

Planning Practice Guidance

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Guidance


Planning obligations

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Planning obligations

Paragraph: 001 Reference ID: 23b-001-20140306


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

Planning obligations mitigate the impact of unacceptable development to make it acceptable in planning terms. Obligations should 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  (<http://www.legislation.gov.uk/ukdsi/2010/9780111492390/part/11>) and as policy tests in the National Planning Policy Framework.

Revision date: 06 03 2014

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  (<http://www.legislation.gov.uk/ukpga/1980/66/section/278>). Developers will also have to comply with any conditions (<http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-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.

Related policy

National Planning Policy Framework

- Paragraph 204 (http://planningguidance.planningportal.gov.uk/b-sustainable-development/decision-making/#paragraph_204)

Related policy

National Planning Policy Framework

- Paragraph 173 (http://planningguidance.planningportal.gov.uk/b-sustainable-development/plan-making/#paragraph_173)

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Paragraph: 003 Reference ID: 23b-003-20140306

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

Policies for seeking obligations should be set out in a development plan document 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.

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Related policy

National Planning Policy Framework

- Paragraph 153 (http://planningguidance.planningportal.gov.uk/blog/making/#paragraph_153)

Paragraph: 004 Reference ID: 23b-004-20140306

Does the local planning authority have to justify its requirements for 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 – on for instance, public art – which are clearly not necessary to make a development acceptable in planning terms

The Government is clear that obligations must be fully justified and evidenced. Where affordable housing contributions are being sought, obligations should not prevent development from going forward.

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Related policy

National Planning Policy Framework

- Paragraph 204 (http://planningguidance.planningportal.gov.uk/blog/taking/#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 

(<http://www.legislation.gov.uk/ukxi/2013/1101/contents/made>) and should not, for instance, seek contributions for affordable housing.

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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. However, 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 obligations will take into account specific site circumstances.

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Paragraph: 007 Reference ID: 23b-007-20140306

What evidence is required to support negotiations on obligations?

Policy for seeking obligations should be grounded in an understanding of development viability (<http://planningguidance.planningportal.gov.uk/blog/guidance/viability-guidance/>) through the plan making process.

On individual schemes, applicants should submit evidence on scheme viability (<http://planningguidance.planningportal.gov.uk/blog/guidance/viability-guidance/>) where obligations are under consideration. Wherever possible, this should be open book.

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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: 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 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/106A>)).

In addition, Section 106BA of the 1990 Act [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/106B>)

(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 [\[2\]](#) (<https://www.gov.uk/government/publications/section-106-affordable-housing-requirements-review-and-appeal>).

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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) [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/106B>) 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 [\[2\]](#)

(<http://www.legislation.gov.uk/ukpga/1990/8/section/106B>) 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" (<https://www.gov.uk/government/publications/section-106-affordable-housing-requirements-review-and-appeal>).

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