

Planning Obligations

Supplementary Planning Document

Adopted April 2017



1. POLICY AND PROCEDURES

1.1 Introduction

1.1.1 This Supplementary Planning Document (SPD) sets out Corby Borough Council's (the Council) approach to planning obligations when considering planning applications for development in the Borough. The aim of this SPD is to provide clarity and guidance for developers, build on the policies in the Joint Core Strategy and direct developers to the documents and requirements provided by Northamptonshire County Council and other infrastructure providers.

1.1.2 Planning obligations are negotiated between local authorities, developers and statutory providers of infrastructure in the context of granting planning permission. They provide a means to ensure that a proposed development contributes to the provision of necessary infrastructure, services and facilities required by national and local planning policies.

1.1.3 At the current time, the Council is not pursuing implementation of the Community Infrastructure Levy. Therefore this Council will continue to rely on planning obligations secured through Section 106 to contribute towards infrastructure where required. The purpose of this SPD is to provide clarification on the basis on which planning obligations will be sought. It outlines the scope and scale of planning obligations that may be required and sets out the basis on which the level of obligation will be calculated, where appropriate.

1.1.4 The SPD supplements Policy 10 of the North Northamptonshire Joint Core Strategy which seeks to ensure the timely delivery of infrastructure, services and facilities to meet the needs of the Borough and support sustainable development. This SPD also provides detail on how other policies related to infrastructure provision in the Local Plan will be implemented.

1.2 Legislative and Policy Framework

1.2.1 The legislative basis for planning obligations is set out in Section 106 of the Town & Country Planning Act 1990, as amended by Section 12 of the 1991 Planning and Compensation Act.

1.2.2 Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and Paragraph 204 of the National Planning Policy Framework (NPPF) set out the following tests that must be satisfied in order for obligations to be required in respect of development proposals:

- the obligation must be necessary to make the proposed development acceptable in planning terms
- the obligation must be directly related to the proposed development
- the obligation must be fairly and reasonably related in scale and kind to the proposed development

- 1.2.3 Regulation 123 of the Community Infrastructure Levy (CIL) Regulations prevents the pooling of Section 106 contributions from more than five developments to enable the provision of new infrastructure. However, the provision of affordable housing remains within the remit of Section 106 obligations.
- 1.2.4 The NPPF at paragraph 203 advises that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
- 1.2.5 The North Northamptonshire Joint Core Strategy was adopted in July 2016 and sets out development strategy for the area and policies for delivering growth in the Borough. To support the level of development set out in the Plan, Policy 10 of the Joint Core Strategy requires direct provision or contributions towards the delivery of infrastructure where there is a need.
- 1.2.6 In addition, the following policies in the Joint Core Strategy require the provision of infrastructure to meet the needs of development:
- Policy 4 – Biodiversity and Geodiversity
 - Policy 7 – Community Services and Facilities
 - Policy 18 - HGV Parking
 - Policy 19 – The Delivery of Green Infrastructure
 - Policy 21 – Rockingham Forest
 - Policy 30 – Housing Mix and Tenure
 - Policy 32 – West Corby Sustainable Urban Extension
- 1.2.7 The North Northamptonshire Infrastructure Delivery Plan sets out the key pieces of infrastructure required in order to deliver the objectives and policies in the Joint Core Strategy; and provide the evidence on how, and when these are proposed to be delivered, and by whom. The latest version of the Infrastructure Delivery Plan was produced in January 2015 and is available at www.nnjpu.org.uk, but the Infrastructure Delivery Plan is a living document and will evolve as additional evidence becomes available, and as the Infrastructure Delivery Plan is monitored and reviewed.
- 1.2.8 The policies within the Northamptonshire Minerals and Waste Local Plan are also relevant to planning obligations in some cases.
- 1.2.9 Relevant statutory undertakers or service providers may have their own policy or guidance, for example, the current version of the Northamptonshire County Council Planning Obligations Framework and Guidance Document¹ which outlines the

¹ The current version of the Planning Obligations Framework and Guidance available at <http://www.northamptonshire.gov.uk/en/councilservices/Environ/economic/Documents/Creating%20Sustainable%20Communities%20Jan%202015%20FINAL.pdf>

County Council's approach to developer contributions via planning obligations, through Section 106 agreements.

