



# **Planning Obligations**

## **Supplementary Planning Guidance**

**2019**

## **Contents Page**

### **Part One**

- 1.0 Introduction**
- 2.0 National and Local Policy Context**
- 3.0 Procedure**
- 4.0 Payments & Bonds**
- 5.0 Compliance & Monitoring**
- 6.0 Legal Agreements & Administration Fees**
- 7.0 Types of Obligation**
- 8.0 Piecemeal Development and Under-Development**
- 9.0 Outline Planning Applications**
- 10.0 Development Costs**
- 11.0 Financial Viability**
- 12.0 Time-Limited S106 Agreements & Reviews**
- 13.0 Dispute Resolution**
- 14.0 Renegotiation**

### **Part Two**

- 15.0 Affordable Housing**
- 16.0 Education**
- 17.0 Leisure & Recreation**
- 18.0 Transportation**
- 19.0 Residential and Employee Travel Plans**
- 20.0 Payment Details**

## **Glossary of Terms**

### **BCIS – Building Cost Information Service**

Administered by the Royal Institute of Chartered Surveyors it provides an Index identifying the inflationary % increase or decrease in the costs of construction year on year

### **CIL - Community Infrastructure Levy**

A levy that Local Authorities can choose to charge on new developments in their area. The money can be used to support development by funding infrastructure that the City Council, local community and neighbourhoods want

### **DV - District Valuer**

Provides professional property and valuation advice for the public sector.

### **LDP - Local Development Plan**

The spatial planning strategy for the City Council

### **NOR – Numbers on Role**

Represents the current and future 10 year projected pupil numbers

### **PO – Planning Obligation**

A requirement on the developer to pay a financial sum or provide ‘in-kind’ works/facilities - secured under S106 of the Town and Country Planning Act 1990

### **PPW – Planning Policy Wales**

Sets out National Planning Policy which is a material consideration in the determination of planning applications – published by Welsh Government

### **PMC - Private Management Company**

A body nominated or established by the owner, and to be agreed with the Council if the land is not to be transferred to and/or managed by the Council

### **RPI – Retail Price Index**

An inflationary index based upon the increase or decrease in prices

### **SPG – Supplementary Planning Guidance**

A document prepared by the Local Planning Authority to provide more detailed local policy guidance to supplement the policies contained in the adopted Development Plan

### **TAN – Technical Advice Note**

A document prepared by Welsh Government to provide more detailed guidance to the policies contained in PPW

### **TCPA – Town and Country Planning Act 1990 (as amended)**

Permits Local Authorities to secure planning obligations from developers

### **UU – Unilateral Undertaking**

A Legal Agreement, offered and signed only by the developer that binds the developer, upon approval of a planning application, to make a payment or carry out works in kind as specified

### **WG – Welsh Government**

An executive branch of the devolved government in Wales

**WS – Windfall Sites**

A site not specifically allocated for development in a development plan, but which unexpectedly becomes available for development during the lifetime of a Development Plan.

## **PART ONE**

### **1. Introduction**

- 1.1 New development can create detrimental effects upon local amenity and infrastructure unless additional, or improved, services and facilities are provided through planning obligations. This adopted Supplementary Planning Guidance (SPG) identifies what, and when, the Local Planning Authority will expect from developers in terms of planning obligations, in order to assist the Council in creating sustainable communities that provide social, economic, and environmental benefits.
- 1.2 The infrastructure need generated by a proposed development is a material consideration in the determination of a planning application. The capacity of existing infrastructure may be exceeded as a consequence of new development, generating a need for new infrastructure or facilities. The use of planning obligations may be appropriate to require developers to make contributions for the provision of infrastructure to support proposed development.
- 1.3 A planning obligation is a legally binding agreement, which runs with the title of the land. It requires the developer to either carry out certain works (known as a contribution in kind), or to contribute financially towards the provision of measures that will mitigate the detrimental impacts of their development. Where a developer fails to show they can adequately mitigate a developments impact, it is likely the planning permission will be refused.
- 1.4 The Council does not propose to formulate a blanket approach to planning obligations, as each planning application will be considered on its own merits. Obligations relating to matters not covered by this SPG may be sought where there is sufficient robust evidence to justify such obligations. This guidance aims to provide clarity for interested parties and it will represent a material consideration in the determination of relevant planning applications and appeals.
- 1.5 Extant planning permissions, granted before this SPG is adopted, will come within the terms and conditions of this new policy, should an application for renewal be submitted. Likewise, material changes in planning circumstances will be considered regarding Section 73 applications, the practical effect of which is to grant a fresh consent.

