilities at places of employment and in town centres. Such improvements will be negotiated through Section 106 Obligations in conjunction with proposals for new development.

4.55 In Local Plan Policy : T6 Public Transport, public transport facilities will be improved wherever opportunities arise. This will be primarily through the development control process, but may also include environmental improvement schemes and traffic management. In conjunction with proposals for development, the Council will seek to negotiate S.106 Obligations to secure, where appropriate, the provision of, or financial contributions towards, measures to improve public transport services. In relation to such measures potential contributions will be assessed on a case-by-case basis . Evidence-based assessment of the impact of development will need to be produced through a Transport Assessment in relation to rail infrastructure enhancements.

### **Developer Contribution Requirements**

4.56 Contributions will normally be sought proportionate to the scale and impact of the development and its parking provision.

4.57 Consideration will also be paid to the likely effect of new development on existing on road parking provision. Where it can be evidenced that where new development will compromise existing on road parking provision developers may be required to provide compensatory and additional off road parking provision.

### **Financial considerations**

4.58 Highway provision will commonly be dealt with either by the simple payment of a Commuted Sum to allow Derbyshire





County Council (as highway authority) to carry out the works or by the developer entering into highway agreements (commonly known as a Section 278 agreement in relation to new highway or a Section 38 agreement in relation to alteration to an existing highway) 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 S.106 or other relevant agreement.

- 4.59 It is likely that in many cases developer contributions will be insufficient to fully fund complete transport related schemes. In these cases contributions will be pooled in ring-fenced accounts held until such time as they can be spent on the measures for which they were initially collected.
- 4.60 There may be some items for which contributions will be required will be strategic in nature and again 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 such circumstances a joint approach may be appropriate in seeking and distributing financial obligations associated with major developments involving North East Derbyshire District Council, Derbyshire County Council and the Highways Agency.

## Public Realm

### Policy Justification

- 4.61 It is government policy that planning should seek to maintain and improve the local environment and help to mitigate the effects of declining environmental quality through positive policies on design, conservation and the provision of public space. PPS1 states that planning authorities should seek to enhance the environment as part of development proposals.
- 4.62 Developer contributions towards public realm improvements will be sought in accordance with Circular 05/2005. The 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

- 4.63 Whilst all development should seek to improve the environmental quality of the area in which it is located, there may be circumstances, for example due to the scale or impact of the development, where it is appropriate for that development to contribute to wider environmental improvements.



4.64 The nature of environmental/public realm improvements can be varied and are dependant on factors such as location and existing provision. They may include:

- Planting of street trees
- Provision of street furniture, including elements such as cycle parking and seats where residents can meet
- Improvements to footpaths
- New/improved lighting

4.65 In the case of some major schemes, some or all of the requirements may be met on site.

4.66 Developers can gain by creating and contributing to well-designed, attractive and well-maintained environments where businesses will choose to locate and where residents feel safe and secure.

4.67 The Housing Building Federation, in partnership with CABI have produced the 'Building for Life' Standard, which identifies a list of 20 criteria that should be considered when designing a new housing development. This document is a tool for both developers, planning officers, architects, and highways engineers. Applicants may find it useful to consider this document in formulating proposals. Information is available at the "Building for Life" website [www.buildingforlife.org](http://www.buildingforlife.org)."

### Financial considerations

4.68 In some cases contributions from planning obligations will form only part of the funding for improvement projects. The contributions will therefore be calculated depending on the matched funding allocated to the project and the scale and the direct impact of the development, but are unlikely to exceed £1,000 per dwelling or per 100 sq m of industrial or commercial floor space. Financial

contributions will be pooled with contributions from other developments wherever necessary.

## Public Art

### Policy Justification

4.69 It is government policy that planning should seek to maintain and improve the local environment and help to mitigate the effects of declining environmental quality through positive policies on design, conservation and the provision of public space. PPS1 states that planning authorities should seek to enhance the environment as part of development proposals.

