

Supplementary Planning Guidance (SPG) Planning Obligations

SPG 10a The Negotiation, Management and Monitoring of Planning Obligations (Adopted 2006)

1. INTRODUCTION

- 1.1 In negotiating, managing and monitoring planning obligations the Council have particular regard to ODPM Circular 05/2005, the London Plan (February 2004), Draft Further Alterations to the London Plan (Sep 2006), and Haringey's Unitary Development Plan (2006).
- 1.2 Planning guidance is provided on the following:
- Purpose of this guidance.
 - Definition of planning obligations.
 - Types of contribution.
 - Seeking and negotiating planning obligations.
 - Policy framework.
 - Procedures for negotiating planning obligations.
 - Content of a planning obligation.
 - Implementation, monitoring and enforcement of planning obligations.
 - Monitoring.
 - Enforcement.

2. PURPOSE OF THIS GUIDANCE

- 2.1 This guidance provides a general overview for planning obligations, the procedures involved and matters that may be included in a planning obligation. Clarifying the use of planning obligations provides an indication of what the Council may expect from developers and therefore a better framework for discussion. More detail on specific types of planning obligations is contained in the following supplementary planning guidance and codes of practice;-

SPG 10b: Affordable Housing.

SPG 10c: Educational Needs Generated by New Housing.

SPG 10d: Open Space.

SPG 10e: Improvements to Public Transport Infrastructure and Services.

Code of Practice Note 1: Employment and Training.
Code of Practice Note 2: Health.

3. DEFINITION OF PLANNING OBLIGATIONS

- 3.1 The power to enter into a planning obligation is contained in section 106 of the Town and Country Planning Act 1990 as substituted by the Planning and Compensation Act 1991. ODPM Circular 05/2005, on 'Planning Contributions', clarifies the basis on which planning obligations should be assessed for their acceptability on policy terms and gives guidance on the process of securing obligations. It replaces Department of Environment Circular 1/97.
- 3.2 There are three types of obligation, a planning agreement between the developer and the local authority, a unilateral undertaking by the developer or a tri-party agreement between Haringey, the developer and an adjoining borough (s). Unilateral undertakings are mainly used by developers at planning appeals in order to overcome objections to a proposal. A tri-party agreement may be required because major developments on sites adjoining or in close proximity to borough boundaries may have cross-boundary impacts. Such agreements would specify each Borough Council's responsibilities.
- 3.3 A planning obligation can be used in the following ways:
- i. To prescribe the nature of the development to achieve planning objectives.
 - ii. To mitigate the impact of a development.
 - iii. To compensate for loss or damage caused by a development.
- 3.4 The purpose of planning obligations is to enable any adverse impacts of a development to be offset, to enhance the physical environment or to contribute towards local facilities. Where a development creates a need for extra facilities, for example new housing may create a need for extra school places and health facilities, it is reasonable to ask developers to provide or contribute towards the provision of such facilities. It is only acceptable to ask if it would be wrong to allow the development without these facilities. Planning obligations can also be used to overcome difficulties that a development would create. For example a development may result in the loss of open space and therefore it may be reasonable to require the replacement of the open space. Obligations may also be used to improve infrastructure such as new public transport routes, access roads or improved measures for cyclists / pedestrians. All obligations are intended to benefit the local community.
- 3.5 Planning obligations run with the land so they may be enforced against both the original covenantor and against anyone acquiring an interest in the land from him/her unless the agreement specifies to the contrary.

4. TYPES OF CONTRIBUTION

4.1 Contributions may either be in kind or in the form of a financial contribution. In the case of financial contributions, payments can be made in the form of a lump sum or an endowment, or, if beneficial to all parties and not unduly complex, as phased payments over a period of time, related to defined dates, events and triggers.

A. Maintenance Payments

A.1 Where contributions are secured through planning obligations towards the provision of facilities which are predominately for the benefit of the users of the associated development, it may be appropriate for the developer to make provision for subsequent maintenance. Such provision may be required in perpetuity, although generally where an asset is intended for wider public use, the costs of subsequent maintenance and other recurrent expenditure associated with the developers contribution is normally borne by the authority in which the asset is vested. For example, this may apply to the provision of public open space and health facilities.