- 1.2.10 It should be noted that in February 2017 the Government published a white paper entitled 'Fixing our broken housing market'. Published alongside this was an independent review of the Community Infrastructure Levy which identified issues with the current system. The white paper stated that the Government intends to examine the options for reforming the system of developer contributions and will make an announcement at the time of the Autumn Budget 2017. As such the SPD and Council's position on Community Infrastructure Levy will be reviewed in due course. Full consultation will be carried out when the SPD is proposed for review.

1.3 Procedures

- 1.3.1 Developers are advised to initiate negotiations at a pre-application stage with officers of the Council and statutory providers of infrastructure, since it may be necessary to take into account several potential planning obligations in their calculations of the development value of a site and to ensure they are reasonable and related in scale and kind. They may find it useful to view the Council's Pre-Application Planning Advice available at: <http://www.corby.gov.uk/sites/default/files/planning%20pre-application%20advice%201.pdf>, including the fees payable for this service. This way, the developers will discuss the planning application Heads of Terms at the earliest opportunity, understand how this might impact on viability of their proposals, be clear and certain about the process and minimise delays in determining planning applications.

1.4 Timing and Phasing of Provision

- 1.4.1 The Council would expect the payment of financial contributions to be on or before the commencement of development in order to co-ordinate the delivery of any planning obligations with the delivery of the development. This should be agreed at the planning application stage and be set out in the Section 106 Agreement or Unilateral Undertaking.
- 1.4.2 It may be acceptable to phase payments. However this will require the production of a phasing agreement with appropriate 'triggers points', to be agreed with the Council. Following this, the onus will be on the developers to inform the Council when the relevant triggers have been reached.
- 1.4.3 What constitutes commencement will be specified in the legal agreement but will normally be as set out in the Town and Country Planning Act 1990 (as amended). However, the performance of planning obligations can be deferred to suitable stages in the site's development depending on the nature of the development.
- 1.4.4 Should a payment not be made on or before the date due, interest will be charged in order to act as a disincentive to late payment, as detailed in the planning agreement.

1.4.5 If it becomes evident that a legal agreement is not being complied with, the legal team will instigate appropriate enforcement action, which could be through the use of an injunction to stop the development, or use of the Council's powers of entry to carry out any works related to the agreement. The Council will recover the costs for this action from the developer.

1.4.6 The obligations will specify time limits for the expenditure of Section 106 planning obligations. This will be determined on a case by case basis. Unspent obligations beyond the agreed period will be returned to the developer with interest, as specified in the legal agreement.

1.5 Maintaining the value of financial contributions

1.5.1 In order to maintain the real value of payment to the Council, as development progresses, it is usual for the financial sums required to be paid to be indexed linked. The indexation applied may vary depending upon the particular type of works to which the contribution will relate (e.g. BCIS Price Adjustment Formulae Indices or Consumer Prices Index).

1.6 Viability

1.6.1 The Council is aware that there may be occasions where the level of planning obligations required would render the development proposal unviable.

1.6.2 Where a developer believes that viability is an issue for their scheme, they must submit evidence to the Council to support their case. This should clearly set out:

- The considerations which demonstrate that they are unable to provide the full policy requirements, and
- Demonstrate what the benefits of not meeting the policy requirements and delivering the site immediately are

1.6.3 For purposes of assessing the developer's case, what constitutes "benefits" is a material consideration in the decision making process which will be determined on a case by case basis. It will involve balancing the planning benefits against the harm resulting from under-provision or delayed provision of infrastructure (including affordable housing), and any other policy requirements.

1.6.4 As guidance on the nature and content of the viability assessments, the Council will require that:

- Financial information is provided on an "open book" basis
- Current values and costs including abnormalities are the basis for the valuation (schemes may require a viability review after 5 years).