4.70 The local plan has a specific policy for Public Art: BE5 'Percent for Art'. This policy relates to the 'Percent for Art scheme', which is an initiative promoted by the Arts Council. Policy BE5 states:

*"The Council will seek the provision of new works of art as part of major development proposals which are accessible to the general public."*

4.71 Also relevant in terms of policy is 'The Joint Arts Development Strategy for North East Derbyshire and Chesterfield', which was approved by both councils in October 2006. This strategy is a partnership project between Arts Council England, Chesterfield Borough Council and North East Derbyshire District Council. The strategy identifies key themes for development of the arts in the area over the next five years, and has been developed through consultation and partnership between the stakeholders and key players that make up the local arts sector. This document can be seen online using the following link: <http://www.ne-derbyshire.gov.uk/leisure--culture/arts-development/arts-strategy>



## Developer Contribution Requirements

4.72 Public art can form a key part of a public realm strategy, as well as adding to the cultural facilities of an area. It might include features such as: sculpture, water features, lighting schemes, mosaics, murals, engraving, carvings and street furniture, as well as temporary features such as festivals or other visual displays. Public art describes any contribution or intervention made by artists or craftspeople, whether part of a building or free-standing, and whether permanent or temporary, that is intended for public space. Public art encompasses a wide range of media. This can include the use of unusual materials and technologies, in experimental ways, or in an innovative approach to social progress.

4.73 In addition the Joint Arts Development Strategy for North East Derbyshire and Chesterfield gives further information about the many kinds of public art, which could be possibly included as a developer contribution. They are summarised below:

- **Music** – from choirs to brass bands to jazz nights to DJing
- **Theatre** – from Shakespeare to youth theatre to amateur productions
- **Film** – from local history projects to animation, from cartoons to blockbusters at the local cinema
- **New Technologies** – from web design to graphic design, from electronic music to sound recording
- **Visual Arts** – from paintings to photography, sculpture and art in public places
- **Crafts** – from furniture to jewellery, from fashion to pottery
- **Dance** – from ballet to ballroom or bhangra to street dance

- **Festivals & celebratory events** – from carnival parades to firework displays
- **Literature** – from poetry competitions to creative writing groups

## Financial Considerations

4.74 'Percent for Art' is an Arts Council sponsored campaign aimed at improving the built environment by employing the talents of Britain's artists and craftspeople. It is aimed at ensuring that a proportion of the cost of new development is directed towards the provision of art and craft works. In accordance with normal practice under this scheme, the Council will seek to ensure that one per cent of the capital cost of development projects that are either:

a) of 2,500 m<sup>2</sup> or more, or

b) other development which impacts on existing, or create new public places; is set aside for artistic enhancement.

4.75 Although on-site provision is preferred, in exceptional cases a payment or other contribution towards providing public art on a different site may be acceptable. The Council would encourage developers to consult with artists and craftspeople at an early stage in the design process to ensure that public art features are cohesive and properly integrated in development schemes.

## Open Space and Recreation

### Policy Justification

4.76 PPG17: Planning for Open Space, Sport and Recreation (2002) sets out the Government policy on development of open space, sport and recreation and identifies the importance of these in supporting urban renaissance and rural renewal, promoting social inclusion and community cohesion, improving health and well being and promoting more sustainable development. The long term outcomes PPG17 aims to deliver are:

- networks of accessible, high quality open spaces and sport and recreation facilities, in both urban and rural areas, which meet the needs of residents and visitors, are fit for purpose and economically and environmentally sustainable;
  - an appropriate balance between new provision and the enhancement of existing provision; and
  - clarity and reasonable certainty for developers and landowners in relation to the requirements and expectations of local planning authorities in respect of open space and sport and recreation provision.
- 4.77 The Companion Guide to PPG17: 'Assessing Needs and Opportunities', provides more advice on how to use the planning system to help deliver open spaces and sport and recreation facilities.
- 4.78 The North East Derbyshire Local Plan was adopted in November 2005. The following policies are set within the Recreation and Leisure chapter of this Plan:
- R1 (Outdoor Recreation Space Standards);
  - R2 (Formal Recreation Facilities);
  - R3 (Urban Green Space);
  - R4 (Allotments);
  - R5 (Providing for Children's Play Space through New Development); and
  - R6 (Proposals for new Outdoor Recreation Uses).
- 4.79 Policy R1 seeks to ensure that adequate provision is made for outdoor recreation space to serve the District's population and states that, until a local standard is adopted within the

Recreation and Open Space Supplementary Planning Document, provision should be made of 2.4 hectares per 1000 population in accordance with the National Playing Fields Association Standard.

- 4.80 The Council has prepared a Recreation and Open Space Supplementary Planning Document. This SPD sets out needs for recreation facilities and open space across the district and that developer contributions will be sought in accordance with this document and the policies set out in the Recreation and Leisure section of the Local Plan.