A.2 Where contributions to the initial support (“pump priming”) of new facilities are necessary, these should reflect the time lag between the provision of the new facility and its inclusion in public sector funding streams, or its ability to recover its own costs in the case of privately-run bus services, for example. This should be time-limited and not be required in perpetuity by planning obligations.

B. Pooled Contributions

B.1 Where the combined impact of a number of developments creates the need for infrastructure, it may be reasonable for the associated developers’ contributions to be pooled, in order to allow the infrastructure to be secured in a fair and equitable way. Pooling can take place between Haringey and other local authorities where there is a cross-authority impact. There will be clear audit trail between the contribution made and the infrastructure provided.

B.2 In some cases, individual developments will have some impact but not sufficient to justify the need for a discrete piece of infrastructure. Here, Haringey may seek contributions to specific future provision where need for such can be demonstrated. In such cases, spare capacity in existing infrastructure provision will not be credited to earlier developers.

B.3 In cases where an item of infrastructure necessitated by the cumulative impact of a series of developments is provided by Haringey or another body before all the developments have come forward, the later developers may be required to contribute the relevant proportion of the

costs. In such cases the need for the infrastructure and the proportionate contributions to be sought will be set out in advance, for example in the form of other supplementary planning policy guidance, area planning briefs or codes of practice.

B.4 In the event that contributions are made towards specific infrastructure provision but the infrastructure is not provided within an agreed timeframe, arrangements will be made for contributions to be returned to developers.

C. **Formulae and Standard Charges**

C.1 Formulae and standard charges are quantitative indications of the level of contribution likely to be sought by a local planning authority, through a planning obligation, towards the provision of infrastructure that is necessitated by a new development. Haringey will employ formulae and standard charges where appropriate, as part of the framework for negotiating and securing planning obligations. These will help speed up negotiations, and ensure predictability, by including the likely size and type of some of the contributions in advance. They will also help promote transparency by making figures public and assist in accountability in the spending of monies. Standard charges and formulae will reflect the actual impact of the development and will not be applied in blanket form regardless of actual impact. For example, where appropriate and necessary these will be used to calculate the contributions in respect of the provision of education and health facilities.

5. **SEEKING AND NEGOTIATING PLANNING OBLIGATIONS**

A. **Policy Framework**

A.1 **National Government Guidance**

A.2 The requirement of planning obligations is underpinned by section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation act 1991. Circular 05/2005 'Planning Obligations' provides the relevant planning guidance. The Circular states that planning obligations are private agreements negotiated, usually in the context of planning applications, between local planning authorities and persons with an interest in a piece of land, and intended to make acceptable development which would otherwise be unacceptable in planning terms.

A.3 The Guidance states that planning obligations must only be sought where they meet all of the following test:

- relevant to planning.
- necessary to make the proposed development acceptable in planning terms.

- directly related to the proposed development.
- fairly and reasonably related in scale and kind to the proposed development, and
- and are reasonable in all other respects.

A.4 Planning obligations will be used to:

- Prescribe the nature of the development to achieve planning objectives.
- Ensure there is satisfactory infrastructure to allow the development to proceed; and
- Offset the relevant adverse impacts on the environment, local economic conditions, education, health, social, recreational and community facilities that may arise from development, where the development might otherwise have been refused.

A.5 The use of planning obligations must be governed by the fundamental principle that planning permission must not be sought or sold.

A.6 **The London Plan 2004 and Draft further Alterations to the London Plan, September 2006**

A.7 The London Plan is currently being reviewed. The proposed changes are set out in the London Plan Further Alterations. Revised **Policy 3A.15 Protection and enhancement of social infrastructure and community facilities** states;-

Policies in DPDs should assess the need for social infrastructure and community facilities in their area, and ensure that they are capable of being met wherever possible. These needs include primary healthcare facilities, children’s play and recreation facilities, services for young people, older people and disabled people, as well as libraries, sports and leisure facilities, open space, schools, nurseries and other childcare provision, training facilities, fire and police station, community halls, meeting rooms, places of worship and public toilets. Adequate provision for these facilities is particularly important in major areas of new development and regeneration.