### **2. National and Local Policy Context**

#### **National Planning Policy**

- 2.1 Section 106 of the Town and Country Planning Act (TCPA) 1990, as amended by Section 12 of the Planning and Compensation Act (1991), and the Community Infrastructure Levy Regulations 2010 (as amended), is the legislative framework for planning obligations. Any obligation must meet the following three tests:
  - 1) Necessary to make the development acceptable in planning terms;
  - 2) Directly related to the development; and
  - 3) Fairly and reasonably related in scale and kind to the development.
- 2.2 Furthermore, it should be noted that the CIL Regulations (Regulation 123) restricts the pooling of s106 contributions. Regulation 123 states a section 106 obligation cannot constitute a reason for granting planning permission if five or more separate planning obligations already exist for a specific single infrastructure project (entered into since 6th

April 2010) ). The Council keeps up to date records of all section 106 agreements entered onto on the Planning Register. In discussions with developers, the Council will consider whether the pooling restriction is relevant and seek to ensure that the development can be appropriately mitigated through planning obligations, whilst ensuring that the pooling restriction is not breached. If a development is not capable of delivering appropriate infrastructure because of the pooling restriction, this may make it unacceptable in planning terms.

- 2.3 Given the uncertainty regarding the future of the Community Infrastructure Levy Regulations 2010 (as amended) and the devolved powers Welsh Government inherited to modify existing secondary legislation in April 2018, the Council has agreed that until there is a clear direction from Welsh Government, that progress on CIL is to be placed into abeyance. In the meantime, the Council will continue to use planning obligations secured through section 106 agreements to secure necessary infrastructure.
- 2.4 Planning Policy Wales (PPW) identifies that planning obligations are useful arrangements to overcome obstacles which may otherwise prevent planning permission from being granted. Contributions may be used to offset negative consequences, to help meet local needs, or to secure benefits which will make development more sustainable. It is essential that arrangements are fair to both the developer and community, that the process is transparent as possible, and that development plans provide guidance on the types of obligations which the Council may seek.

## **Local Planning Policy**

### **Newport Local Development Plan**

- 2.5 The Council adopted the Local Development Plan (2011-2026) in January 2015. Whilst new development proposals should have regard to all relevant policies of the Plan the following policy is particularly pertinent in relation to planning obligations and new developments.

Policy SP13 (Planning Obligations) states:

*DEVELOPMENT WILL BE REQUIRED TO HELP DELIVER MORE SUSTAINABLE COMMUNITIES BY PROVIDING, OR MAKING CONTRIBUTIONS TO, LOCAL, AND REGIONAL INFRASTRUCTURE IN PROPORTION TO ITS SCALE AND THE SUSTAINABILITY OF ITS LOCATION.*

*THIS LIST IS NOT EXHAUSTIVE, BUT THE FOLLOWING ARE INFRASTRUCTURE PRIORITIES THAT DEVELOPERS WILL BE EXPECTED TO PROVIDE OR CONTRIBUTE TO IN ORDER TO MITIGATE ANY NEGATIVE CONSEQUENCES OF DEVELOPMENT:*

- *EDUCATIONAL FACILITIES AND/OR THEIR UPGRADES;*
- *AFFORDABLE HOUSING;*
- *IMPROVEMENTS TO THE HIGHWAY NETWORK, INCLUDING WALKING AND CYCLING ROUTES AND PUBLIC TRANSPORT;*
- *OUTDOOR RECREATION;*
- *PROTECTION, ENHANCEMENT AND MANAGEMENT OF THE NATURAL, HISTORIC AND BUILT ENVIRONMENTS,*
- *COMMUNITY FACILITIES AND/OR THEIR UPGRADES, AND*
- *IMPROVEMENTS TO THE PUBLIC REALM.*

## **3. Procedure**

- 2.0 Where pre-application advice has raised a S106 issue or where adopted policy expects a planning obligation, developers are advised, if possible, to submit the following documents

with their application:

- Proof of Title – proof of ownership of all the property and/or land affected by the application site edged red. Because planning obligations run with the land, all owners, lessees and mortgagees must be signatories;
- Draft S106 Heads of Terms;
- Any valuation to prove eligibility for reduced contributions, accompanied by information detailing how costs were derived;
- All other requirements outlined by the application form checklist;
- Details of the solicitor that will be handling the case;

### **3 Payments and Bonds**

- 4.1 The timeframe for payment of contributions will be subject to negotiation between the parties. All payments will be index linked from the last index prior to the date of signing of the associated S106 agreement and the last index published prior to the date the financial sum is due.
- 4.2 Overdue financial obligations will be subject to Late Payment Interest to be included in the legal agreement at a rate of 2% above Santander base rate, payable from the date on which the amount was due until the date it is received by the Council. Where it is deemed necessary, the Council will require the developer to pay a bond to ensure delivery of obligations.

### **5 Compliance and Monitoring**

- 5.1 Compliance with the obligations contained within planning legal agreements remains the responsibility of the landowner, or their chosen development representative(s). The Planning Contributions Manager provides proactive monitoring of agreements, to assist in ensuring that obligations are met in a timely manner by all parties. Breaches may result in a legal injunction and/or debt recovery proceedings.
- 5.2 Financial contributions, which remain unspent at the end of the specified time period, will be returned to the payee with any interest accrued, unless otherwise agreed in writing. If 95% of the total sum has been spent in accordance with the legal agreement, the remaining unspent 5% can be transferred to the revenue income of the appropriate service area.
- 5.3 Planning Obligations will be monitored by the Planning Contributions Manager to ensure that all obligations are complied with by both the developer and the Council. Regular monitoring reports will be produced that will provide details of agreements entered into, financial contributions received, and the completion of schemes that have been funded through financial contributions in whole or in part.
- 5.4 Once projects are completed, service areas are required to provide evidence of their delivery. In some circumstances, where the original agreed planning obligation/s have become outdated, due to changing circumstance, it may be appropriate to require other related obligations to support the proposed development. This has to be agreed by the owner of the site.

