

Adopted Torfaen Local Development Plan

Revised Planning Obligations Supplementary Planning Guidance

February 2023

Summary

Introduction, Purpose and Status of Supplementary Planning Guidance (SPG)

A planning obligation is a legal agreement, executed as a Deed, between the Council and the applicant / developer and any others that may have a legal interest in the land. This SPG relates to national policy, guidance and relevant policies of the Adopted Torfaen Local Development Plan (December 2013). It is intended to improve clarity and transparency for all involved in and with an interest in the development process and to explain the approach that the Council will take in respect of the negotiation, drafting, implementation and subsequent monitoring of planning obligations.

This Revised Planning Obligations SPG is the third iteration of the guidance since its initial publication in June 2011. It sees a change to the methodology for calculating affordable housing contributions alongside altered provision for maintenance charges and use of Social Housing Grant. It also contains changes to the education requirements in terms of scope and definitions. The opportunity has been taken to update references, including costs where applicable. It has been subject to public consultation and has subsequently been adopted by Council giving it weight as a material consideration in decision making for planning applications and appeals.

Content and Context of SPG

This SPG is arranged in two parts. Part One sets out context and general information regarding planning obligations and has Appendices containing template agreements. Part Two comprises topic specific Annexes, referring to those obligations which tend to occur most frequently i.e. affordable housing; highways; education; community facilities; biodiversity, geodiversity & ecological resilience; and public open space & recreation facilities.

Government policy requires planning obligations to be sought only where they meet certain tests:

- 1) The obligation must be necessary - either from a practical point of view to enable the development to go ahead or to make a proposal acceptable in land-use planning terms.
- 2) The obligation must be relevant to planning, in other words it must be a material consideration to the assessment of the planning application.
- 3) The obligation must be directly related to the proposed development.
- 4) The obligation must be fairly and reasonably related in scale and kind to the proposed development. In other words, there must be a relationship between what is lost or required, and what is being requested or offered.
- 5) The obligation must be reasonable in all other respects.

More recently, Part 11 of The Planning Act 2008 and the Community Infrastructure Levy Regulations (as amended) gave legal effect to tests 1), 3) and 5).

The Council will consider the issues that are relevant on a case by case basis, taking account of the nature of the development proposal, the site and the local context. The Council also reserves the

right to seek obligations relating to matters not covered by this SPG where there is sufficiently robust evidence to justify such obligations. These will be negotiated on individual schemes as appropriate. Within the adopted Torfaen Local Development Plan (LDP), Policy S8 provides for planning obligations; Policy H4 seeks provision of affordable housing; Policy H5 seeks provision for recreation, open space, leisure facilities and allotments; Policy H9 enables provision of affordable housing by way of exception sites; Policy T1 provides for transport improvements; Policy T2 relates to safeguarding and improvement of former transport routes; Policy T3 safeguards and facilitates improvement to the walking and cycling network, Policy CF3 both protects and provides for community facilities, Policy CF5 provides for compensatory provision for allotments, recreational facilities & amenity open spaces lost to development, and Policy BG1 seeks to protect and mitigate local ecological and geological sites.

Overview of Common Requirements

Planning obligations will be sought with regard to developments where there would be a detrimental impact upon the site or local community as a result of the proposed development that can be mitigated. Where a planning condition could be used to secure the same outcome as a legal agreement, the Council will use conditions rather than planning obligations. A summary of the most common obligation requirements is set out in Table 1 below.

Table 1: Summary of Common Requirements			
Type of Obligation	Residential development threshold	Commercial development threshold	Obligation
Affordable Housing	3 dwellings or 0.1 ha (10 dwellings or 0.33 ha) ¹	N/A	Site Specific - On site provision for an RSL and / or commuted sum: - <ul style="list-style-type: none"> ▪ up to 5% in North Torfaen² ▪ up to 25% in Pontypool ▪ up to 20% in Cwmbran West & North ▪ up to 30% in Cwmbran South & East
Highways & Transport	No Threshold	No Threshold	Site Specific - Highways Infrastructure Works and / or Sustainable Transport Works according to need
Educational Facilities	10 dwellings	N/A	Site Specific - Provision for additional capacity according to need
Community Facilities & Regeneration	25 dwellings	1 ha or 1,000 m ²	Site Specific - Provision for additional capacity according to need
Biodiversity, Geodiversity & Ecological Resilience	No Threshold	No Threshold	Site Specific - Mitigation and / or compensation according to impact
Recreation, Open Space & Allotments	3 dwellings or 0.1 ha or loss of such facility	Loss of such facility	Site Specific - Provision of additional capacity and / or compensatory provision according to need (adopted FiT, Council, NRW and allotments Standards and / or LDP Policy)

Notes:

¹ Following a viability review (as part of the 2015 Torfaen LDP AMR reported to Council 15th December 2015), the threshold for affordable housing provision in the North Torfaen (Blaenavon & Abersychan), Pontypool and Cwmbran North & West Housing Sub-Market Areas (HSMAs) has been raised to 10 dwellings (or 0.33 ha).