Policies should seek to ensure that appropriate facilities are provided within easy reach by walking and public transport of the population that use them. The net loss of such facilities must be resisted and increased provision be sought, both to deal with the increased population and to meet existing deficiencies.

The Mayor will and boroughs should have regard to the additional guidance in the SPG on ‘Meeting the spatial needs of London’s diverse population’.

A.8 **Haringey Unitary Development Plan**

- A.9 Haringey's Unitary Development Plan was adopted on 17th July, 2006 and includes the following policy;-.

Policy UD8 PLANNING OBLIGATIONS

The Council, where appropriate, will enter into planning agreements under section 106 of the Town and Country Planning Act. Such agreements will be used to:

- a) **offset the relevant adverse impacts that might arise as a result of the development including those on the environment, transport, local economic conditions, social, recreational, health, educational, emergency services, and community facilities that may arise from development; and**
 - b) **overcome problems associated with a development proposal where planning conditions would not be suitable.**
- A.10 The paragraphs below set out a framework for the use of planning obligations, including when the Council would seek planning obligations, what matters are most likely to be included within an obligation and the procedures involved. This provides a clear indication for developers as to what the Council would expect in certain cases.
- A.11 In Haringey, the Council, where appropriate, will seek planning obligations from development proposals under section 106 of the Town & Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and Circular 05/2005 'Planning Obligations'
- A.12 The Council will assess each application individually and on its merits to determine if a planning obligation is needed and what matters it should address. All planning obligations sought will meet the tests set out above and as specified in ODPM Circular 05/2005. Where it is decided that a planning obligation is necessary the Council will fully justify their reasons for seeking an obligation.
- A.13 The Council will ensure that a section 106 agreement will only be entered into where planning conditions cannot be used to overcome problems associated with a development proposal. Where appropriate conditions will be used. The table below shows types of benefits the Council wishes to secure from different types of development. This is not an exhaustive list but indicates the types of benefits to be sought in appropriate circumstances:

Obligation Type	Type of Development
<u>Development and Urban Design</u>	
Adoption of travel plans (which may include setting up car clubs).	Employment/Retail/Education/Health/ Leisure
Improvements to signage and street furniture.	General
<u>Environment</u>	
Improvements to the environment near to the development.	General
Provision of defined environmental infrastructure.	General
Provision of flood attenuation measures.	General
Provision of sustainable urban drainage systems.	General
Provision of recycling facilities.	General
<u>Housing</u>	
Provision of affordable and special needs housing.	Residential
Restricting the occupation of affordable and special needs housing to people falling within particular categories of need.	Residential
Restricting the occupation of private sector hostels to those on the Council's housing list.	Residential
<u>Employment</u>	
Employment training schemes.	Major development
Measures ensuring local access to new jobs created.	General
Loss of employment – employees, land &, or floor-space.	General
<u>Education</u>	
Education provision in areas where a shortage of school places exists or where development will create a shortage.	Residential
<u>Health</u>	
Providing for health needs of new population – revenue and capital cost.	Residential
<u>Town Centres and Retailing</u>	

Obligation Type	Type of Development
Contributions to town centre management.	Retail / Leisure / Employment / Community Facilities
<u>Movement</u>	
Improvements to public transport, including new-build facilities e.g. bus stands, bus priority measures.	Employment / Retail / Development.
Funding of additional/extended new bus services for specified periods.	Development in areas of low priority
Rail improvements including contributions towards station enhancements.	Employment/retail/health/leisure/major new developments
Improvements to cycling and pedestrian routes and facilities.	General
Provision of off site traffic improvements such as traffic calming/management and highway safety schemes.	General
Parking measures such as: <ul style="list-style-type: none"> • Provision of off-street parking in the development or elsewhere. • Management of off-street parking in compliance with policy. • Contribution to introduction or maintenance of control of on-street parking. 	General
<u>Open Space</u>	
Provision of new areas of open space or wildlife habitats or improvements to the access to existing open space.	Major new development
Contribution to future upkeep and replacement of open space or community facilities.	General
Retain, replace and enhance areas of open space, natural habitats and trees.	General
Protect or reduce harm to designated sites of nature conservation.	General
Carrying out archaeological investigations or excavations.	General
<u>Community Wellbeing</u>	
Provision of health facilities.	Major new development
Provision of community facilities.	Major new development
Provision of crèches/nurseries related to the need of the workforce.	Employment / Tourism / Leisure / Education / Health / Retail

