

PLANNING AND DEVELOPMENT

TRANSPORT POLICY AND IMPLEMENTATION GROUP



DEVELOPER CONTRIBUTIONS A BRIEF GUIDE

What are Developer Contributions?

Developer Contributions (also known as 'section 106 agreements' or 'planning obligations') can be sought to mitigate the impact of a proposed new development on local infrastructure (highway improvements, public open space etc.) and services (library's, schools etc.). They are negotiated as part of the planning application process, and are secured by a legal agreement, which can either bind one party (normally the developer, termed as a 'unilateral undertaking') or several parties (typically the developer, plus a housing association and/or the Council, known as 'bilateral agreements' or 'multilateral agreements').

Information is available on the Borough's web site at the following link:
http://www.rbwm.gov.uk/web/pp_planning_obligations.htm

Legal agreements are specific to each development, and can be used to:

- Secure payments for physical works;
- Ensure affordable housing is provided;
- Place a limitation on the activities of future occupiers, such as preventing householders from obtaining parking permits in areas of existing high demand, or keeping dogs where these could give rise to increased disturbance, through dog walking, to the Thames Basin Heaths Special Protection Area.

In the case of larger developments, legal agreements can be used to:

- Secure a workplace travel plan (a strategy for managing travel generated by an organisation, with the aim of reducing its environmental impact);
- Secure a land management plan;
- In the case of mineral workings, for example, to limit the number and route of lorries serving the development.

These are some of the commonest requirements, this list being by no means exhaustive.

The planning obligations within a legal agreement only come into effect once a development commences (this does not include demolition). Developers' contributions are normally payable within 14 days of commencement, but phased payments upon completion or occupation may also be specified, particularly in the case of larger developments.

A developer may request repayment of a contribution if the funds are not spent within a certain timeframe on the project(s) for which it was specified. Whilst the Council does not, as a matter of routine include a timeframe clause within an agreement, in the instances where this is applicable, it will typically be 10 years from the date of payment. In the absence of such a clause, the developer may request evidence that the funds have been properly used after 5 years.

In accordance with the Governments advice as set out in Circular 05/2005 'Planning Obligations' (available on the following web link: <http://www.communities.gov.uk/publications/planningandbuilding/circularplanningobligations>), developers contributions may only be sought where they meet all the following criteria:

- They must be necessary to make the development acceptable in planning terms
- They must be related to planning and to the development in question
- They must be fairly and reasonably related in scale and kind to the proposed development, and must be reasonable in all other respects

Contributions may only be sought where the link between the impact of a proposed development and its effect on local infrastructure and services can be established. It follows that developers' contributions cannot be used to make up for any existing shortfall in these two areas.

To assist developers, the Council has published a supplementary planning document (SPD). It is in two parts comprising 'Planning Obligations and Developers Contributions: A Developers Guide' and 'Planning Obligations and Developers Contributions: Infrastructure and Amenity Requirements (and Approved Programme of Schemes) 2005/2010'. The latter document includes projects relating to physical infrastructure and provision/expansion of services that the Council has approved as being projects that justify planning obligations being sought from development over a five year period. The formulae and projects are updated annually following consultation with Councillors, the Parishes and the Councils' Officers within individual service areas, and the updated SPD endorsed by the Council's Cabinet for use in conjunction with the assessment of planning applications. The document is therefore a material consideration in the determination of a planning application, and the failure to make provision for contributions towards additional infrastructure and services made necessary by a development can be a reason for refusal.

The SPD covers a number of the Council's service areas, corresponding to section headings within the document. Each section starts with a brief explanation of the rationale in planning terms of the anticipated functional and geographical justification for requesting contributions, followed by the formula that will be applied to calculate the contribution, based on the anticipated pressures of different types

of development on the service. So, for example, an additional 5 bedroom house would give rise to a contribution towards schooling, whereas a new office block would not.