- 1.6.5 The Council will normally seek independent valuation advice to review viability assessments. Where this is required, the developer will bear the costs.
- 1.6.6 It should be noted that due to Freedom of Information requirements and requests, if a viability assessment is submitted in relation to a valid planning application then the local planning authority will treat the submission as a public document, but will redact the commercially sensitive elements of the assessment following consultation.
- 1.6.7 The Council may take actions to prevent large developments from being stalled on viability grounds. This involves defining the scope and scale of obligations, which elements can be paid initially and deferring other payments linked to future reassessment of viability or changes to land values over time. This approach recognises the impact the current conditions have on viability while acknowledging that the conditions may improve in the future in accordance with paragraph 205 of the NPPF. The Council will work with developers on the principles of this mechanism. If a developer satisfactorily demonstrates that a scheme is unviable due to policy and guidance requirements, the Council has agreed a Deferred Developer Contributions protocol² to prevent large developments from being stalled on viability grounds.

1.7 Monitoring and Enforcement

- 1.7.1 The Council will monitor planning obligation requirements to ensure that they are compiled with. Where the Council identifies situations where the requirements are not being compiled with, enforcement action may be taken by the Council.

² Section 106 – Deferred Developer Contributions available at <http://www.corby.gov.uk/sites/corby.gov.uk/files/Section%20106%20Deferred%20Developer%20Contribution.pdf>

2. TYPES OF CONTRIBUTIONS

2.1 Affordable Housing

2.1.1 Policy 30 of the Joint Core Strategy enables the authority to seek planning obligations to secure the delivery of affordable housing. On private sector developments of 15 or more dwellings (net) or where the combined gross floor area of dwellings will exceed 1,500m² in Corby and 11 or more dwellings (net) or where the combined gross floor area of dwellings will exceed 1,000m² elsewhere, the local planning authority will seek the provision of affordable housing in line with the following targets:

- Sustainable Urban Extensions - 20% of total dwellings in phases to be developed by March 2026, with provision to be made for a review of the viable levels of affordable housing in later phases
- Corby – 30% of total dwellings
- Rural areas including all villages – 40% of total dwellings

2.1.2 Applications which try to artificially subdivide or phase sites so as to avoid or minimise the provision of affordable housing will not be approved by the Council. If the calculation of the amount of affordable housing involves a fraction, this will be rounded to the nearest whole number.

Definition

2.1.3 The definition of affordable housing that the Council will use in applying this guidance accords with the NPPF³. For further guidance on its interpretation, please refer to the Corby Tenancy Strategy 2012-17⁴ and/or contact the Housing Strategy section of the Council.

Design and Integration

2.1.4 The Council expects affordable housing to be well designed and built to a high standard. The affordable and market housing should be indistinguishable neither by location, design, external appearance or parking arrangements. Further details will be set out in the North Northamptonshire Place Shaping Supplementary Planning Document.

Location of affordable housing

³ Refer to glossary of NPPF, on page 50

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

⁴ Corby Tenancy Strategy 2012-2017 available at

<http://www.corby.gov.uk/sites/default/files/documents/files/Corby%20Tenancy%20Strategy%202012-2017.pdf>

2.1.5 Affordable housing will be provided on site unless the developer can demonstrate exceptional circumstances which necessitate provision on another site, or the Council is satisfied that, off-site delivery or an equivalent financial contribution for affordable housing will support urban regeneration and/or the creation of sustainable mixed and inclusive communities. This might include the need to improve or make more effective use of existing affordable housing stock where there may be difficulties over delivery, design or management. Whether on or off-site, the Council will seek to achieve mixed and balanced communities at all times. The Council will determine each case on its own merits.

2.2 Transport

2.2.1 Northamptonshire County Council are responsible for identifying specific types of infrastructure needed to support development in the Borough. The County Council has a duty to manage the local road network with a view to securing the expeditious movement of traffic.

2.2.2 Local transport and highway requirements are set out within the Northamptonshire Transportation Plan and associated Daughter Documents, as well as Policies 15 to 18 of the Joint Core Strategy. These measures will support planned growth, ensuring better connectivity and more sustainable patterns of travel.

2.2.3 Northamptonshire County Council determines the need for site specific measures on a case by case basis in accordance with the impact, highway safety and ease of movement.

2.3.4 The Council will work closely with the highway authority to ensure any required transport infrastructure identified in the Local Plan or on a site specific basis is delivered, so long as need can be evidenced, and they meet the three tests set out in CIL Regulations.