### **6 Legal Agreements and Administration Fees**

- 6.1 Planning Obligations can be contained in Unilateral Undertakings or Agreements. Unilateral Undertakings are usually drafted by the developer's solicitors, whereas Agreements are

usually drafted by the Council's in house solicitors (but there is no general objection to developers arranging for their own solicitors to draft the Agreement if preferred). Either way the developers will be responsible for the Council's legal costs incurred in relation to the process of drafting, approving and completing any Deed of Obligation, including costs of title investigation which is necessary to ensure the correct parties enter into the Deed. The legal agreement shall be signed within three months of the resolution to grant permission. If not agreed within this time period, or cannot be signed imminently, the application will be submitted to Planning Committee or to the officer who holds delegated powers with a recommendation for refusal.

- 6.2 In addition to the planning application and legal fee, the Council charges an Administration Fee for progressing and subsequent monitoring of S106 planning agreements. This reflects the additional work which goes above and beyond the normal cost of assessing a planning application. The fee is calculated on the basis of 2% of the total financial contribution being sought under the agreement, or 20% of the planning application fee, whichever is the greater, subject to a minimum fee of £200. The 2% figure is based on the total financial contributions sought plus the financial value of the in-kind contributions, where this can be appropriately calculated. This forms a separate agreement between the Council and landowner/developer. The Council will secure this either via a solicitors undertaking, similar to the Council's legal costs, or at the forefront of the section 106 agreement under "Miscellaneous Matters" (falling outside of the schedules containing the planning obligations).
- 6.3 In those cases involving significant planning obligation contributions, it may be appropriate to negotiate a fee based on the amount of officer involvement, rather than the above formula. Phased payments related to occupancy rates will also be considered for significant contributions.
- 6.4 Applicants will be expected to contractually agree within the legal agreement that they will pay the Administration Fee at the same time as payment of the Legal Fees i.e. at the date of signing of the legal agreement. These fees are non-refundable.

## **7 Types of Obligations**

- 7.1 The Local Planning Authority considers that development costs incurred in delivering sustainable development is to be expected, and therefore, a development site should still be able to contribute towards, where appropriate, the following planning obligations:
- EDUCATIONAL FACILITIES AND/OR THEIR UPGRADES;
  - AFFORDABLE HOUSING;
  - IMPROVEMENTS TO THE HIGHWAY NETWORK, INCLUDING WALKING AND CYCLING ROUTES AND PUBLIC TRANSPORT;
  - OUTDOOR RECREATION;
  - PROTECTION, ENHANCEMENT AND MANAGEMENT OF THE NATURAL, HISTORIC AND BUILT ENVIRONMENTS;
  - COMMUNITY FACILITIES AND/OR THEIR UPGRADES; AND
  - IMPROVEMENTS TO THE PUBLIC REALM.
- 7.2 The above list should be regarded as illustrative (and not exhaustive) of the types of contributions that might be necessary depending on individual circumstances.
- 7.3 Once sufficient infrastructure to enable a scheme to proceed has been made available, the priority given to the different types of planning obligation will be at the discretion of the Local Planning Authority, and dependent upon the characteristics and location of individual



sites. However, in order to provide a balanced sustainable development in planning terms, the Council will endeavour to ensure that S106 contributions equitably serve the planning objectives. The Planning Officer's report to Committee will provide the justification for the chosen priorities.

## **8 Piecemeal Development and Under-Development**

- 8.1 Where an adjacent and related development forms part of a site that, in its entirety, would meet or is capable of meeting any defined threshold, the requirement for the obligation will still apply. Under such circumstances, each subdivided plot will be required to provide contribution towards the relevant obligation proportionate to its size and relative to its impact. Where the new development involves more than one developer, the Council may seek joint contributions from developers to mitigate combined impacts.
- 8.2 The Council will also consider whether a proposal constitutes deliberate under-development of a site, in order to avoid planning obligation contributions i.e. does the development represent an inefficient and unsustainable use of land. However, as a general rule, a minimum density of 30 dwellings per hectare will be considered appropriate; a lower density will be considered if it complies with policy H3 – Housing Mix and Density.

## **9 Outline Planning Applications**

- 9.1 When required and supported by evidence, when determining an outline planning application, a legal agreement will be required to provide for the principle of specific obligations, with the value and details to be determined when the full details of the scheme are known, via the associated Reserved Matters application. The S106 agreement at outline stage will, therefore, be formula based, so that the exact contributions will be dependent upon floor space or the number and size of dwellings.