² The Council also resolved (on 15th December 2015) to reduce the amount of affordable housing sought with the North Torfaen HSMA from 'up to 10%' to 'up to 5%'.

Viability matters will be reviewed annually as part of the Torfaen LDP Annual Monitoring Report (AMR); so these thresholds and affordable housing % sought may change again.

Section 106 Agreements are voluntary and require the co-operation of the developer in order to be delivered, however, planning permission may be refused or determination delayed where a developer fails to show they can adequately mitigate the impacts of their development either through planning obligations or other measures.

Extant planning permissions granted before this SPG was adopted will also come within its terms and conditions should an application for renewal be submitted. This SPG represents a material change in the planning circumstances since the original permission was granted and will be taken into account when determining such applications. Likewise, material changes in planning circumstances will be considered regarding Section 73 planning applications (to vary or remove a condition), the practical effect of which is to grant a fresh consent.

Sub-division of Sites: Where a site is subdivided, the Council will treat such sites in their totality. Under such circumstances, each subdivided plot will be required to provide a contribution towards the relevant obligation proportionate to its size and relative to the impact of the development. Where developments are proposed which fall short of the threshold, it will be necessary for the Council to consider whether the proposal constitutes deliberate under development of the site to avoid the planning obligation requirement. If so, there is planning case law to support a stance that the requirement should be applied.

Pooled Contributions: Where considered appropriate, S106 contributions may be pooled in line with current Regulations.

Management Arrangements: Where new public or private spaces or facilities are provided, the developer will need to provide for the long term maintenance and / or management of the site. This can be achieved by way of establishing a management company or trust to undertake the site management in perpetuity; or by way of transferring the land / facility to the Council accompanied by a commuted sum to enable the Council to undertake the maintenance for a period of 20 years.

Outline Planning Applications: Whether or not an obligation is necessary, and if so, it's nature and value, can often only be established when the details of an application are known at the time of the planning application. As a general rule, in determining an outline 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, either via the associated reserved matters application or by any subsequent full application.

Procedures for dealing with planning obligations and template agreements are included in the SPG's Appendices. In almost all circumstances, the Heads of Terms of the S106 Agreement should be agreed prior to the application being presented to Planning Committee or receiving a resolution to grant. Following the date of Planning Committee or resolution to grant, the applicant will have a period of up to six months to finalise and sign the legal agreement. Any agreement which has not been signed within the six month period and cannot be signed imminently will need to be reconsidered by Planning Committee or under delegated powers.

Where a developer submits that the planning obligation requirements associated with a scheme are too onerous and will potentially make the scheme unviable, they will be expected to submit a financial assessment of the costs and anticipated profit based upon properly sourced evidence in accordance with the Council's procedure for Viability and Valuation Assessment attached at Appendix A of the SPG. In order to facilitate such a financial assessment, and subject to payment of a standardised fee, the Council will make a site specific copy of the Development Viability Model (DVM) available for site developers. The DVM has been produced by Burrows-Hutchinson Ltd Chartered Surveyors

who have worked with a number of Local Planning Authorities (LPAs) across Wales. Using this model ensures consistency for developers and LPAs regarding viability matters.

Where reductions are justified on the basis of unusual market circumstances, the Council will usually require developers to agree to a time limiting S106 clause of two years. Following two years from the date of the agreement, the agreement will require review for any units left to be completed, in order to take account of any subsequent uplift in market conditions which might make the normal requirement feasible.

The Annexes

Each Annexe considers a specific topic where planning obligations may typically be required. They set out the policy context, circumstances in which such an obligation will be sought, nature and scale of potential obligations with typical examples. Standard S106 Agreement heads of terms and example clauses are provided.

Annex 1: Affordable Housing

There is a substantial need for affordable housing in Torfaen (240 new dwellings per annum) and the Council will seek a contribution to increasing the provision where possible. This includes social rented homes, intermediate properties (partially subsidised purchase properties), supported housing, extra care homes and gypsy and traveller provision. On development sites, provision should be on the basis of 75% social rented homes and 25% intermediate. The number of dwellings to be provided as an affordable contribution will be determined by the location of the site and viability of the proposed scheme (see Table 1 above for a summary). Both social rented homes and intermediate homes should be constructed in accordance with the 'specifications, sizes and general internal storage' requirements of the Welsh Development Quality Requirements: Creating Beautiful Homes and Places (WG, 2021) and be of similar appearance to the market homes on a site. The preferred approach is for the developer to build the homes and transfer them freehold to a named Registered Social Landlord.