The current SPD covers the following service areas:

- Affordable housing
- Transport (including workplace travel plans and highways, public transport and public rights of way)
- Education
- Community facilities
- Library services
- Recreation and leisure (including public open space, biodiversity, indoor sports facilities and allotments)
- Public art and heritage (including archives)
- Town management and improvement
- Economic development
- Landscaping
- Thames Basin Heaths Special Protection Area
- Air quality
- Waste disposal
- Archaeology
- Flood risk management and draining
- Parish projects

Both part 1 and part 2 of the SPD may be viewed on the following web link:

http://www.rbwm.gov.uk/web/pp_planning_obligations.htm

S106 Calculator

The Developer Contribution Calculator is a spreadsheet, which can be used to estimate the contributions that are likely to be requested from a proposed development. It utilises the formulae within the current SPD to calculate contributions from proposed development, allowing credit for any existing residential units or floorspace which are to be lost as a result of the development. The results should be taken as a guide only with the final calculations being prepared by the Planning Case Officer in each individual case. Further information on this can be found on the web site on the above link listed under “Public Guide on Developer Contributions”.

How can Parish Councils get involved?

Parish Councils can get involved at two stages:

The first is through the annual SPD update consultation process and the second is during the consultation period for each individual planning application.

The annual SPD update consultation process

Parish Councils are invited to review the list of existing projects within the current SPD in collaboration with officers from each of the Councils' relevant service areas and delete those projects, which are completed or no longer appropriate.

New projects may be put forward following a feasibility assessment by the Council's relevant service area where applicable. Projects, which have no reasonable prospect of being completed in the near future, should not be included. This is because, as outlined above, a developer may request repayment of a contribution if the funds are not spent on the project(s) for which it was specified within the legal agreement.

Where future development within a Parish is limited (due to Green Belt restrictions for example) it follows that opportunities for securing developer contributions will also be limited. It is suggested that in such cases, Parish Councils prioritise any projects put forward to ensure any contributions secured are not spread so thinly between a number of projects that none ever becomes financially viable.

All feasible projects put forward by a Parish Council are included within the SPD under the 'Parish Projects' section. However, where a Parish project relates to one of the service areas where the Council ordinarily seeks contributions on a formulaic basis, the Parish project will also be listed under the appropriate service area section.

However, projects can be added to the list of schemes throughout the year by applying to the S106 Team, who will advise on the eligibility of a project and seek approval from the Head of Planning and Development along with the Lead Member for Planning and Development where appropriate. If approved, the project is then added to the SPD list of schemes on the web making Officers at the Council and Developers aware of the scheme when an appropriate planning application arises.

Planning consultation process

Parish Councils will be consulted on planning applications for development within their Parish area. Any representations on the acceptability of the development should be made in writing to the planning development control case officer who is identified on the consultation letter.

At this stage, the opportunity also arises for Parishes to consider the possible effects of the proposed development on infrastructure and services within their area, and in particular whether developers contributions should be sought for specific projects included within the SPD.

In accordance with Government guidance and the SPD, developers' contributions can only be sought where the link between the impact of a proposed development and its effect on local infrastructure and services can be established.

The types of development where this link can currently be justified include:

- Additional housing units (houses and flats – including conversions and subdivisions)
- New retail, commercial and industrial development and most extensions to existing retail, commercial and industrial premises
- Changes of use where the number of employees and/or visitors will exceed previous numbers

Since developers' contributions can also be used to place a limitation on the activities of future occupiers such as owning a dog, which increase dog walking activities on a protected heath area, Parish Councils may also wish to comment on such matters in the course of the planning application consultation process.

Conversely, developers' contributions will not be sought for the following types of development, as they are unlikely to place a significant additional burden on existing infrastructure or services:

- Householder extensions, including outbuildings
- Replacement dwellings (where the number of new units does not exceed the existing number of units)
- Small extensions to business premises (retail, commercial or industrial)
- Agricultural buildings

This list is not exhaustive, and exceptions will occur where the proposed development provides a substantial community benefit. This may include for example, affordable housing, or the clearing of contaminated land as part of the development process. For this reason, extensions to schools, libraries and other community facilities do not normally result in the need for developers' contributions.

However, every application is dealt with on a case-by-case basis, including taking account of the planning history of a site. For example, credit will be given for the existing number of dwellings or commercial floorspace lost through demolition, or for an approved live planning permission for a similar development on the site.

Since it is possible a development may be granted consent on appeal following refusal by the Council, it is important that even if a Parish Council objects to a scheme, it should still consider the possible effects of the proposed development on infrastructure and services within their area, and in particular whether developers contributions should be sought for specific projects included within the SPD. Such a suggested list of projects can be referred to as 'without prejudice to the outcome of the application'. The Planning Inspector can then take account of these representations when considering the appeal.