## **10 Development Costs**

- 10.1 Developers/Owners must ensure "due diligence" in the acquisition of development sites. This is usually done by means of an "environmental audit" and basic site investigation to identify any liabilities and development constraints before purchase of the site. Many of the development sites in Newport are 'brownfield' sites and, therefore, any abnormal costs should be reflected in the valuation and purchase price of the site. Any unforeseen costs, not considered at the outline planning application stage, would have to be provided on an 'open book' basis.

## **11 Financial Viability**

- 11.1 Certain proposals may be eligible for discounted or reduced contributions, if it can be proven that the level of contribution required will jeopardise a proposal's viability. This is most likely to be the case on previously developed land, and the development of the site is considered to be a significant regeneration benefit.
- 11.2 It is expected that an 'open book' approach to negotiations will be supported by developers/owners, in order that planning obligations can be secured at appropriate levels to mitigate the impact of the development, whilst ensuring that the development remains viable. Any financial information supplied by a developer as part of this 'open book' process will be considered as being 'commercial information supplied in confidence'.
- 11.3 All 'open book' financial appraisals will be scrutinised by the Council, which may lead to additional questions being asked of the applicant. Developers will be expected to prove to the Council that a scheme is financially unviable. The Council will seek verification of these

details for the Three Dragons Development Appraisal Toolkit. Assessments undertaken by developers/owners utilising other suitable toolkits (e.g. Circle) will also be considered. Where the parties are unable to agree, or by prior mutual agreement, the Council will instruct the District Valuer to undertake an independent study, at cost to the applicant.

- 11.4 Irrespective of the outcome of a viability appraisal, it may be necessary for the Council to secure a certain level of developer contributions, in order to mitigate the impact of the development. Such a circumstance could be where a failure to make some provision for certain infrastructure items would make the development unacceptable in planning terms, contrary to policy and an unacceptable burden. This will be assessed on a case-by-case basis. In such circumstances, failure to secure the contributions, deemed necessary to support the proposal, could result in a recommendation of refusal.
- 11.5 It is important to understand the principle that a planning obligation is generally necessary to make a proposed development acceptable in planning terms. A scheme's non-viability, although a material consideration, is not a sufficient reason in itself for accepting reduced contributions. Reduced contributions would, however, be considered for developments that provide regeneration benefits and/or additional planning benefits to the City.

## **12 Time Limited S106 Agreements & Reviews**

- 12.1 In exceptional circumstances, where the Council accepts that the scheme is unable to make any or all the required contributions, due to proven viability difficulty, it may, where applicable, impose a planning condition or obligation, setting a limited timeframe within which the development must be substantially completed.
- 12.2 Where reductions are justified, the Council may require developers to agree to timely review points in their section 106 agreement to take account of any subsequent change in the economy, which may make additional planning obligations feasible. All interested parties must agree to the review process.
- 12.3 Please note that any future Renewal Application of an extant permission or new Full Application will also result in all planning contributions being re-assessed, based on local and national policy at the date of registration of the planning application.

## **13 Dispute Resolution**

- 13.1 Where there is a dispute between the Council and landowner, applicant and/or developer, and where all parties agree, the District Valuer (DV) will be appointed to undertake an independent assessment of scheme viability and the ability to achieve the planning obligations that are in dispute. The DV appointment will be paid for by the applicant/owner/developer. All key stakeholders must endorse the process, play an active role and be willing to submit appropriate information to enable the appraisal to be undertaken. The role of the DV is to validate factual information to assist in the resolution of issues. Both parties should accept the DV's decision on the determination of viability. However, the DV would not act as an arbitrator. Responsibility remains with the Local Authority and landowner, applicant and/or developer to resolve the dispute.
- 13.2 A Statement of Common Ground must be jointly produced to establish project elements, costs and assumptions that can be agreed between both parties at the outset of the DV's involvement. Any financial assessment can then focus on addressing the specific areas of disagreement. To address commercially sensitive information, a confidentiality agreement can be drawn-up to ensure that any sensitive financial information is made available only to the assessor and not shared directly with the Local Authority or any other third party. Only the findings of the assessor need to be shared across all parties, based upon the information supplied to them and their professional opinion on its accuracy. However,

enough information must be presented to ensure the decision making process can continue and to see the effect the decision may have on the scheme viability and also give confidence to determine the need to depart from policy.

- 13.3 Either party may, of course, decline to participate. However, this could be perceived as obstructing a potential resolution and may compromise their position at a later date in the decision making process.

## 14 **Renegotiation**

- 14.1 Where a consented development can no longer deliver the agreed planning contributions, for reasons of non-viability (subject to verification by the developer/owner in accordance with the procedures identified above), the Council is entitled to take a view on whether there are benefits to the scheme that justify flexibility. The Council will consider whether the development is of sufficiently high priority to warrant renegotiation of planning obligations to restore viability and allow delivery, and whether any re-negotiated development will continue to match the Council's local policies and priorities. For example, reduced contributions would be considered for developments that provide regeneration benefits and/or additional planning benefits to the City.