Site maintenance charges (such as for open space or recreation facilities, etc. managed by private maintenance companies) will need to be taken into account in the price paid for the social rented dwellings. Social rented dwelling values are based upon Welsh Government's affordable housing Standard Viability Model (SVM) specific to the house type. Developers can expect to receive the following payments for the on-site affordable housing (at the time of notice of sale to the Registered Social Landlord (RSL)):

- the relevant 'Social Rented Unit Tariff' from Table '4' below for each social rented dwelling type, less a 50-year allowance to cover any site maintenance charges over £104 per annum; and

Table 4: S106 'Social Rented Unit Tariff' (April 2023)								
Houses			Flats			Bungalow		
Type	Size m ²	Tariff	Type	Size m ²	Tariff	Type	Size m ²	Tariff
7P 4B H	114	£92,224	3P 2B F	65	£49,460	3P 2B B	58	£72,933
6P 4B H	110	£91,709	2P 1B F	53	£40,776			
5P 3B H	94	£80,004						
4P 3B H	88	£79,094						
4P 2B H	83	£73,213						

Note - dwellings designated by Persons (P), Bedrooms (B) and type (H = House, F = Flat & B = Bungalow)

- 50% of the 'Market Value' for each intermediate dwelling type (low-cost home ownership and intermediate rented).

Contributions in lieu of full or partial on-site provision, such as a financial payment, provision of the affordable housing on another site or off-site land provision with a financial payment may be accepted in exceptional circumstances. Where for viability reasons, the Council has accepted that a housing scheme proposal cannot achieve the maximum affordable housing % for the relevant Housing Sub-Market Area under LDP Policy H4 (as amended), then the developer will be requested, at their earliest possible opportunity, to liaise with an RSL, outside the S106 Agreement, to potentially make up any affordable housing 'shortfall' by purchasing, at market value, additional affordable units up to the aforesaid LDP Policy H4 maximum affordable housing %; using a combination of Social Housing Grant and their own finances.

In extremely exceptional circumstances, where the Council or an RSL consider that it is impractical to provide all or part of the affordable housing on a site, a payment in lieu of on-site provision may be appropriate. The payment required in such circumstances will be the Welsh Government's 'works only' Agreed Cost Guidance (ACG) which is set out in Appendix 2 of the Annex.

A mix of dwelling types and sizes (both market and affordable) will be required on all sites in order to create balanced sustainable communities. It is important that the scheme is designed as a whole, with both the market and the affordable homes located together, rather than as two separate schemes; similarly, neither should the social or intermediate affordable housing be separated. Planning applications should include plans which identify the location, tenure, type and size of the affordable homes, which have been agreed by the Council's Housing Strategy Team.

The Council will seek to ensure that the affordable homes are actually delivered and built alongside the market homes. Therefore, it will make provision for 'trigger points' in Section 106 planning agreements to ensure that the affordable housing is provided in step with the market housing or at an agreed time.

Annex 2: Highways and Transport

A planning obligation relating to highways and transport may apply to any scale and any type of development, according to the specific characteristics of the proposed site and the potential impact from the proposed development. Sites will be considered on a case by case basis. There is no standard threshold or trigger and as such, discussion with the Council as to the likelihood of such an obligation is recommended at the earliest point. Where a proposed development may impact upon a trunk road, it is advisable to also consult with the Welsh Government at the earliest opportunity.

Planning obligations will be sought in respect of all proposals whereby highways and transport measures are necessary to enable a development to function efficiently in transport terms and these cannot be secured by way of a planning condition. These measures will normally, but not exclusively, be provided within the immediate vicinity of the site.

Annex 3: Education Facilities

A planning obligation in relation to educational facilities will be required where a proposed development is likely to result in the generation of additional pupil numbers in excess of that which local catchment schools can accommodate. School capacity will be calculated in accordance with Welsh Government Circular 021/2011: Measuring the Capacity of Schools in Wales. It will comprise a snapshot assessment at the time of the planning application and will take into account existing numbers of pupils and any planned increase or decrease in capacity as part of the 21st Century Schools and Colleges programme based upon the needs of the catchment area and not trends in parental preference. Contributions will therefore be sought where:-

- a) the pupils potentially arising from the development will cause the surplus capacity of local schools within the catchment area to be exceeded; or
- b) existing surplus capacity exists to accommodate some or all of the pupils potentially arising from the development, but refurbishment is required to make those places 'fit for use'.

Pupil yield multipliers are used to determine the likely number of children to arise from a development which along with up to date costings applied to a square meterage per pupil are used to calculate a required contribution.