### Developer Contribution Requirements

- 4.81 The guidance in the Council's Recreation and Open Space SPD (adopted October 2007) will be taken into account in terms of needs across the District. This document sets the local recreation standard and is intended to be the main policy document in relation to open space and recreation requirements resulting from new development which will include residential, new employment premises and educational facilities. This SPD provides a formula based approach in assessing developer contributions such that developers will clearly be able to identify the likely level of contributions in relation to the development proposed.
- 4.82 Developers will be required to make appropriate contributions to amenity green space and commons (including allotments), housing green space, green corridors, parks, outdoor sports provision, children's play space including equipment and outdoor youth facilities in line with methodology set out in the SPD. In line with the needs and standards set in the Recreation and Open Space SPD obligations may be in relation to new on site or off site facilities and in relation to enhancement of existing facilities.



4.83 The SPD also provides recommendations on design in relation to new provision.

4.84 The local recreation standard will be applied to applications for residential developments of 10 or more units or which are 0.3 hectares or greater in size (regardless of the number of bedrooms). This will include proposals that involve new build, conversions or changes of use, where appropriate for the following types of development:

- Family housing
- Flats and bed sits
- Affordable housing
- Sheltered housing
- Extra care housing

4.85 Applicants will also be encouraged to provide for recreation facilities on open spaces as part of proposals for new employment premises and educational facilities.

4.86 The Council will normally be prepared to adopt and maintain public open space and play areas provided it is laid out in accordance with adoptable standards and subject to a payment by the developer of a commuted sum to cover ongoing maintenance costs. The methodology for the calculation of commuted sums payable set out in the Recreation and Open Space SPD.

## Natural Environment

### Policy Justification

4.87 Biodiversity means the full variety of living organisms and the inter-action between them. National Policies on biodiversity are set out in PPS 9: Biodiversity and Geological Conservation. PPS 9 encourages the inclusion within development proposals of beneficial biodiversity or geological features as part of good design. In considering proposals the Council will seek to maximise opportunities to do so, using planning obligations where appropriate. PPS 9 encourages local

planning authorities to use planning conditions and/or planning obligations to mitigate the harmful aspects of development in relation to SSSI's (Sites of Special Scientific Interest) to ensure the conservation and enhancement of the site's biodiversity or geological interest.

4.88 PPS 9 also encourages local planning authorities to use planning conditions and/or planning obligations to ensure that species without statutory protection (for list see [www.defra.gov.uk/wildlife-countryside/cl/habitats/habitats-list.pdf](http://www.defra.gov.uk/wildlife-countryside/cl/habitats/habitats-list.pdf)) are protected from the adverse effects of development.

4.89 The East Midlands Regional Spatial Strategy is highly relevant in setting the regional priorities for natural resources, environmental and green infrastructure and for enhancing biodiversity. The regional context is set by the environmental objectives of the East Midlands Integrated Regional Strategy and by Regional Assembly's Environment Strategy (available at [www.emra.gov.uk/a4e](http://www.emra.gov.uk/a4e)). This provides a framework for environmental policy development and highlights a number of key challenges. The area of statutory sites important for biodiversity in the Region is well below the national level. Overall there has been a significant decline in biodiversity and to compensate for past losses, regional habitat restoration and creation targets through the provision of 'green infrastructure' need to be proportionally greater than in other UK regions.

4.90 Planning obligations and S.106 agreements can play a role in the delivery of, enhancement and restoration of landscape character and the mitigation of new development by, for example, off-site landscaping or management plans. Local landscape character should be taken into account when dealing with off site landscaping



and management plans. Protecting and enhancing the quality and character of the countryside is a requirement of Planning Policy Statement 1: Delivering Sustainable Development, and landscape character assessments and their role in Local Development Documents is specifically referred to in Planning Policy Statement 7: Sustainable Development in Rural Areas. Government guidance is reinforced by Policy 31 of the Draft Regional Spatial Strategy (Priorities for the Management and Enhancement of the Regions Landscape).



4.91 Regional Priorities for biodiversity are set out in 'Putting Wildlife back on the Map' – A Biodiversity Strategy for the East Midlands (2006), produced by the East Midlands Biodiversity Forum.

4.92 Two Local Biodiversity Action Plans (BAP) cover the District's area – The Peak District BAP and The Lowland Derbyshire BAP. Both contain Habitat Action and Species Action Plans. More details can be accessed via [www.derbyshirebiodiversity.org.uk](http://www.derbyshirebiodiversity.org.uk)

4.93 The Council in partnership with the Derbyshire Wildlife Trust is preparing a Greenprint, which is due for adoption by the end of 2007. This document translates both the UK and Local BAPs to a district level. It identifies local priority habitats and species, setting out detailed targets and action plans for achieving them.