## PART TWO

### 15 Affordable Housing

#### Policy Background

- 15.1 The Welsh Government (WG) published Technical Advice Note 2: Planning and Affordable Housing (TAN2) in June 2006. TAN2 defines affordable housing as 'housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers'. TAN2 identifies that affordable housing includes social rented housing (e.g. provided by registered social landlords) and intermediate housing, where prices or rents are above those of social rent but below market housing prices and rents.
- 15.2 Policy H4 (Affordable Housing) of Newport's Adopted Local Development Plan (2011 - 2026) identifies that the Council will seek to negotiate appropriate elements of affordable housing on new developments or commuted sums.
- 15.3 Planning Policy Wales states that where development plan policies identify that affordable housing, or other developer contributions, are required on specific sites, then this will be a material consideration in determining relevant planning applications.
- 15.4 Applicants should be aware that affordable housing provision is exempt from contributions towards leisure and education planning obligations.
- 15.5 The Council will expect applicants to have taken into account the cost of providing policy compliant affordable housing provision when purchasing land. The Council will not allow a reduced affordable housing contribution if a developer has paid too much for a site by neglecting to consider the cost of providing the affordable housing. The Council will require that land values agreed take into account the full provision of affordable housing in line with policy. The assumption should always be that public subsidy would not be available.
- 15.6 However, any applicant who believes that 10%, 20%, 30% or 40% is inappropriate on any particular site will need to demonstrate that fact to the Council (see appendix 6 of the Affordable Housing SPG for further details). The applicant will also be required to meet the costs of independently assessing the scheme on behalf of the Council. Furthermore, such discussions will need to take place as early in the process as possible, to allow the Council to explore other funding routes. Should this be necessary, the affordable homes will need to be delivered in accordance with the relevant funding requirements current at the date of entering into contract for the construction of the affordable housing units.
- 15.7 The viability assessment will include assessments of anticipated costs against anticipated income for the site, to produce a residual land value. This land value will then be measured against any alternative use values to assess whether the site will still come forward for development.

#### Trigger for Obligation

- 15.8 On-site affordable housing provision and/or commuted sums will be sought on all housing sites. The detail of the provision will depend on whether the proposal meets the relevant thresholds identified in policy H4 – Affordable Housing. The Affordable Housing SPG sets out the detail of the calculation method for the required provision. Affordable housing should normally be provided on-site in order to contribute to socially mixed communities, although in exceptional circumstances it may be provided off-site or via a commuted sum paid 'in-lieu'; this will need to be evidenced (please see the Affordable Housing SPG for more detail).
- 15.9 Registered Social Landlords are key partners in the process and the Council will involve them at an early stage in negotiations with developers.

- 15.10 **Detailed guidance** on the type and provision of affordable housing in Newport can be found in **Affordable Housing Supplementary Planning Guidance**. Further information in relation to affordable housing provision, Housing Market Assessments, and waiting lists can be obtained from:

<p><b>Housing Strategy &amp; Development Manager</b></p> <p>Regeneration, Investment &amp; Housing Civic Centre Newport NP20 4UR Tel 01633 656656</p>	<b>OR</b>	<p><b>Planning Contributions Manager</b></p> <p>Regeneration, Investment &amp; Housing Civic Centre Newport NP20 4UR Tel 01633 210087</p>
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## 16 Education

### Policy Background

- 16.1 The justification for requiring financial or in-kind contributions in respect to educational facilities is set out in Welsh Office Circular 13/97 (Planning Obligations). Paragraph A4 identifies that Section 106(2) of the Town and Country Planning Act 1990 provides for payments of money to be made, either of a specific amount or by reference to a formula. Paragraph B10 states that provision of educational facilities may be acceptable provided that such facilities are directly related to the development proposal, the need for them arises from its implementation, and they are related in scale and kind.
- 16.2 Policies SP13 – Planning Obligations of the Adopted Newport Local Development Plan (2011-2026) states that the Council will seek contributions (where necessary and generated as a result of the development) towards the cost of education facilities and/or their upgrades.
- 16.3 The Council will seek contributions for all age groups for all maintained schools. Planning Obligations will be sought for:
- major development: Where there is a specific and identified need, a major development should bear the full cost of education facilities needed to support it, including where appropriate, the acquisition and provision of a fully serviced site, the design and construction of buildings, fixture and fitting costs and any necessary transport measures;
  - provision of new classrooms;
  - improvements and refurbishment of existing facilities to provide additional capacity;
  - provision of additional resources or improvements to existing resources necessitated by the additional demand;
  - provision of any necessary interim school measures which, in some circumstances, might be required when it is not possible to ensure that permanent measures will be in place on time.
- 16.4 Housing development within a catchment/cluster area of a school will increase the numbers of pupils that a school will need to cater for. Where a number of developments take place within a catchment/cluster area over a short period of time, this position can be exacerbated. In reality, the need for additional school places does not occur until such time

as the number of pupils generated by the development, in addition to the existing school roll, exceeds the available places. If this was to be taken literally the development that will generate the first additional place will be responsible for providing the contributions to provide the additional capacity, whilst previous developments have not been subject to any charge, even though they have contributed to the under-supply of places. In this case, the requirement to contribute to additional provision becomes a lottery of when planning permission is granted and can lead to developments being treated differentially due to the timing of their permissions. This is neither fair nor reasonable and contrary to Circular 13/97.