Annex 4: Community Facilities and Regeneration

Planning obligations in relation to community facilities will be required where a proposed development is likely to result in the generation of additional households or work force so that the likely additional population would exceed the existing or planned capacity of local facilities. Such facilities may include community centres and meeting places, community halls, doctor's surgeries, community learning facilities, libraries and leisure centres. For the purposes of this guidance, community facilities do not include those which are not freely available to all members of the public. Obligations could also relate to waste and recycling provision, public art, broadband connectivity and commercial training opportunities.

Obligations relating to community facilities, public realm improvements, community safety measures and works to the Monmouthshire and Brecon Canal / Afon Llwyd Corridor may comprise the transfer of land, works by the developer or a financial sum (Community Facilities Payment) to be paid to the Council at an agreed stage in the development.

Annex 5: Biodiversity, Geodiversity and Ecological Resilience

A contribution relating to ecology and biodiversity may apply to any scale and any type of development, according to the specific characteristics of the proposed site and the potential impact from the proposed development. This includes both direct and indirect impacts on the site and linked areas (e.g. water corridors, green corridors, foraging areas). There is no standard threshold or trigger and as such, discussion with the Council as to the likelihood of such a contribution is recommended at the earliest point.

Annex 6: Recreation and Public Open Space

The Council will seek an obligation to address any detrimental impact on the standard of provision of open space and recreation facilities relating to a development site. The obligation may comprise the direct provision of facilities, off-site provision on land controlled by the developer and / or a financial contribution (Open Space and Recreation Payment) in lieu of direct provision.

Management of the facilities provided should be addressed either by the establishment of an appropriate management company; or by way of transfer of the land to the Council and payment of a commuted sum equivalent to the management costs for 20 years.

Standards of provision are determined by the Fields in Trust (FiT) benchmark standards (2015) of 2.4 hectare / 1000 population; the Natural Green Space Standard devised by Countryside Council for Wales (CCW) (2006); the Council's adopted SPG 'Development and its Incorporation within the Landscape: A Guide for Developers' (2000) which requires open space standards equivalent to 9.16 m² per dwelling; and national allotments standards.

Requirements will be calculated using an approximate population generation approach based upon average household occupancy of 2.3 persons along with an assessment of existing provision in the locality. The exact form and type of open space and recreation facilities are to be determined on a site by site basis, reflecting the requirements of likely future occupiers and the characteristics of the site. Where there are existing facilities that are substandard, the Council will consider an Open Space and Recreation Payment in order to mitigate the impact of the development by way of upgrading the existing facilities as opposed to additional on-site provision. Appendix 6A of the Annexe sets out the current guidelines for typical capital and maintenance costs for recreation and open space facilities. The most up to date equivalent costs will be used at the time of a planning application.

The Council will assess proposals taking into account guidance set out in the Fields in Trust document 'Planning and Design for Outdoor Sport and Play' (2009) and the Countryside Council for Wales document 'Providing Accessible Natural Greenspace in Towns and Cities' (2006). It is accepted that each site will have its own character and that guidelines should therefore be interpreted appropriately according to individual circumstances.

Location of open space, both natural and formal is a key consideration and requirements should be addressed at the initial design stage. The open space must be located in a position where it is easily accessible from all parts of the development, taking into account movements patterns and proximity to residential occupiers. The expectation is that formal open space should occupy a central location within the development site subject to site characteristics.

The Council has adopted minimum standards for the installation of all new play equipment in the form of European Standards BSEN 1176:1998 Parts 1-7 for equipment, and BSEN 1177:1998 for safety surfacing. Compliance with these standards will be a requirement on all new developments and proof of compliance will be required prior to installation. All equipment will be inspected for continued compliance with the European Standards to ensure retained equipment is maintained correctly, and new equipment has been correctly installed, sited and maintained.

The design of all new facilities must fully comply with the Disability Discrimination Act (DDA) 1995. The gradient of footpaths, size of steps, height of handrails and visual obstructions that may be encountered on route to a play or recreation facility are among the factors to be considered.

The Council will only adopt a public open space facility if constructed to the required standard and pass an independent post installation inspection by RoSPA (Royal Society for the Prevention of Accidents) or Fields in Trust. Where the Council does not adopt the on-site provision, the liability to maintain the facility will remain with the developer or property owners.

Further Information and Contact Details

If you have any queries regarding this SPG, please feel free to contact us: -

- Email: ldp@torfaen.gov.uk
- Telephone: 01633 648039

Planning Policy and Implementation Team
Torfaen County Borough Council
Civic Centre
Pontypool
Torfaen
NP4 6YB

Torfaen Supplementary Planning Guidance website page -
<https://www.torfaen.gov.uk/en/PlanningAndDevelopment/Planningpolicy/Supplementaryplanningguidance/Supplementary-Planning-Guidance.aspx>