4.94 The policy justification for seeking developer contributions in respect of the natural environment is also provided by Circular 05/2005 (B15 & B16) which relate to mitigating the impact of a development and compensating for the loss or damage caused by a development.

4.95 Local Plan policies NE3, NE4, NE5 & NE6, also provide guidance on potential developer contributions relating to the natural environment.

4.96 Local Plan Policy NE3 states that, *'...where a development would result in a loss of a habitat, the Council will seek to maintain and enhance biodiversity within the District by securing the creation, enhancement and/or management of habitats in or adjacent to new development'*

4.97 Local Plan Policy NE4 reinforces PPS 9 guidance in relation to nationally important SSSI's by stating that, *'...where necessary the Council will impose conditions or seek to negotiate a Section 106 obligation to secure appropriate mitigation and/or compensatory measures to protect the nature conservation interests of the site.'* Policy NE5 makes the same provision in relation to any other site important for nature conservation, including Derbyshire Wildlife Sites and Regionally Important Geological Sites, as identified on the Proposals Map'.

4.98 Local Plan Policy NE6 considers development likely to have an adverse impact upon species with no or very



limited legal protection and which are known to be nationally rare. Policy NE6 states that,

*'The Council will impose conditions or seek to negotiate a Section 106 obligation to secure the provision of any appropriate mitigation measures to protect the status of the species on the site.'*

### Developer Contribution Requirements

4.99 The Council will proactively seek to improve biodiversity on all development sites by ensuring that their potential is understood and realised, for example by the identification / reinforcement / creation of wildlife corridors that will benefit a wide range of flora and fauna. In addition opportunities should also be taken to secure low cost provision including for example, bird or bat boxes. For further advice and information visit:

[www.derbyshirewildlifetrust.org.uk](http://www.derbyshirewildlifetrust.org.uk).

4.100 Developer contributions will be largely based on the impact developments may have on Biodiversity and nature conservation as identified in the Local Plan. In considering potential impacts and mitigation measures, the Council will seek the professional advice of English Nature and Derbyshire Wildlife Trust as appropriate.

### Financial considerations

4.101 The Local Planning Authority will have regard to the Local Biodiversity Plan as per the existing local plan policy (paragraph 2.19) and other adopted policies in the natural environment section. It is not considered appropriate to set out a method or threshold basis for calculation given the unique and different flora, fauna and landscape conditions or circumstances which will apply to development sites.

## Community Facilities

### Policy Justification

4.102 Planning Policy Statement 7: 'Sustainable Development in Rural Areas' (July 2004) (PPS7) is firmly based upon the principles of sustainable development and clearly distinguishes between the policy approach to be applied to rural settlements and to the largely undeveloped countryside that separates towns and villages. The Statement provides that:

*'People who live or work in rural areas should have reasonable access to a range of services and facilities. These local facilities should be located within or adjacent to existing villages and settlements where access can be gained by walking, cycling and (where available) public transport.'*

4.103 The Regional Spatial Strategy for the East Midlands (RSS8) (March 2005) states that it is essential to seek ways of reversing the decline of services available to the rural population.

4.104 The North East Derbyshire Local Plan 2005 states that the provision of education, community and health facilities conveniently located throughout the District is essential to serve the needs of the population. Facilities are provided by a variety of organisations from the public, private and voluntary sectors. Furthermore it is stated that the Local Plan has a facilitating role to play in the provision of community facilities by:

a) safeguarding sites identified by the County Council to meet their statutory requirements;

b) negotiating with developers for the provision of, or contribution towards, community facilities needed as a result of large developments; and

c) seeking to prevent the loss of

existing community facilities which serve an important local need.

4.105 The Local Plan identifies the need for community facilities and other operational facilities, such as schools, fire stations and health care facilities within settlements as they evolve and develop. North Eastern Derbyshire Primary Care Trust (Derbyshire County Primary Care Trust – since October 2006) has identified several areas of need for healthcare facilities within the plan area including appropriate premises to provide drug and substance abuse services and the extension of General Practitioner premises to accommodate an increase in the services being provided.