2.3.5 The County Council considers that it is not appropriate to set a threshold level above which development will contribute towards transport infrastructure. Therefore, all new development is liable to pay contribution towards transport based on their proportionate impact on the local infrastructure, as identified through Transport Assessment or Transport Statement. Further guidance on contributing to transport infrastructure can be found in the current or any subsequent version of the Planning Obligations Framework and Guidance Document published by Northamptonshire County Council. Developers can also contact the County Council's Development Management team on 01604 366634.

2.3 Education

2.3.1 Population increase from new developments creates the need for additional school places and increased pressure on the use of education facilities. The Council will liaise with Northamptonshire County Council when considering educational infrastructure requirements in and as a result of new developments. Additionally it is

advised that prior to application developers undertake their own discussions with Northamptonshire County Council regarding their latest requirements and to ascertain what the most appropriate form of education infrastructure may be.

- 2.3.3 Primary and secondary education facilities are required on the West Corby Sustainable Urban Extension (Policy 32 c) of the Joint Core Strategy) and these should be provided by the developer as part of the planning permission for the development.
- 2.3.4 Further guidance on contributing to education obligations can be found in the current or any subsequent version of the Planning Obligations Framework and Guidance Document published by Northamptonshire County Council.

2.4 Green Infrastructure

- 2.4.1 Green infrastructure is a catch all term applied to the network of multi-functional green or water spaces and other environmental features that together are capable of delivering a wide range of environmental and quality of life benefits (ecosystem services) for local communities. For example, green infrastructure can help to reduce flood risk by reducing the volume and speed of rainfall flowing into rivers, while also helping to reduce water pollution and contributing to the objectives of the Water Framework Directive. Green infrastructure includes parks, open spaces, playing fields, woodlands, wetlands, grasslands, river and canal corridors and allotments. The greatest benefit will be gained when it is designed and managed as a multifunctional resource. For example, street trees add aesthetic quality to an urban area, but will also reduce airborne pollution, provide shade, mitigate wind chill and turbulence and increase biodiversity.
- 2.4.2 Policy 19 of the Joint Core Strategy aims to secure a net gain in green infrastructure through protection and enhancement of assets and the establishment of multi functional areas of green space. The policy identifies sub-regional and local green infrastructure corridors across North Northamptonshire. One of the key mechanisms to deliver Policy 19 and green infrastructure is criterion b) ii 'using developer contributions to facilitate improvements to their quality and robustness'.
- 2.4.3 Strategic allocations and other large development sites should be subject to master plans which translate green infrastructure aspirations into detailed proposals. For example, master plans should identify:
- Measures to establish multi-functional green spaces within the green infrastructure network
 - Opportunities to provide new wildlife habitats, facilities and routes to enhance assets and the linkages between them
 - Measures to support the strategic green infrastructure priorities of the Rockingham Forest (Policy 21)

- 2.4.4 On site provision of accessible green space will be made in accordance with the space standards contained within Policy 7b) of the Joint Core Strategy. For information on the provision of open space, sport and recreational facilities see section 2.5.
- 2.4.5 In November 2016 the Council published a green infrastructure map that further defined the existing resources and needs and opportunities to create or enhance the network of green and blue space in the Borough. To contribute towards the net gain in green infrastructure and enhance the assets and linkages between them, developers are encouraged to:
- Protect and enhance existing corridors
 - Identify and plug gaps in connectivity between green infrastructure assets
 - Ensure new green infrastructure assets connect to the wider green infrastructure network
 - Improve accessibility along existing green corridors subject to nature conservation or public safety interests
 - protect and enhance the local diversity and distinctiveness of the landscape character areas
- 2.4.6 When preparing their proposals, developers should consult with relevant agencies such as the Environment Agency, Northamptonshire County Council, the Wildlife Trust and the Local Nature Partnership as well as with the local parish council and community groups.
- 2.4.7 The need for planning obligations will be determined on a case by case basis from developments of 10 dwellings having regard to the tests set out in regulation 122 and 123 of the CIL Regulations.