As such, existing surplus capacity will not automatically be credited to developers, except where:

- surplus capacity is unlikely to be taken up by development with extant permission (including resolutions for permission within a 6 month period) and/or development identified in the published Joint Housing Land Availability Study 5 year land supply;
- no works are required to make existing school accommodation 'fit for purpose' based upon WG's capacity methodology formulae; and,
- there is surplus capacity over the lifetime of the planning permission (based upon Education Department birth projections and capacity forecasts)

Please note that for the purposes of planning contributions, the pupil capacity will be calculated net of any capacity that has been achieved through using temporary accommodation for 3 years or less.

16.5 Negotiations with developers on planning agreements will include:

- the project(s) to which their contributions may be used;
- the timing of the payment of agreed contributions; on large sites payments may be phased by agreement with the authority;
- when contributions will be spent; this will normally be within 5 years of receipt of the final payment.

#### **Trigger for Education Contribution**

16.6 A contribution will be sought from a developer if the 'net gain' of dwellings to be built is 5 or more and where:

- the pupils potentially arising from the development will cause the 'surplus capacity' of any secondary school within the cluster area to be exceeded; and/or
- the pupils potentially arising from the development will cause the 'surplus capacity' of any primary school within the catchment area to be exceeded; and/or
- there is inaccessible surplus capacity in catchment and cluster schools to accommodate some or all of the pupils probably arising from the development, but refurbishment is required to make those places 'fit for use'.

In all above cases, the contribution requested will relate to the number of pupils expected to be generated by the proposed development.

The only exemptions will be:

- sheltered/elderly person housing
- care homes, rest homes and nursing homes;
- homes for the homeless;
- hotels;
- agricultural dwelling;
- hostels; student accommodation (including residential schools, colleges or training centres).

- 16.7 The Council will take account of school capacity when calculating financial contributions towards education facilities. The school capacity is published in the Newport City Council Parents' Information Handbook.
- 16.8 Where large scale development generates sufficient pupil numbers to justify a new primary or secondary school, this will be required to be provided within the development. If not physically possible to accommodate the facility on site, the developer will be required to make an equivalent financial contribution (e.g. land value and building costs) towards its off-site provision.

#### Education Contribution Formula

- 16.9 Firstly calculate the number of pupils in each age range that are expected to arise from each type of dwelling in the development. (Please note that figures will be rounded up or down to the nearest whole figure e.g. 0.49 or less will equal 0 (zero), whilst 0.5 or more will equal 1 (one))

<b><u>Proposed Dwelling</u></b>	<b><u>Primary</u></b> No. _____ of <u>Dwellingsx</u>	<b><u>Secondary</u></b> No. _____ of <u>Dwellingsx</u>
1 bed dwelling	0.04	0.01
2 bed dwelling	0.14	0.05
3 bed dwelling	0.30	0.17
4 bed dwelling	0.38	0.27
5+ bed dwelling	0.41	0.35

<p>Total number of primary school pupils generated.... <b>A</b> Total number of secondary school pupils generated..... <b>B</b></p>
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16.10 Calculate the requirement for increased capacity taking into account capacity and “number on role” (NOR).

**a.** If the NOR is **less than** identified capacity

Calculate the number of additional pupils by which the school NOR exceeds the published “capacity” once the number of pupils generated are added to the school role.

Primary:            **C = NOR + A – capacity**  
Secondary:        **D = NOR + B – capacity**

**Or**

**b.** If the NOR is already **greater than** identified capacity

Use the number of additional pupils generated by the development.

Primary:            **C = A**  
Secondary:        **D = B**

**Then**

$$\text{Section 106 Contribution} = \mathbf{C} \times \text{Primary Cost Multiplier} + \mathbf{D} \times \text{Secondary Cost Multiplier}$$

16.11 The 2018/19 Cost Multipliers are:

**Primary: £19,034**  
**Secondary: £29,741**

The cost per pupil is based upon Welsh Government standardised costs provided by the Band B 21<sup>st</sup> Century programme.

All cost multipliers will be reviewed annually and updated if necessary.

In some cases, the specific circumstances of the proposed education development will be taken into account to ensure the obligation reflects the actual cost of delivering new facilities on specific sites, including but not restricted to site topography/history, flood risk (and associated mitigation measures) and development constraints.