4.106 Para 9.14 of the Plan stresses the importance of other community facilities such as village and community halls, youth centres and places of worship and that facilities are typically provided as part of wider development proposals and secured by a S.106 obligation. The need to safeguard existing facilities e.g. village halls and meeting rooms, especially in rural locations, Policy CSU3: Protection of Existing Community Facilities, states that consent for change of use or redevelopment of buildings with community functions will not be forthcoming if either:

a) appropriate alternative provision is made or already available; or

b) it can be demonstrated that the facility is no longer required or financially viable.

4.107 As with all major new developments the provision of infrastructure is extremely important. In accordance with Circular 05/05, the Council recognises that obligations can be sought to relate to cumulative implications of a number of developments. Hence the capacity of existing infrastructure and the need for additional facilities for facilities such as

sewage treatment works will be an imperative consideration of individual planning applications. This approach is reinforced in PPS 12: Local Development Frameworks 2004 paragraph B4 which states that ‘...when it comes to an individual planning application, the adequacy of infrastructure can be a material consideration in deciding whether permission should be granted.’

## **Developer Contribution Requirements**

4.108 Developer contributions will be largely determined in accordance with existing Local Plan Policy.

4.109 Where replacement facilities are to be provided The District Council may seek a planning obligation requiring that the new community facilities are completed and made available prior to the occupation of the rest of the development.

4.110 Community facilities also include community centres, meeting halls, places of worship, youth centres, day nurseries and crèches and other similar social infrastructure, indoor and outdoor leisure and recreation facilities, facilities for emergency services, residential care homes for older people and younger adults and civic waste amenities. Their provision is made by a wide variety of authorities and many voluntary organizations and it is inevitable in some cases no single methodology is applicable to identify existing deficiencies and the needs generated by new development.

## **Financial considerations**

4.111 Prospective developers will be required to contribute to new or improved community provision in relation to the community facilities listed above in the local area of their proposal unless they are able to demonstrate to the Council’s satisfaction that the proposed new development will not place new





demands on such resources. Multi-purpose buildings can provide accommodation for many different community groups and locations for learning and will therefore be encouraged. The level of contributions sought for local community facilities will be based on the costs of providing or improving such buildings, including maintenance. The location of new community facilities e.g. GP surgeries close to accessible public transport and within cycling and walking distance of local residents will be encouraged where feasible. The provision of local recycling initiatives within new developments will also be expected. In relation to larger developments the impact on existing civic waste amenities will also be taken into account in determining contributions.

4.112 In certain circumstances, the District Council may seek to channel contributions to partner organisations in the voluntary or community sectors that have the capacity to manage such resources. This provision is intended to ensure the availability of sites and/or buildings for youth and community groups that cannot be easily accommodated in a general purpose community hall. Planning obligations may include a number of measures including phasing of the community facility to be brought into the development and commuted sum maintenance agreements.

## Skills and Training

### Policy Justification

4.113 The Regional Spatial Strategy for the East Midlands (RSS8) (March 2005) recognises the Northern sub-area as a priority area for regeneration and that it is crucial that the area develops a viable new economic base that will support healthy and vibrant communities.

4.114 The economy of North East Derbyshire has traditionally been based upon the coal, steel and heavy engineering industries. The decline of these industries has led to higher unemployment in the ex-coalfield wards compared to other wards in the District, the County and the UK. The western areas are rural and agricultural in character, and have suffered from the decline in agriculture. The Council is committed to the regeneration of these areas and the economic well being of the District.

4.115 In January 2007 Sheffield Hallam University produced an independent report for The District Council - The State of the District of North East Derbyshire.

4.116 In relation to Economic Condition and Employment (Chapter 5), key findings include:

- Significant proportions of people are working in low wage sectors of the economy
- Relatively high levels of part-time employment
- Pay rates for full-time workers in North East Derbyshire are lower than those in the region
- Key challenges with respect to unemployment amongst young people resident in North East Derbyshire and higher than average levels of sickness and disability
- Tendency to long-term disengagement from the labour market amongst residents who are economically inactive
- The task of re-engaging those people of working age who have spent 10 or more years outside employment is a key issue locally

4.117 The Economic Development Strategy for Chesterfield and North East



Derbyshire 2005–2015: Our vision for 2015 prepared by Chesterfield Borough Council and North East Derbyshire District Council provides a framework for the delivery of their economic development and tourism services. It aims to raise the economic performance of North East Derbyshire and address the regeneration needs of local communities which have been adversely affected by industrial restructuring.

