



**Nottinghamshire  
County Council**

# **Planning Obligations Strategy – 2017 update**

## **Draft for consultation**

**November 2017**

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# 1 Introduction

## The purpose of the Strategy

- 1.1 This document is the third edition of Nottinghamshire County Council's Planning Obligations Strategy and replaces the April 2014 document. As with previous editions, it details the scope and range of contributions towards infrastructure which Nottinghamshire County Council may seek from developers and land owners in order to make development acceptable in planning terms, including how these contributions will be calculated.
- 1.2 The Strategy fits with the overall aims of the National Planning Policy Framework by supporting sustainable development. By promoting a consistent and transparent approach to likely obligations, developers and landowners will be able to take into account the potential costs of a proposed development at the earliest stage. They can be assured that they are making a fair contribution to the infrastructure needed to support growth, and local residents can understand how proposed development in their area will be accommodated.
- 1.3 The County Council does not determine applications for housing and commercial development which often require planning obligations – these are a matter for District and Borough Councils in Nottinghamshire. The Strategy aims to assist District and Borough Planning Authorities in making decisions on planning applications. The County Council will separately work with District and Borough Councils on Local Plans and where appropriate, local groups in preparing Neighbourhood Plans to identify the overall level of infrastructure needed to support proposals. The aim of the County Council is to ensure that infrastructure is delivered in a timely manner and thereby ensure that new development does not have a negative impact upon the quality of life in Nottinghamshire.
- 1.4 A significant change to developer contributions has come into force since the previous edition of the Strategy, namely amendments to the Community Infrastructure Levy (CIL) Regulations which came into effect in April 2015. These put limits on the use of Section 106 obligations and specifically the number of contributions which can be 'pooled' to finance a single infrastructure project, or type of infrastructure. That maximum has been set at five contributions agreed since April 2010. This provision coming into force and the implications it will have for providing infrastructure for many Nottinghamshire County Council services is a further factor requiring an update of the Planning Obligations Strategy at this time.
- 1.5 The Government is currently reviewing the Community Infrastructure Levy and any further announcements that are made regarding its future will be taken into account in the final version of the 2017 Planning Obligations Strategy Update.

## County Council Objectives

- 1.6 The County Council's strategic objectives are set out in its four year plan "Your Place, Your Nottinghamshire 2017 – 2021". The Plan is based around four vision statements:
  - A great place to bring up your family;
  - A great place to fulfil your ambition;
  - A great place to enjoy your later life; and
  - A great place to start and grow your business.

- 1.7 By providing a mechanism for supporting the County Council's responsibilities for enabling the provision of new schools, libraries, waste and recycling and other services, when dealing with the impact of new development, the Planning Obligations Strategy will help to ensure that these vision statements are achieved.
- 1.8 The County Council is the responsible body for minerals and waste planning in the County. Potential obligations for mineral and waste development are included in Appendices 8 and 9 of this document. The County Council is the Lead Local Flood Authority and Local Highway Authority and obligations which could arise from these responsibilities are set out in Appendices 3 and 4.
- 1.9 The County is also responsible for improving the general health of people in Nottinghamshire. The Nottinghamshire Health and Wellbeing Board has endorsed the document [Spatial Planning for the Health and Wellbeing of Nottinghamshire](#) (2016) and a Planning and Health Engagement Protocol (2017) between local planning authorities and health partners in Nottinghamshire. Whilst planning obligations are unlikely to be required in most cases, County, District & Borough Planning Authorities and the NHS should consider the impact of local plans and development applications on health and wellbeing.

#### Infrastructure this Strategy covers

- 1.10 The Strategy covers the administrative area of Nottinghamshire County Council. Nottingham City Council is a unitary authority outside Nottinghamshire and therefore its area is not covered by this Strategy.
- 1.11 The Strategy does not cover services provided by lower tier authorities (District and Borough Councils), such as affordable housing or open space, or contributions that may be sought by other infrastructure providers, such as the NHS or the Police. It solely deals with services provided by the County Council.
- 1.12 The services for which the County Council may seek contributions are:
- Archaeology
  - Education
  - Flood Risk Management
  - Highways and Transport
  - Library Provision
  - Natural Environment
  - Waste Management and Recycling
  - Mineral Development
  - Waste Development.

- 1.13 Further information on these requirements can be found in Appendices 1 to 9.