Further information on school capacities and numbers on roll can be obtained from

**The Planning Contributions Manager**

Regeneration, Investment & Housing  
Civic Centre  
Newport  
NP20 4UR  
Tel (01633) 210087

## 17 Leisure & Recreation

### Policy Background

- 17.1 Planning Policy Wales (2016) identifies that the Welsh Government's main planning objective is to promote a more sustainable pattern of development by creating and maintaining networks of facilities and open spaces, particularly within urban areas. In addition, Local Planning Authorities may be justified in seeking Section 106 contributions to contribute to the maintenance of facilities and open space, and to meet the needs of new communities, and ensure that standards of provision are met.
- 17.2 Policy CF2 (Outdoor Play Space Requirements) of the Adopted Newport Local Development Plan (2011-2026) states that provision of open space at a minimum standard of 2.4 hectares per 1000 population will be sought on all new housing developments with the developer making a requisite commuted sum towards future maintenance.

### Trigger for Obligation

- 17.3 A contribution will be sought from a developer if the net gain of dwellings to be built is 5 or more. Please note, however, that surplus capacity will not automatically be credited to developers; surplus capacity will have to take account of development with extant permission including resolutions for permission within a 6 month period) and/or development identified in the Joint Housing Land Availability Study 5 year land supply. Contributions will be spent in the associated ward, or if more appropriate, spent in the local vicinity.
- 17.4 A financial contribution, in-lieu of on-site provision, will be sought for developments between 5 and 15 dwellings; this will be spent in the leisure areas determined to be affected by the proposals. For developments of 15 or more dwellings the preference is for provision to be situated on-site. However, in exceptional circumstances, a financial contribution, or partial financial and partial on-site provision, will be considered.

### Maintenance Payments

- 17.5 Where on-site provision is agreed, an additional maintenance payment covering a period of 20 years will be required upon adoption. The level of maintenance payments are regularly updated by the Council in accordance with current Council contracts. Alternatively, if all parties agree, Private Management Companies could be used as an alternative to maintenance payments to the Council.
- 17.6 For clarity please note that Homes for the Homeless, Sheltered/Elderly housing, Care Homes, Rest Homes and Nursing Homes are exempt from leisure and recreational obligations. In the case of one bed apartments, these are exempt from provision towards children's play areas but are included for the purpose of informal and formal space requirements.

### Calculating the Requirement

- 17.7 Provision of a satisfactory level and standard of outdoor play space should be sought on new housing developments where it can be demonstrated that a new housing development would exert additional pressure on existing facilities.
- 17.8 Outdoor play space will be sought on all residential developments of five units or more, as a collective number of small sites would place the same pressures on resources as a large individual site. The lowest amount of usable outdoor play space generated from a new

development is that of a Local Area for Play (100m<sup>2</sup>), which would be created from a development of 15 dwellings.

- 17.9 Financial contributions, in-lieu of on-site provision, should be sought for development of 5 to 14 dwellings. For developments of 15 or more dwellings, on-site provision and/or a financial contribution will be considered.
- 17.10 Where sites are sub-divided, the Council will seek to secure an appropriate amount of open space as if the whole site were to be developed. Where part of the site has previously been developed, subsequent developers may be expected to make provision to reflect the numbers on the combined parts of the site.

Development size	Requirement
5 – 14 dwellings	Financial contribution in lieu of onsite provision
15 + dwellings	Either on site provision or financial contribution in lieu of onsite provision

- 17.11 The total outdoor play requirement for a development will be calculated by multiplying the number of dwellings by a given occupancy rate relevant to each dwelling. The number of bedrooms a dwelling has will determine the most appropriate occupancy rate. The average occupancy levels used by the Council for the purposes of the SPG are:

Household type	Average occupancy
1 bed flat	1.5 persons
2 bed flat	2 persons
3 bed flat	2.5 persons
1 bed house	1.5 persons
2 bed house	2 persons
3 bed house	3 persons
4+ bed house	4 persons

- 17.12 The FIT 'Benchmark Standard' of 2.4 ha per 1,000 population can be broken down to a square metre requirement per person as follows:

*Standard*

Designated equipped playing space	0.25 ha per 1,000 pop = 2.5m <sup>2</sup> per person
Informal playing space	0.55 ha per 1,000 pop = 5.5m <sup>2</sup> per person
Outdoor sport (formal)	1.6 ha per 1,000 pop = 16m <sup>2</sup> per person

- 17.13 The estimated development population can then be assessed against the FIT standard to calculate the required amount of outdoor play space relevant to the development.

*Worked example*

A development of 50 three bedroom houses would give a development population of 50x3 (based on average occupancy rates) = 150. The outdoor play space requirement would therefore be:

Designated equipped playing space	150 x 2.5m <sup>2</sup> = 375 m <sup>2</sup>
Informal playing space	150 x 5.5m <sup>2</sup> = 825 m <sup>2</sup>
Outdoor sport (formal)	150 x 16m <sup>2</sup> = 2400 m <sup>2</sup>
<b>Total provision = 3600 m<sup>2</sup></b>	

- 17.14 The guide to the level of provision required, depending on the estimated development population, is therefore:

Development population	Equipped playing space (m <sup>2</sup> )	Informal playing space (m <sup>2</sup> )	Outdoor sport (m <sup>2</sup> )	Total development provision (m <sup>2</sup> )
50	125	275	800	1200
100	250	550	1600	2400
200	500	1100	3200	4800
500	1250	2750	8000	12000