Obligation Type	Type of Development
<u>Miscellaneous</u>	
Cost recovery for negotiation, implementation & monitoring of s106 Agreements.	General
Provision of public conveniences.	General
Provision of public art.	General
Securing an acceptable balance of uses.	Mixed use developments

Table 1: List of planning obligations

- A.14 The above table is not an exhaustive list and any obligations necessary will depend on the planning application in hand. In certain circumstances, where the need arises it may be necessary to seek contributions not listed above. In the case of major individual sites suitable for redevelopment any planning obligations deemed necessary will be set out in planning briefs.
- A.15 For key regeneration sites in the Borough the necessity and type of planning obligations will be monitored by the Council's Strategic Sites & Projects Group. This group brings together the key officers in the Council with a role in relation to key sites. As appropriate major schemes negotiations will be reported to the relevant Council Committees and have regard to commercial confidentiality.
- A.16 Where appropriate the Council will prioritise planning benefits taking into account the Council's priorities as set out in the Community Strategy, which are:
- Improve services - *provide modern, high quality, accessible services for everyone who needs them, particularly health and social care.*
 - Narrow the gap- *improving the most deprived neighbourhoods.*
 - Create safer communities – *create safe and confident communities with less fear of crime and the ability to prevent crime and resist committing crimes.*
 - A Better Environment – *creating a cleaner, greener environment with better transport and leisure opportunities.*
 - Education - *raise achievement in education and create opportunities for life long learning.*
- A.17 The Council has developed Codes of Practice in accordance with paragraph 32 of Circular 5/05 and chapter 4 of the Practice Guidance so as to improve Speed, Predictability, Transparency and Accountability. The Codes of Practice regarding (1) Employment and Training and (2) Health relate to Council priorities in the Community Strategy.

B. Procedures for Negotiating Planning Obligations

- B.1 If planning obligations are considered necessary to allow a particular development proposal to go ahead then the planning officer will raise this with the applicant as soon as possible. Pre-application discussions are strongly encouraged but where these do not occur negotiations will take place as soon as possible after the planning application has been submitted.
- B.2 The case officer will be the main point of contact for negotiations. It will be the case officer's responsibility to discuss with other services (such as housing/education) what requirements if any they consider necessary. The case officer will then enter into negotiations with the applicant over the need for a planning obligation and the matters it should address. The case officer will normally conduct all negotiations unless a legal representative is needed to discuss a point of law.
- B.3 The planning application will be submitted to the Planning Applications Sub-Committee with a resolution to grant planning permission subject to a Section 106 agreement being entered into. The report to the Sub-committee will include the draft agreed heads of term as recommended by the Nolan Report "Standards in Public Life" 1997. The Council's legal service will normally only be instructed to draw up the planning obligations once a resolution to grant planning permission has been made by Sub-Committee.
- B.4 When the planning obligation is finalised all relevant parties must sign the document. The decision notice granting planning permission will only be released when the agreement has been agreed, completed and sealed. A copy of the agreement will be placed on the Council's planning register. It should be noted that depending on the nature and complexity of the case it can take a considerable time to reach final agreement on the detailed terms of the agreement, and developers are asked to ensure that sufficient time and resources are made available in their programme. The Council will endeavour to deal with agreements as expeditiously as possible. Any significant changes to the heads of terms of any agreement will require re-submission to the Planning Applications Sub-Committee.
- B.5 The agreement will usually come into force when the planning permission is implemented, i.e. when the development commences. The start of development is defined as the date on which any material operation connected to the development starts such as the digging of foundations or the laying out of a road. This is in accordance with section 56 of the Town & Country Planning Act 1990. Occasionally it is necessary to provide for specific obligations to come into force prior to or after the start of the development.

C. **Content of a Planning Obligation**

- C.1 A valid planning obligation must include:
- identification of the land involved.
 - identification of the person entering the agreement and their interest in the land.
 - identification of the authority who will enforce the obligation.