#### Status of the Strategy

- 1.14 This Planning Obligations Strategy is a revision of the document which was adopted in 2014.

- 1.15 Whilst this document will have no statutory status, it is intended to be a material consideration in the determination of planning applications and if development proposals do not comply, the Strategy should be capable of being used to justify the refusal of planning permission by a Local Planning Authority. The County Council encourages District and Borough Councils to endorse the Strategy and use it in determining planning applications.
- 1.16 The County Council recognises that the key basis for determination of planning applications is the relevant Local Plan and Neighbourhood Plan (where this exists). The County Council will provide necessary evidence at the time of Plan making about what infrastructure is needed to support Plan proposals in order to provide the framework for future contributions from development towards County Council services. Where Local Planning Authorities have Supplementary Planning Documents (SPDs) covering planning obligations, this document will inform the preparation or review of any such SPDs by the Local Planning Authorities.
- 1.17 The Planning Obligations Strategy will in future be published as an online resource on the County Council's [Planning Obligations Strategy web page](#). which will be updated as required to reflect changes to national policy guidance and updated figures for calculating obligations. Where changes are made notification of this will be given to Local Planning Authorities. Where significant changes are intended, these will be subject to re-consultation before being adopted.
- 1.18 This document should be read in conjunction with relevant Local Plan Policies and any Supplementary Planning Documents (SPDs) produced by the County Council and District / Borough Councils.

## 2 Purpose, Use and Application of Planning Obligations

- 2.1 Planning law recognises that it is reasonable to expect that developers should contribute towards the costs of services, infrastructure or resources that would not have been necessary but for their development.
- 2.2 The 1990 Town and Country Planning Act (as amended by the Planning and Compensation Act 1991) established the statutory framework for developer contributions in the form of Section 106 planning obligations. The Act provides that a planning obligation may:
- Be unconditional or subject to conditions;
  - Impose any restriction or requirement for an indefinite or specified period; and
  - Provide for payments of money to be made, either of a specific amount or by reference to a formula, and require periodical payments to be paid indefinitely or for a specified period.
- 2.3 The National Planning Policy Framework (NPPF)<sup>1</sup> and the Planning Practice Guidance<sup>2</sup> are the Government's overarching national planning guidance and define planning obligations as being "A *legally enforceable obligation entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal.*"
- 2.4 Legal agreements and any planning contributions run with the land in the same way that a planning permission does. This means that they are enforceable against the developer who originally entered into the agreement and any subsequent person acquiring an interest in that land. These legal agreements must be registered as a land charge and will form part of the planning register, available for public inspection.
- 2.5 The Community Infrastructure Levy Regulations (as amended) and paragraphs 203 - 206 of the NPPF set out information on the use of planning obligations and the tests which should be applied. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. However, planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Planning obligations should only be sought where they are:
- Necessary to make the development acceptable in planning terms;
  - Directly related to the development; and
  - Fairly and reasonably related in scale and kind to the development.
- 2.6 The NPPF seeks to ensure that obligations allow development to proceed in a viable manner, taking into account market conditions.
- 2.7 The Planning Practice Guidance states that local authorities should not seek contributions from developments of 10 units or less, and which have a maximum combined gross floorspace of no more than 1,000sq metres. Where the County Council is consulted or are made aware of such developments, unless there is clear evidence available that the

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<sup>1</sup> <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

<sup>2</sup> <https://www.gov.uk/guidance/planning-obligations>

application is below this threshold, the County Council may seek a contribution where a need for this is required to mitigate the impact of development.

- 2.8 If a legal agreement makes provision for a commuted sum to be paid to the Local Planning Authority (LPA), the money must be spent within a reasonable time frame. This period is usually five years but may be longer, if deemed appropriate. If the money is not spent within the agreed period, the developer should be reimbursed with the outstanding amount, together with any interest accrued, unless the agreement is varied.
- 2.9 This Strategy sets out the likely level of planning obligations which may be sought in relation to Nottinghamshire County Council's functions and services. However, it is acknowledged that planning obligations may have an impact on the overall financial viability of development. In such circumstances, Nottinghamshire County Council would encourage open discussions with the developer and the LPA (which will include the County Council for Minerals and Waste planning applications) to achieve the most satisfactory outcome, without an undue burden being placed on either the developer or the County Council .

