

Planning Obligations Appendix A

Department for Communities and Local Government - Planning Practice Guidance

When can planning obligations be sought by the local planning authority?

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. These tests are set out as statutory tests in the [Community Infrastructure Levy Regulations 2010](#) and as policy tests in the National Planning Policy Framework.

Revision date: 26 03 2015 [See revisions](#)

Related policy

National Planning Policy Framework

- [Paragraph 204](#)

Paragraph: 002 Reference ID: 23b-002-20140306

How do planning obligations relate to other contributions?

Developers may be asked to provide contributions for infrastructure in several ways. This may be by way of the Community Infrastructure Levy and planning obligations in the form of section 106 agreements and [section 278 highway agreements](#). Developers will also have to comply with any [conditions](#) attached to their planning permission. Local authorities should ensure that the combined total impact of such requests does not threaten the viability of the sites and scale of development identified in the development plan.

Where the levy is in place for an area, charging authorities should work proactively with developers to ensure they are clear about the authorities' infrastructure needs and what developers will be expected to pay for through which route. There should be not actual or perceived 'double dipping' with developers paying twice for the same item of infrastructure.

Revision date: 06 03 2014

Related policy

National Planning Policy Framework

- [Paragraph 173](#)

Paragraph: 003 Reference ID: 23b-003-20150326

Should policy on seeking planning obligations be set out in the development plan?

Policies for seeking planning obligations should be set out in a [Local Plan](#); [neighbourhood plan](#) and where applicable in the London Plan to enable fair and open testing of the policy at examination. Supplementary planning documents should not be used to add unnecessarily to the financial burdens on development and should not be used to set rates or charges which have not been established through development plan policy.

Planning obligations assist in mitigating the impact of development which benefits local communities and supports the provision of local infrastructure. Local communities should be involved in the setting of planning obligations policies in a [Local Plan](#); [neighbourhood plan](#) and where applicable in the London Plan.

Revision date: 26 03 2015 [See revisions](#)

Related policy

National Planning Policy Framework

- [Paragraph 153](#)

Paragraph: 004 Reference ID: 23b-004-20150326

Does the local planning authority have to justify its requirements for planning obligations?

In all cases, including where tariff style charges are sought, the local planning authority must ensure that the obligation meets the relevant tests for planning obligations in that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.

Planning obligations should not be sought where they are clearly not necessary to make the development acceptable in planning terms.

Planning obligations must be fully justified and evidenced. Where affordable housing contributions are being sought, planning obligations should not prevent development from going forward.

Revision date: 26 03 2015 [See revisions](#)

Related policy

National Planning Policy Framework

- [Paragraph 204](#)

Paragraph: 005 Reference ID: 23b-005-20140306

Can planning obligations be required for permitted development?

By its nature permitted development should already be generally acceptable in planning terms and therefore planning obligations would ordinarily not be necessary. Any planning obligations entered into should be limited only to matters requiring [prior approval](#) and should not, for instance, seek contributions for affordable housing.

Revision date: 06 03 2014

Paragraph: 006 Reference ID: 23b-006-20140306

Are planning obligations negotiable?

Obligations should only be sought where they are necessary to make the development acceptable in planning terms. Where they provide essential site specific items to mitigate the impact of the development, such as a necessary road improvement, there may only be limited opportunity to negotiate. Where local planning authorities are requiring affordable housing obligations or tariff style contributions to infrastructure, they should be flexible in their requirements. Their policy should be clear that such planning obligations will take into account specific site circumstances.

Revision date: 06 03 2014

Paragraph: 007 Reference ID: 23b-007-20150326

What evidence is required to support negotiations on planning obligations?

Policy for seeking planning obligations should be grounded in an understanding of development [viability](#) through the plan making process.

On individual schemes, applicants should submit evidence on scheme [viability](#) where obligations are under consideration. Wherever possible, applicants should provide viability evidence through an open book approach to improve the review of evidence submitted and for transparency.

Revision date: 26 03 2015 [See revisions](#)

Paragraph: 024 Reference ID: 23b-024-20150326

Are planning obligation contributions required by local planning authorities publically available?

Local planning authorities are required to keep a copy of any planning obligation together with details of any modification or discharge of the planning obligation and make these publically available on their [planning register](#).

Local planning authorities are expected to use all of the funding they receive through planning obligations in accordance with the terms of the individual planning obligation agreement. This will ensure that new developments are acceptable in planning terms; benefit local communities and support the provision of local infrastructure. To ensure transparency local planning authorities are encouraged to make publically available information as to what planning obligation contributions are received and how these contributions are used. This information could be published in the [authority's monitoring report](#) or through separate periodic reports published on the local planning authority's website.

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Paragraph: 025 Reference ID: 23b-025-20150326

When should discussions on planning obligations take place?