4.118 This Economic Development Strategy states that by 2015 North East Derbyshire will be a competitive location, providing quality employment opportunities. This vision will be achieved through a range of activities, which can be grouped under four programme headings:

- Encouraging Business Competitiveness and Growth
- Attracting and Supporting Visitors and Investors
- Developing Product and Infrastructure
- Regenerating Communities

4.119 The Council's Corporate Plan is the main document the Council uses to show what it is trying to achieve, and how it intends to go about doing it. The contents of the Corporate Plan help focus effort on improving services, provide a framework for determining spending priorities, and set out the actions and targets that must be achieved if quality of life in the District is to continue getting better. The Corporate Plan has direct links to the Community Strategy published originally in March 2002, and reviewed and re-launched in 2005.

4.120 A priority focus in the Council's Corporate Plan 2006 –2009 is

*"To improve employment opportunities and incomes for local citizens by increasing the employability of the local workforce", and the Council has now agreed the development of a Working Communities Strategy. This has five key themes:*

**Employment** - reduce under employment in communities by delivering local Working Communities programmes;

**Procurement** - achieve community benefits by engaging actively with suppliers and contractors;

**Construction** - maximise employment opportunities for local people in the construction industry;

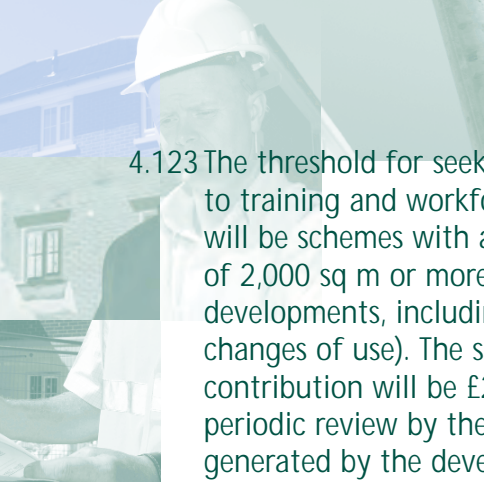
**Skills** - work in partnership with businesses, schools and colleges to raise the levels of relevant skills to meet the needs of individuals and organisations;

**Projects** - actively support relevant community based projects to achieve their objectives.

4.121 Training and workforce development has an essential role in upskilling the District's workforce, sustaining economic growth and supporting disengaged communities and will serve to achieve the policy aims highlighted above. If targeted correctly, it can also help reduce unemployment, ensuring that local people are prepared for and are able to secure new jobs being created in the local economy.

### **Developer Contribution Requirements and Financial considerations**

4.122 Developer contributions would be in relation to planning applications for employment-generating development which meet the criteria identified in the following paragraph and/or where a proposal results in a loss of employment floorspace.



4.123 The threshold for seeking contributions to training and workforce development will be schemes with a gross floor area of 2,000 sq m or more (new developments, including extensions and changes of use). The standard contribution will be £200 (subject to periodic review by the Council) per job generated by the development ( where the new occupier and number of employees is specified in the planning application, this information will be used in the calculation subject to checks being made against employee/floorspace ratios). For speculative development the number of employees judged likely to occupy the proposed development will be calculated using employee/floorspace ratios set out below in Table 1:

4.124 Where funding for training and workforce development initiatives is sought in association with development the training would be required for people living in target wards and working in the District and be directly related to the employment needs of the area. It may include:

- Financial contributions towards established supported employment and training initiatives
- Financial contributions to support the development of new employment and training programmes to meet specific community or sector needs
- Apprenticeship schemes

- Work-based placement

4.125 On most schemes, obligations will take the form of contributions towards provision by recognised providers. An over-riding aim is to develop a partnership approach with existing organisations such as Jobcentre Plus, the Learning and Skills Council, Connexions and CHART Local Strategic Partnership.

## Conservation of Historic Assets

### Policy Justification

4.126 PPG 15: Planning and the Historic Environment advises that physical survivals of our past are to be valued and protected. The guidance states that the aim of the planning process is to reconcile the need for economic growth with the need to protect the natural and historic environment. In addition PPG 16: Archaeology and Planning advises that archaeological remains should be seen as a finite and non-renewable resource. The guidance advises in favour of physical preservation of remains and their settings when affected by proposed development.