#### Relationship between Section 106 Obligations and the Community Infrastructure Levy

- 2.10 The Community Infrastructure Levy (CIL) is a funding mechanism intended to help fund major infrastructure to support the development of a wider area, rather than to make individual planning applications acceptable in planning terms. In Nottinghamshire, Bassetlaw District Council, Gedling Borough Council and Newark and Sherwood District Council have each introduced a CIL. Developers and land owners will thereby be liable in these areas to pay the Community Infrastructure Levy and enter into a Section 106 Agreement also.
- 2.11 Where a Community Infrastructure Levy is in place, Local Planning Authorities are required to set out in a 'Regulation 123 List', the types of infrastructure or individual projects they will use the Community Infrastructure Levy to fund. The items on the 123 list cannot then be funded by Section 106 obligations. Applicants are advised to consult the relevant District / Borough Council to ascertain the current Regulation 123 list which applies in the area concerned.

### 3 County Council approach to Planning Obligations

3.1 It is important that the County Council, District / Borough Councils, developers and their agents work together to identify and negotiate the contributions which may be sought to mitigate the impact of development.

3.2 The County Council's Planning Policy team within the Place Department will provide a single point of contact for developers and LPAs regarding planning obligations related to the County Council's services. It can be contacted via [planning.policy@nottscc.gov.uk](mailto:planning.policy@nottscc.gov.uk) or 0300 500 80 80. The team provides advice on planning applications sent to the County Council for comment and will provide to the local planning authority following internal consultation:

- Advice on planning obligations sought;
- Liaison concerning the drawing up of legal agreements; and
- Information on the receipt and use of all planning contributions received by the County Council in order that a clear audit trail can be established.

3.3 In addition to the above:

- The County Council as Highway Authority will continue to assess any development which is likely to result in a material increase in the volume of traffic or material change in the character of traffic entering or leaving a classified road or proposed highway and seek local highways and transport contributions; and
- The County Council Flood Risk Management Team will work closely with Districts / Boroughs and developers to secure suitable, feasible and sustainable drainage solutions for new developments that are sympathetic to wider flooding issues in an area.

3.4 The County Council will normally only seek planning obligations from 'major' developments which are defined as follows<sup>3</sup>:

- Residential development for 10 dwellings or more where the provisions of the Planning Practice Guidance are met (see paragraph 2.7 above);
- Residential development on a site in excess of 0.5 hectares where the phasing of developments will add up to 10 dwellings or more;
- Non-residential development of 1,000 square metres or more gross floor space;
- Non-residential development on a site of at least 1 hectare.

3.5 When considering infrastructure and potential planning obligations requirements, the County Council will:

- Act in accordance with relevant planning policies and other policy documents including the Government's National Planning Policy Framework (NPPF);
- Provide a coordinated response regarding infrastructure implications to the District / Borough Council consultations on all Local Plans, development briefs, planning applications and informal enquires;<sup>4</sup>

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<sup>3</sup> Unless these differ from locally adopted policies

<sup>4</sup> Where a pre-application submission is made the County Council will provide an "in principle" response which sets out whether contributions are likely to be sought. Detailed information about the value of contributions will be provide should the proposal move forward to a formal application.

- Provide a coordinated response<sup>5</sup> to planning applications, within the consultation timescales, unless otherwise agreed with the relevant District or Borough Council;
- On the occasions that the County Council is approached directly by a landowner, developer or agent requesting information on likely developer contributions, the County Council will provide the advice but copy correspondence to the relevant local planning authority;
- Provide evidence and reasoned justification for infrastructure and contributions sought based on planning policies for requests for developer contributions;
- Identify a named individual to coordinate the County Council's response;
- Assess the capacity of existing infrastructure and services and particular area needs in areas planned for growth in District / Borough Local Plans and the infrastructure and service needs of any specific development proposal;
- Provide its coordinated response to the relevant District and Borough Councils and developers, and will provide draft heads of terms for incorporation into Section 106 obligations;
- Attend meetings with the relevant District and Borough Councils, applicants and their agents when requested and justified by the Local Planning Authority to discuss draft Section 106 heads of terms;
- Consult District / Borough Councils on County planning applications that it receives (in accordance with its statutory duty);
- Where requested by the relevant local planning authority, support the provision of evidence for planning appeals, including hearings and inquiries where the decision is supported; and
- Participate in District / Borough Council's Development Team meetings when requested.