2.5 Community Services and Facilities

- 2.5.1 Community services and facilities (sometimes referred to as community assets) are those that provide for the health and wellbeing, social, educational, spiritual, recreational, leisure and cultural needs of the community. They play a vital role in promoting the sustainability of communities and contributing to their self-reliance. Population increase from new development creates increased pressure on the use of community assets and new development should contribute to its provision.
- 2.5.2 Policy 7 of the Joint Core Strategy provides for new or enhanced community services and facilities to meet the needs arising from the development utilising, where possible, opportunities for the co-location of facilities or the use of existing suitable sites. It also supports the provision of accessible greenspace in accordance with Natural England's Accessible Natural Greenspace Standards and the Woodland Trust's Woodland Access Standard unless local standards have been adopted.
- 2.5.3 The Council is currently updating the evidence base in respect to open space, sport and recreation to meet the requirements of the NPPF and support the

implementation of the Joint Core Strategy. Until that evidence base is updated, the Council will continue to determine the level of planning obligations for the provision of open space, sport and recreational facilities using national policy and the Open Space, Sport and Receptions Study⁵ as a starting point for negotiations.

- 2.5.4 New community assets are required at the West Corby Sustainable Urban Extension (Policy 32 of the Joint Core Strategy) and these should be provided by the developer as part of the planning permission for the development.
- 2.5.5 Northamptonshire County Council's approach to County Council services including libraries and archives is set out in the current or any subsequent version of the Planning Obligations Framework and Guidance Document. The Council will work with the County Council to ensure that provision for cultural infrastructure is taken into account in planning obligations.

2.6 Employment and Skills Training

- 2.6.1 In accordance with paragraph 21 of the NPPF, the Joint Core Strategy sets out a clear economic strategy for the area which positively encourages sustainable economic growth and recognises the need to support programmes of skills development to assist the local workforce. Paragraph 8.10 of the Joint Core Strategy provides the justification for the use of planning obligations. Investment in employment and skills training, including recruitment policies and procedures is important in enabling Corby to achieve a stronger more sustainable economy.
- 2.6.2 The Council will assess on a case-by-case basis the need for a development to provide local employment and skills training for local residents. Planning obligations to secure such commitments will reflect the scale of the development and are only likely to be necessary on major developments sites of more than 10 dwellings or 1,000m² floorspace.
- 2.6.3 Developers will be requested to submit an Employment and Skills Strategy to the Council outlining opportunities that will be provided by the development and how they will be promoted and delivered. Such opportunities will include:
 - Construction training initiatives – e.g. Through Construction Futures which can provide apprenticeships and training opportunities
 - Up skilling through contributions toward higher education in high skilled fields of employment
 - Local procurement agreement – potential for local businesses to be included in tender lists

2.7 Biodiversity and Geodiversity

⁵ Executive Summary of the Open Space, Sport and Receptions Study available at <http://www.corby.gov.uk/sites/default/files/Open%20Space%2C%20Sport%20and%20Recreation%20Study%20%28exec%20summary%29%20%28January%202006%29.doc>

- 2.7.1 Policy 4 of the Joint Core Strategy identifies the potential need for the use of planning obligations in protecting existing biodiversity and geodiversity assets; and enhancing ecological networks. Such contributions towards biodiversity interests will assist the Council in discharging responsibilities under the Section 40 of the Natural Environment and Rural Communities Act 2006.
- 2.7.2 Further guidance on how biodiversity should be incorporated into the development process is provided in the Biodiversity SPD for Northamptonshire adopted in July 2016⁶.
- 2.7.3 The need for planning obligations will be determined on a case by case basis from developments of 10 dwellings or more following an assessment of any requirements for biodiversity and geodiversity.

2.8 Other Obligations

2.8.1 Other site specific measures may be necessary and planning obligations including the following areas may also be sought. Requirements will be assessed on a case by case basis having regard to the evidence and tests set out in regulation 122 and 123 of the CIL Regulations. It is recommended that applicants and developers engage with the Council at an early stage to determine if their specific proposal will result in a requirement for obligation such as:

- HGV parking
- Rockingham Forest
- Public art
- Waste
- Historic environment
- Police
- Healthcare
- Sustainable buildings
- Water Environment, Resources and Flood Risk Management
- Fire and Rescue
- Land affected by contamination
- Renewable and low carbon energy
- Rockingham MRC Enterprise Areas

2.8.2 The absence of detailed guidance for a particular planning obligation does not rule out the Council requiring one where that request meets relevant national guidance or legal requirements.

⁶ Biodiversity SPD for Northamptonshire is available at http://www.nnjpu.org.uk/docs/Biodiversity_SPD_final_Aug_2015.pdf