Discussions about planning obligations should take place as early as possible in the planning process, including at the [pre-application](#) stage. This will prevent delays in finalising those planning applications which are granted subject to the completion of planning obligation agreements.

[Can planning obligations or heads of terms be on a local list?](#)

Local planning authorities are encouraged to inform and involve all parties with an interest in the land and relevant infrastructure providers, including county councils where appropriate, at an early stage to prevent delays to the process.

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Paragraph: 026 Reference ID: 23b-026-20150326

How can relevant infrastructure issues be taken into account during discussions on planning obligations?

Local planning authorities are encouraged to work with relevant infrastructure providers at an early stage of the planning process when planning obligations are being discussed in order to prevent delays to the agreement of planning obligations. For two tier council areas this should include county councils who provide services such as education. County councils can also be statutory consultees in the planning application process as set out in [Table 2 of the Planning Guidance](#) .

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Paragraph: 027 Reference ID: 23b-027-20150326

Are there standard templates for the agreement of planning obligations?

Local planning authorities are encouraged to use and publish standard forms and templates to assist with the process of agreeing planning obligations. These could include model agreements and clauses (including those already published by other bodies), that could be made publically available to help with the planning application process. Any further information required by the local planning authority, or issues raised by the applicant regarding planning obligations, should

be addressed at an early stage of the planning application process. Use of model agreements does not remove the requirement for local planning authorities to consider on a case by case basis whether a planning obligation is necessary to make the development acceptable in planning terms.

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Paragraph: 028 Reference ID: 23b-028-20150326

Is there a timeframe for negotiating planning obligations?

Planning obligations should be negotiated to enable decisions on planning applications to be made within the [statutory time limits](#) or a longer period where agreed in writing between the local planning authority and the applicant.

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Paragraph: 008 Reference ID: 23b-008-20140306

Do applicants have to agree to a planning obligation?

Applicants do not have to agree to a proposed planning obligation. However, this may lead to a refusal of planning permission or non-determination of the application. An appeal may be made against the non-determination or refusal of planning permission.

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Paragraph: 029 Reference ID: 23b-029-20150326

Can local planning authorities draw on other resources and expertise in considering planning obligations?

It may be appropriate in some cases to consider collaborative agreements to make use of the skills of officers from other local planning authorities or contractual arrangements to make use of external third party experts so that planning obligations can be agreed quickly and effectively. Local planning authorities and developers may want to discuss the provision of extra resources to enable the speedy determination of planning obligations, for example when handling large and possibly detailed planning applications.

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Paragraph: 009 Reference ID: 23b-009-20140306

Can an agreed planning obligation be changed?

Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way (see [Section 106A of the Town and Country Planning Act 1990](#)).

In addition, [Section 106BA of the 1990 Act](#) (inserted by the Growth and Infrastructure Act 2013) allows applications to be made to modify the affordable housing requirements of any Section 106 agreement regardless of when it was signed. This review must be based on economic viability and cannot take into account other aspects of the planning consent. It addresses affordable housing requirements only. Further guidance can be found [here](#).

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Paragraph: 010 Reference ID: 23b-010-20140306

Do local planning authorities have to pay back unspent planning obligations?

Local planning authorities are expected to use all of the funding received by way of planning obligations, as set out in individual agreements, in order to make development acceptable in planning terms. Agreements should normally include clauses stating when and how the funds will be used by and allow for their return, after an agreed period of time, where they are not.

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Paragraph: 011 Reference ID: 23b-011-20140306

Can there be an appeal against a refusal to change a planning obligation (Section 106 agreement)?

Applications made to local planning authorities to modify a planning obligation, which pre dates April 2010 or is over 5 years old, may result in refusal or non-determination. If so, an appeal may be made. An appeal to the Planning Inspectorate under [section 106B of the Town and Country Planning Act \(1990\)](#) must be made within 6 months of a decision by the local authority not to amend the obligation, or within 6 months starting at the 8 weeks from the date of request to amend if no decision is issued.

An appeal to the Planning Inspectorate on affordable housing viability under [section 106BC of the 1990 Act](#) must be made within 6 months of a decision by the local authority not to amend the obligation, or within 6 months commencing with the date which is 28 days (35 days if the Mayor of London is involved) from date of request to amend if no decision is issued. Further guidance can be found on Gov.uk titled “[Section 106 affordable housing requirements: review and appeal.](#)”

Revision date: 06 03 2014

Paragraph: 031 Reference ID: 23b-031-20150814

Are there any circumstances where infrastructure contributions through planning obligations should not be sought from developers?

As set out in the [Starter Homes Written Ministerial Statement](#) of 2 March 2015, starter homes exception sites should not be required to make affordable housing or tariff-style section 106 contributions.

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