The planning obligation will also include:

- description of the development.
- the type and amount of obligations the developer has agreed to, which may be in the form of actual works or financial contributions.
- a trigger(s) for when the benefits should be provided.
- if financial requirements are provided the agreement may state a time limit within which the money should be committed.
- definitions of terms used within the agreement.
- provision for the legal costs of drafting the agreement to be met.
- provision for the monitoring costs to be met.

6. **IMPLEMENTATION, MONITORING AND ENFORCEMENT OF PLANNING OBLIGATIONS**

6.1 Planning obligations will normally be expected to be paid prior to or upon commencement of development, once planning permission is implemented. Most agreements provide that at this point financial contributions should be paid to the council and any physical works should commence. However, in some cases the obligation may state that payments should be phased and paid during various stages during the development. Trigger dates for the payment of monies will be included in agreements, as well as any time periods by which the contribution is to be committed. Such cases will need closer monitoring to ensure that all payments have been made over the agreed period. It is important that planning obligations are logged, monitored and accounted for in order to provide information for interested parties on the outcome of any agreement. This will help to ensure that the process is open and fair.

6.2 The Council has introduced arrangements to ensure detailed management and monitoring of planning obligations. The procedures for monitoring and enforcement are set out below.

A. **Monitoring**

A.1 When a planning obligation has been signed and a decision notice issued, copies will be sent to the monitoring officer. The monitoring officer will enter information relating to the planning obligation into a database for the purposes of monitoring. The system will record information such as:

- A reference number.
- Address.

- Description of development.
- Planning obligation heads of term.
- Amount of financial contribution.
- Date development started.
- Date money received.
- Date money committed.
- Date works completed.

- A.2 The monitoring officer will liaise with building control and development control, and carry out site visits to determine whether developments that have a planning obligation attached to them have started. Site visits will also be conducted as appropriate to ensure that the developer carries out any physical works required by the planning obligation. Where financial contributions are made the monitoring officer will liaise with the Council's Planning, Environmental Policy and Performance's finance section, to ensure that monies have been received and paid into a planning obligations account. A specific code will be set up relating to each planning obligation to enable the money to be tracked. The monitoring officer will ensure that services for which the money is intended are aware that the money has arrived and of any time limits within which the money must be committed. Some planning obligation agreements require that if financial contributions are not committed within the specified time period then the Council will refund the developer with interest, so the monitoring officer will be proactive in seeking the completion of relevant projects. To obtain the money to complete the agreed works the relevant Council Service will first provide a description of the proposed works in keeping with the agreement before money is released from the account. This will ensure that money was spent on what was agreed in the planning obligation. The monitoring officer will keep copies of all receipts and records relating to a planning obligation to aid monitoring. In this way the monitoring officer can ensure that planning obligations are complied with.
- A.3 The monitoring system will indicate when all the money in connection with a planning obligation has been received and the appropriate physical works have been undertaken. At this point a closing statement can be sent to the developer and also placed on the planning register. This will increase the transparency of the system and inform developers and the public that the money has been committed and/or spent on what was set out in the planning obligation.
- A.4 The Council has a dedicated officer responsible for monitoring and managing planning contributions. Where planning contributions require compliance checks, monitoring, project management and implementation through the Council and its service area, then an appropriate management, implementation and monitoring cost of up to 5 per cent (%) of the monies agreed will be sought. This will be in addition to any legal fees the Council incurs in preparing the obligation.

B. Enforcement

- B.1 If it is evident that planning obligations are not being complied with the monitoring officer will instigate enforcement action. Planning obligations can be enforced through the use of an injunction, which can stop the development proceeding. The authority has the power to enter the land and carry out any works that were required and recover costs (must give 21 days notice of intention to do this), anyone who obstructs the authority from doing this is liable to a fine of up to £1000. In addition the Council will consider charging developers interest for the late payment of financial contributions. This will be written into any planning obligation so that developers are aware of the implications of late payment and agree to the terms.
- B.2 The Council's Planning Policy Team, in conjunction with the s106 monitoring officer, will produce Annual Monitoring Reports setting out the contributions negotiated, received, committed and spent.