- 17.15 The type of *equipped playing space* considered acceptable by the Council will be judged on a site-by-site basis. However, the sort of equipped play likely to be required based on the size of the development population is indicated as:

Development population	Equipped playing space (m <sup>2</sup> )	Type of equipped play
100	250	Local Area for Play
150	375	Local Equipped Area for Play
250	625	Local Area for Play & Local Equipped Area for Play
350	875	Neighbourhood Area for Play

### Further Information

- 17.16 Further information and details on types of equipment and maintenance costs can be found in the Council's Outdoor Play Space Supplementary Planning Guidance. Detailed requests can be directed to:

**Planning Contributions Manager**

Regeneration, Investment & Housing  
Civic Centre  
Newport  
NP20 4UR  
Tel (01633) 210087

## 18 Transportation

### Highway & Infrastructure Provision

#### Policy Background

- 18.1 Welsh Office Circular 13/97 (Planning Obligations) identifies in Paragraph B10 that appropriate contributions may be sought towards new access roads, improved junction layouts, extra car parking facilities, new/improved rail/bus stations, park and ride schemes, improved bus services, and improved measures for cyclists and pedestrians both on, and where necessary, off the development site.
- 18.2 Additionally, TAN 18: Transport (2007) states that planning authorities may use planning obligations to secure improvements in roads, cycling and public transport, whether as a result of a proposal on its own or cumulatively with other proposals and where such improvements would be likely to influence travel patterns, either on their own or as part of a package of measures. It also identifies that pooled contributions towards infrastructure capacity issues may be appropriate when a number of individual developments create a combined need or an unacceptable cumulative impact

#### Trigger for Obligation

- 18.3 The Local Planning Authority will require contributions from any development, regardless of size or type, where there is a requirement to improve existing, or construct new, highway infrastructure, either in order to provide safe access to a new development, or, as a result of the additional traffic impact associated with the development. This contribution would be required in addition to contributions to other travel modes such as public transport provision, cycle routes, or footpaths.

#### Further Information

- 18.4 Further information on highway design requirements, Section 278 Agreements (1980 Highways Act), and car parking standards can be obtained from:

**Team Manager**  
City Services  
Civic Centre  
Newport  
NP20 4UR  
Tel (01633) 656656

OR

**Planning Contributions Manager**  
Regeneration, Investment & Housing  
Civic Centre  
Newport  
NP20 4UR  
Tel (01633) 210087

## 19 Residential and Employee Travel Plans

### Policy Background

- 19.1 PPW identifies that when determining a planning application for development that has transport implications, local planning authorities should take into account the willingness of a developer to promote travel by public transport, walking or cycling, or to provide infrastructure or measures to manage traffic, to overcome transport objections to the proposed development.
- 19.2 PPW also states that planning obligations may also be used in appropriate circumstances to secure off-site improvements in public transport, walking and cycling, where such measures would be likely to influence travel patterns to and from the site involved.

### Trigger for Obligation

- 19.3 Developers will be required to produce a Travel Plan where Traffic Impact Assessments (TIAs) identify that a proposed development could have a detrimental impact upon travel movements on the existing highway network. The Travel Plan will need to identify what measures will be implemented by the developer to overcome any detrimental impact through promoting sustainable integrated transport solutions that will reduce the reliance on the private car. The objective of the travel plan will be to achieve at least a 10% modal shift in travel behaviour of the occupiers of the site. The Travel Plan obligation will require occupiers of development to undertake a staff/resident travel survey and implement and monitor a staff/resident travel plan. The Travel Plan should include the provision of up to date information about public transport services, timetables, and opportunities for car sharing (e.g. via a car share website). However additional measures may also be sought, including provision of designated car share parking spaces, discount vouchers/passes for public transport, or financial contributions toward shuttle buses and park and ride schemes.

### Further Information

- 19.4. For further information please contact:

#### **Passenger Transport Officer**

City Services  
Civic Centre  
Newport  
NP20 4UR  
Tel (01633) 656656

#### **Planning Contributions Manager**

Regeneration, Investment & Housing  
Civic Centre  
Newport  
NP20 4UR  
Tel (01633) 210087

## 20 Payment Details

Financial contributions will be paid to Newport City Council. Please send payment(s) to:

Planning Contributions Manager  
Newport City Council  
Regeneration, Investment & Housing  
Development Services  
Civic Centre  
Newport  
NP20 4UR

You must state the planning application number and development address

- Please make **cheques** payable to Newport City Council
- For **BACS transfers**, please quote S106 then your planning application number in the format '--/----

### **Council Bank Details:**

Santander  
Sort Code: 09-07-20  
Account Code: 05070406  
Newport City Council Collection Account

When making a payment by BACS, please inform the Planning Contributions Manager in advance of the payment date with the following details:

- Planning permission reference
- Clauses and Obligations being met
- Name of payee
- The value of the payment

Notification can be made by telephone (01633) 210087 or electronically to [alun.lowe@newport.gov.uk](mailto:alun.lowe@newport.gov.uk)