4.127 East Midlands Regional Spatial Strategy 2005 states that historic assets are vital components of the Region's cultural heritage. They include listed buildings, conservation areas, historic parks and gardens, scheduled monuments and

Table 1

| Description               | Use Class<br>employee (sq m) | Floorspace per |
|---------------------------|------------------------------|----------------|
| Offices                   | B1 (a)                       | 20             |
| Research/Light Industrial | B1 (b) and (c)               | 30             |
| Industrial                | B2                           | 30             |
| Storage/Distribution      | B8                           | 40             |
| Leisure                   |                              | 30             |
| Retail                    |                              | 25             |

other archaeological sites and historic landscapes. Policy 26: Protecting and Enhancing the Region's Natural and Cultural Heritage sets out a number of principles for application in relation to new development. Locally valued assets such as locally listed buildings are also important components and assets of the region's cultural heritage.

4.128 Chapter 3 of the Local Plan covers policy in relation to Archaeological Sites and Scheduled Ancient Monuments, Buildings of Architectural and Historic Interest, Conservation Areas and Historic Parks and Gardens. The Council in conjunction with English Heritage will carefully consider the impact of development in or adjacent to sites and buildings falling into these categories. Applications should include all the necessary information to properly assess the potential effects or impact that may occur. English Heritage's statutory powers regarding the types of applications that it should be notified of and consulted on is set out in Planning and Development in the Historic Environment: A Charter for English Heritage Advisory Services (2005).

4.129 Applicants are advised to contact Derbyshire County Council's Historic Environment Record for information on historic assets in the area, particularly undesignated archaeology.

4.130 The HELM website [www.helm.org.uk](http://www.helm.org.uk) features case studies and policy statements produced by English Heritage, as well as guidance produced by English Heritage, HELM partners, Local Authorities, regional agencies and other key organisations.

### **Developer Contribution Requirements and Financial considerations**

4.131 Requirements for contributions or undertaking of works for conservation of historic assets will be determined on a case-by-case basis and will take into


account the impact that development may have and consideration as to the appropriate mitigation measures which may be required. Requirements may come in different forms, e.g. the retention and physical preservation of archaeological remains or the provision of green infrastructure to enhance the setting of a listed building or improvement of the access between a development site and a nearby historic park or garden or other historic site that is open to visitors.

## **Flooding**

### **Policy Justification**

4.132 Flooding issues have long been recognised as a material consideration in the development planning process. National planning guidance on flooding is contained in Planning Policy Statement 25 (and Practice Guide companion) - Development and Flood Risk (December 2006). This alongside Policy NE9 of the Local Plan seeks to ensure that new development is not at risk from flooding and/or that it does not put other areas at risk.

4.133 PPS 25 explains how flood risk should be considered at all stages of the planning and development process. It sets out the importance of the management and reduction of flood risk in planning, acting on a precautionary basis and taking account of climate change. The Environment Agency (EA) has the lead role in providing advice on flood issues and it is stated that developers should fund flood defences where they are required because of the development. Annex G Paragraph 5 of PPS 25 outlines the considerations concerning the contributions that developers should make to the flood defence and alleviation works required for a proposed development to proceed.



4.134 The Regional Spatial Strategy for the East Midlands (RSS8) sets out a Regional Approach to Managing Flood Risk in Policy 35. It states that,

' Development should not be permitted if, alone or in conjunction with other new development, it would:

- be at unacceptable risk from flooding or create such an unacceptable risk elsewhere;
- inhibit the capacity of the floodplain to store water;
- impede the flow of floodwater;
- have a detrimental impact upon ground water storage capacity;
- otherwise unacceptably increase flood risk; and
- interfere with coastal processes.

4.135 However, such development may be acceptable on the basis of conditions or agreements for adequate measures to mitigate the effects on the overall flooding regime, including provision for the maintenance and enhancement (where appropriate) of biodiversity. Any such measures must accord with the flood management regime for that location. Strategic Flood Risk Assessments should be carried out where appropriate to inform the implementation of this policy:

4.136 Policy NE9: Development and Flood risk of the North East Derbyshire Local Plan states that development proposals will not be permitted in areas at risk of flooding unless:

- (a) the proposal is for open recreation or open space use: or
- (b) the location is essential for a particular development and there are no alternative locations in a lower risk area; and
- (c) the proposals can be adequately safeguarded against flood risk through appropriate mitigation and/or compensation works; and

(d) it can be demonstrated that the proposal would have no adverse effects on the management of flood risk either upstream or downstream of the development:

- by a reduction of the capacity or increase in flows in the floodplain;
- through the discharge of additional surface water;
- by harming flood defences; and

(e) adequate provision is made for access to watercourses for maintenance purposes