3.6 As part of an approach of working together to deliver sustainable development which provides the supporting infrastructure for the community the County Council asks that District and Borough Councils:

- Consult the County Council on scoping opinions, pre-application proposals and applications for planning permission for 'major' development (as defined on page 7);
- Allow a 14 day period (10 working days) for baseline information requests for all screening/scoping opinions and pre-application consultations;
- Allow a statutory 21 day period (15 working days) for responses on all consultations on planning applications, extended by agreement;
- Notify the County Council of proposed developments that are likely to involve County Council requirements prior to pre-application if available;
- Inform the County Council as soon as practicably possible of any subsequent amendments to the proposal if the County Council's requirements are affected.

### Viability

3.7 As required by the National Planning Policy Framework, in pursuing sustainable development local planning authorities must in determining planning applications, take into account the infrastructure requirements arising from a development and the viability of that development. In making such determinations, local planning authorities are encouraged to

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<sup>5</sup> The Highways Authority and Flood Risk Management Teams may respond separately to consultation requests on a case by case basis, in these cases they will endeavour to meet statutory deadlines.

liaise with, and take the views of, the County Council into account and this will be balanced with local matters and available evidence.

- 3.8 The County Council notes that there is increased use of viability assessments to justify reduced or nil planning obligations . At the same time there has been a significant reduction in the level of public funding available to deliver necessary infrastructure. The result of these pressures has been that two key new issues are fundamental to any planning decision: sustainability and viability.
- 3.9 It is clear that a balance needs to be struck between supporting economic growth and ensuring that new developments do not have an adverse impact on existing and future communities.
- 3.10 The County Council will work with developers and Local Planning Authorities to help achieve planning obligations whilst being sensitive to the needs of development, eg by considering the use of flexible trigger points for payment of contributions in order help ensure development proposals remain viable.
- 3.11 The County Council will require clear, transparent and independent evidence to be provided where viability is cited by a developer as a reason for not providing contributions to the levels required. Nottinghamshire County Council will ask to inspect copies of viability appraisals which have been submitted to the District / Borough Council. This will allow the Council to review the evidence and, where necessary, brief senior officers and Members on the reason why reduced / nil contributions may be justified in certain circumstances and what the implication of this will be on delivering the infrastructure required to mitigate the impact of development.
- 3.12 Nevertheless, having been tested at appeal and having been accepted by developers over time, the County Council considers that the general level of contributions outlined in this document are reasonable and in general should be met by the development, otherwise the development will be unacceptable. This document, which indicates what level of contributions are needed, should be taken into account in the financial appraisal of proposed development at an early stage, prior to agreement over other negotiable items such as land price.
- 3.13 The County Council recognises that it is the District and Borough Councils who will determine most planning applications and consider the obligation(s) requested in light of the viability of the development. In circumstances where Local Planning Authorities do not accept the County Council's full request for developer contributions, a system for reviewing of planning obligations as the development proceeds will be required and will be expected to be incorporated into any agreement. The methods for this will differ on a case by case basis. However, for most cases, the developer will be expected to provide financial information for the particular development to the local authorities and will be liable for all costs incurred by the Councils in assessing any viability report.
- 3.14 For larger scale developments where some degree of phasing is likely, it may be that whilst full policy compliant requirements cannot be met at the time when any Viability Assessment is undertaken, positive changes in market circumstances over time may allow additional contributions to be made whilst maintaining the economic viability of development. The County Council will work with Local Authorities in seeking to achieve such Contingent

Deferred Obligations, when the County Council's full request for developer contributions is not accepted.

#### Impact of Reduced or Zero contributions

- 3.15 There may be certain circumstances, e.g. due to viability, where a developer may put forward a case for reduced or zero contributions. This can have a significant impact on the delivery of infrastructure, especially where there are no other funding sources available. Where it becomes evident that a reduced or zero contribution will be secured as part of an application and the County Council sees no justification, the County Council may submit a formal objection to the District / Borough Council.