How can Parishes keep track of progress?

Since planning obligations only run with a planning consent, it follows that if planning permission is refused for a development, no obligations can be sought from the developer.

If a development is granted consent on appeal following a refusal by the Council, the suggested amounts and projects within the legal agreement may be varied by the Planning Inspector, and in some cases, may be considered unnecessary.

A completed legal agreement which links to the grant of planning consent may be viewed as a scanned document on the Council's web site. It can be found with the plans and other documents by searching on the planning application number on the Planning Public Access Module found on the following web link: www.rbwm.gov.uk/pam.

Until development actually starts on site, no developers contributions become payable. The 'commencement of development' has a legal definition, but can include the digging of trenches ready for foundations. Since it does not include demolition of the existing buildings on site, the clearing of a site does not normally trigger the requirements within a S106 agreement.

Once a planning consent is implemented the S106 Team is notified electronically via the Council's Building Control system, and the process of monitoring compliance with the legal agreement commences. If the developer is required to pay financial contributions, these will be sought at the appropriate time as set out in the legal agreement.

Once payment has been received by the Council, it is distributed to the relevant service areas within the Council, and allocated to the projects as written into the appropriate S106 legal agreement. In this way, each service area is responsible for implementing the projects, and accounting for available funds.

It should be noted that in the case of larger projects, these may rely on funds being pooled from a number of S106 agreements, and possibly combined with funds from a number of other Council and/or external sources. Such projects cannot be implemented until all these funds are in place, which may result in a delay from the time when a particular development is started, and the time new infrastructure is completed or an expanded service is provided.

Enquiries as to the status and content of a legal agreement, progress of a development and whether funds have been received by the Council should be made to Linda Arlidge, S106 Special Projects Officer on 01628 796363, email linda.arlidge@rbwm.gov.uk or John Maniscalco, S106 Compliance Officer on 01628 796554, email john.maniscalco@rbwm.gov.uk

During the annual consultation process to update the SPD, a review of existing projects and feasibility assessment of any new projects should be made in collaboration with officers from each of the Councils' relevant service areas. The revised list should be then be sent to Linda Arlidge, S106 Special Projects Officer on 01628 796363, email: linda.arlidge@rbwm.gov.uk

Parishes are reminded that since a developer has the right to request repayment of a contribution if the funds have not been spent within a certain timeframe on the project(s) for which it was specified, if a Parish is unsuccessful in spending funds accumulated for 'Parish Projects', they may have to be returned to the developer.

Enquiries as to the availability of funds for specific projects, including 'Parish Projects', and their progress should be addressed to the following relevant service areas within the Council:

Affordable housing: Housing Enabling Manager – 01628 685705

Highways and public transport:

- Workplace Travel Plan – 01628 796067
- Rights of way team – 01628 796180
- Public transport – 01628 796147
- Verge parking – 01628 796287
- Environmental improvements – 01628 796148
- Cycle network schemes – 01628 796097
- Streetcare – 01628 796814
- Car parks – 01628 796513
- Road safety – 01628 796405
- Bridge strengthening – 01628 796283
- Street lighting – 01628 796798
- Crime prevention and security – 01628 796861

Education: School Accommodation Service – 01628 796364

Community facilities: Community and Youth Services Team - 01628 796983

Library services: Service Development Manager - 01628 796742

Public open space: Environment Officer (Section Manager) – 01628 796093

Biodiversity: Environment Officer (Section Manager) – 01628 796093

Indoor sports facilities: Environment Officer (Section Manager) – 01628 796093

Allotments: Environment Officer (Section Manager) – 01628 796093

Public art and heritage: Community and Development Manager - 01628 685811

Town management and improvement:

- Windsor and Eton Town Manager – 01753 743921
- Maidenhead Town Manager – 01628 796128

Economic development: Grow Our Own Project Manager – 01628 685661

Landscaping: Landscape Officer – 01628 796048

Thames Basin Heaths: Strategy and Plans Team – 01628 796172

Air quality: Environmental Protection Officer – 01628 683544

Waste disposal:

- Waste Manager - 01628 796193
- Recycling Officer – 01628 796272

Archaeology: Reading Museum, Archives and Library Service – 0118 901 5976

Flood risk management and drainage: Environmental Protection Team - 01628 683645