4.137 In relation to paragraph (d) above the Council considers that Sustainable Urban Drainage Systems (SUDs) are a desirable means of demonstrating no adverse effects on the management of flood risk. A variety of SUDs are described in detail in the latest version of a document entitled ' Framework for Sustainable Urban Drainage Systems in England and Wales' published by the National Suds Working Group in May 2003 and available from the Environment Agency website address: <http://www.environment-agency.gov.uk/>

4.138 Applicants should also be aware of Local Plan Policy CSU4 Surface and Foul Drainage. This states that planning permission for development will only be granted where it can be,

*' adequately drained of surface water and where possible incorporates sustainable drainage principles, unless it can be demonstrated that their use would be inappropriate...'*

4.139 The Council may require the submission of an appropriate flood risk assessment from the developer in connection with any application for development consent. The Council strongly advises developers to consult the Environment Agency before making an application to discuss potential flood risks.



## Developer contribution requirements and Financial considerations

- 4.140 In line with policy guidance contribution requirements will be sought, where appropriate, for mitigation of fluvial flood risk for the provision of physical defences or other flood risk measures. The extent and scope of works and/or financial contribution will be determined in accordance with the Environment Agency.
- 4.141 In addition contributions for maintenance of physical defences, other flood risk measures and schemes deemed necessary for the proper management of surface water run off will be required. Such contributions will be assessed as the fair and reasonable costs for maintenance over the lifetime of the development, which is typically 50 years.

## Other Contributions

- 4.142 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 planning policy and the Council will seek to 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 style="padding-left: 40px;"><i>"Ensuring that infrastructure and services are provided to support new and existing economic development and housing."</i> (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:</p> <p><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> <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 'clearly outweighed by other considerations'. (DCLG (1995: paragraph 3.2))</p> |
| PPG2   | Green Belts                              | <p>PPG2 suggests where use of planning obligations and agreements would be suitable:</p> <p><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><i>‘Local Occupancy’ conditions are also mentioned. These may only be granted where; “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>   |
| 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 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.”</i> (DCLG (2001:paragraph 85))</p> <p>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.</p>   |



**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.



## Appendix 2

### Ready Reckoner Table - relevant threshold and contribution requirements

| Obligation         | Type of Development<br>(Use Classes Order)  | Threshold/Financial Consideration  |
|--------------------|---|--|
| Affordable Housing | Residential (C3)  | <p><u>In main settlements</u><br/>15 dwellings or more, or 0.5ha, whichever is less<br/>Provision will be sought at 40% of all new dwellings</p> <p><u>In settlements with a population of 3,000 or fewer</u><br/>Provision will be sought on suitable site of 0.1ha and above.<br/>Proportion and type subject to negotiation</p> |
| Community Safety   | <p>Leisure and entertainment facilities, cafes/restaurants/ takeaways, public houses and night clubs that are likely to operate beyond 8.00pm</p> <p>Town centre developments that will generate significant increases in visitor numbers, trip movements and use of public transport facilities</p> <p>Supermarkets and petrol filling stations that operate at night</p> <p>Non-residential development that will result in intensification of uses and activity in isolated areas, e.g. industrial estates</p> | <p>Proposals of 200m<sup>2</sup> or more</p> <p>2,500 m<sup>2</sup> or more</p> <p>2,500 m<sup>2</sup> or more</p>   |
| Education          | Residential (C3)  | Based on a development of 100 dwellings (including all house types) the need arises for 20 primary places, 5 secondary places and 6 post 16 places.  |
| Public Realm       | <p>Residential (C3)<br/>Residential (C2)</p> <p>Town centre, retail, leisure and business uses</p>  | Up to £1,000 per dwelling or per 100 sq m of floor space   |



| Obligation                | Type of Development<br>(Use Classes Order)   | Threshold/Financial<br>Consideration   |
|---------------------------|--|--|
| Public Art                | Residential (C3)<br>Residential (C2)<br>Town centre, retail, leisure and<br>business uses            | One per cent of the capital cost<br>of development   |
| Open Space and Recreation | All use classes  | <u>10 or more dwellings or 0.3ha,<br/>whichever is less</u><br>Individual site basis using<br>Standards set out in the<br>Recreation and Open Space SPD. |
| Skills and Training       | B1 (a, b and c) and A2<br>employment<br><br>B2 general industrial and B8<br>storage and distribution | Gross floor area of 2,000 sq m or<br>more  |