#### Land for infrastructure

- 3.16 There will be some developments where land will be requested to help deliver infrastructure which is required to mitigate the impact of development, e.g. new schools / land to allow future extension of a school. The County Council will liaise with District / Borough Councils and developers and their agents in respect of the amount of land required and the timescale for its transfer to the County Council.
- 3.17 The following sets out the serviced site requirements where land is being provided for a new school:

*A site remediated to an appropriate standard and without the presence of contamination, ordnance or protected species with all necessary & safe access and rights of access (including free and uninterrupted construction access and to enable the secure passage of people on opening), gas, electricity, potable water, foul & storm drainage, telecommunications, broadband internet and any other services or infrastructure appropriate (to adoptable standard where applicable) to the extent necessary to supply a Primary School (including a Sprinkler installation). Surface water drainage shall be provided to accommodate the 1 in 30 year design flow with attenuation up to 1 in 100 year plus climate change provided within the overall development site, where the utility is to be adopted with an executed agreement (if required) with the relevant body and transferred with confirmation that the infrastructure will be adopted without further payment to the relevant body.*

#### Signing of Legal Agreements

- 3.18 Where the proposed development triggers a County Council requirement in terms of infrastructure, the County Council requires that it is a signatory to the agreement. As part of the process for preparing the legal agreement, District and Borough Councils should consult the County Council on the content of the draft document. This is to allow the County Council to provide input regarding the value of the various contributions (or in the case of land area and transfer requirements), the projects on which monies will be spent and the triggers for payment or provision of land.
- 3.19 In addition, where a legal agreement includes a requirement for monies or a physical contribution to be made to the County Council, the developer will be required to notify the County Council in writing of when development commences and when triggers for payment or provision of infrastructure are reached.

### Indexation

- 3.20 In order to ensure that planning obligations provide for the actual costs of the infrastructure for which they are levied, all financial contributions agreed in legal agreements will be index-linked appropriately to reflect increases in build costs between the date the agreement is signed and the actual delivery date of the service or facility.
- 3.21 The indexation which will be used for County Council obligations will be the BCIS All-In Tender Price Index published by the Office for National Statistics contained in the monthly Digest of Statistics (or contained in any official publication) or such other index as may from time to time be published in substitution. Where local bus service contributions are secured the County Council will use the CPT Cost Index.

### Legal Fees

- 3.22 The County Council will recharge the developer its legal costs incurred in agreeing planning obligations for its services. These costs are payable for work done regardless of whether agreements are ultimately completed. Legal fees will be recharged on a time expended basis.

### Payment of monies

- 3.23 Where agreed by District / Borough Councils, funds payable in relation to the County Council's requirements will be paid directly by the developers to the County Council. In other cases, the sums will be forwarded by the District / Borough Councils to the County Council when the terms and conditions set out in the Section 106 agreement are met and the monies have been received by the District/Borough Councils. In these cases the County Council will expect the District / Borough Council to:
1. Commit to the payment of developer contributions to identified County Council projects, as set out in the S106 agreement (once monies have been received by the District / Borough Council for those identified projects); and
  2. Pay the required developer contributions upfront to allow funds to be spent on the identified project.

### Transfer of monies

- 3.24 In certain cases, in particular relating to education requirements, there may be occasions where S106 monies will need to be transferred to other organisations, e.g. The School Academy Trust. Where this occurs the County Council will enter into a Grant Agreement which will set out:
- The conditions of the grant;
  - The party to whom the monies are to be paid;
  - The amount of monies to be transferred and how this will be paid;
  - The project for which it will be used to deliver; and
  - The clawback period for spending the monies and the process for recovering it in the event that it is not spent in the time period specified.

## Appeals

- 3.25 In the event that planning applications are refused by the Local Planning Authority, representations pertaining to infrastructure need may be recorded as objections and thereby set out as reasons for refusal. The County Council will assist Local Planning Authorities in defending such reasons for refusal at any subsequent appeal, and where considered appropriate, will submit a Planning Obligations Position Statement to the Inspector setting out the various contributions sought and how these requests comply with the three statutory tests. Clearly, Section 106 agreements may be entered into prior to the appeal to overcome the need for Nottinghamshire County Council to raise such objections with the appeal inspector.
- 3.26 Where an appeal is submitted to the District Council, the County Council requests that it is notified. This is to ensure that it has sufficient time to consider the need to submit additional information to the Planning Inspector and, if being determined by a Public Inquiry, whether it needs to attend to set out its position on the planning obligations sought.
- 3.27 The County Council will work with District / Borough Councils, developers and their agents in respect of all aspects relating to the provision of infrastructure that is required to mitigate the impact of development as set out above. The following sections of the document set out in detail the various contributions which may be sought by the County Council.