



# High Peak Borough Council

*working for our community*

## Local Development Framework



Planning Obligations

Supplementary Planning Document

SPD 1

Adopted December 2005



# Contents

	<b>Page</b>
<b>1.0</b> Introduction	4
<b>2.0</b> Role of Supplementary Planning Document	4
<b>3.0</b> Definition and Purpose of Planning Obligations	4
<b>4.0</b> Review of the Current System	5
<b>5.0</b> The Use of Obligations	6
<b>6.0</b> Scheme Viability	9
<b>7.0</b> Procedure	9
<b>8.0</b> Topic Areas for which Obligations will be sought	13
<b>1.</b> Affordable Housing	13
<b>2.</b> Open Space	14
<b>3.</b> Education	16
<b>4.</b> Heritage	18
<b>5.</b> Enabling Development	18
<b>6.</b> Transportation	19
<b>7.</b> Drainage Works	21
<b>8.</b> Land Management (Woodland and Nature Conservation Sites)	22
<b>9.0</b> Implementation and Monitoring	23
Appendix	24

## **1.0 Introduction**

- 1.1** This document provides Supplementary Planning Document (SPD) in respect of planning obligations, or what is commonly referred to as 'planning gain'. It has been prepared having regard to relevant national policy guidance in PPGs, PPS's and Circulars, Regional Spatial Strategy for the East Midlands (RSS8) and to the policies of the development plan which comprises the Derbyshire Structure Plan and the High Peak Local Plan. It supplements the policies of the development plan and should be read in conjunction with other SPD produced by the Borough Council. The Local Plan policies which this guidance refers to are listed in the table on page 8.
- 1.2** The purpose of planning gain is to mitigate the impacts of proposed new development. This may have significant financial implications and developers, applicants and their agents will therefore need to take this guidance into account when seeking planning permission and landowners will need to consider its implications when contemplating the disposal of their land.
- 1.3** It is envisaged that this guidance will be reviewed as appropriate in the light of experience of the process, local circumstances and changes resulting from the Government's review of the system.

## **2.0 The Role of Supplementary Planning Document**

- 2.1** Supplementary Planning Document (SPD) provides non-statutory planning guidance, which supplements the policies of the development plan and is a material consideration in the determination of planning applications.
- 2.2** This document provides a transparent and accountable procedure by which planning obligations are negotiated and secured for development within the Borough.
- 2.3** The aim is to:
- provide as much certainty as possible to landowners, prospective developers and other interested parties;
  - ensure that the process is fair and transparent;
  - provide a clear framework to decide priorities when there are conflicting requirements.

## **3.0 Definitions and Purpose of Planning Obligations**

- 3.1** The power of a local planning authority to enter into a planning obligation with the owner of the land in its area is contained within section 106 of the Town & Country Planning Act 1990 (as amended by the Planning & Compensation Act 1991). Planning obligations made under s.106 may be entered into by agreement with the Borough Council (commonly known as 's.106 agreements') or unilaterally. Planning obligations do not have to be negotiated and can be volunteered (a unilateral undertaking).
- 3.2** A planning obligation may:

- restrict development or use of land in a specified way;
- require specific operations or activities to be carried out;
- require the land to be used in a specified way; or
- require sums of money to be paid to the planning authority.

**3.3** Advice on the proper use of conditions and planning obligations is contained in Circulars 11/95 and 5/05. However, the overarching guiding principle is that developers should only be required to provide benefits through planning obligations if it would be wrong in land-use planning grounds to grant planning permission without them.

**3.4** Circular 5/05 requires planning obligations to meet five tests. They must be:

- necessary
- relevant to planning
- directly related to the proposed development
- fairly and reasonably related in scale and kind to the proposed development
- reasonable in all other respects

**3.5** Traditionally, planning obligations have mainly related to larger schemes including local transport and highway improvements, expansion of school places and improvements to the public realm. Nationally, the use of planning obligations has, in recent years, broadened to cover smaller schemes and an increasing range of service areas such as affordable housing and open space provision.

**3.6** It is undesirable for development to create an undue additional burden on the community or public purse so developers should accept the financial consequences of their schemes. Where possible, the Council will negotiate with developers as part of the process of determining planning applications and attach conditions to planning permission in order to ensure acceptable development in line with the Local Plan's 'Vision and Objectives', including the provision of all relevant services, infrastructure and facilities. In circumstances where it is not possible to adequately achieve the Council's planning aims through the imposition of conditions, the Council will seek to achieve these aims by way of a planning obligation.

## **4.0 Review of the current system**

**4.1** The Government has been reviewing the planning system and the new Planning & Compulsory Purchase Act received Royal assent in May 2004. Section 46 of this Act provides replacement provisions for planning obligations which are now referred to as 'planning contributions'. Regulations made under the Act would enable an applicant to offer a 'planning contribution' either:

- by making the contribution through a negotiated agreement; or
- by paying an optional 'planning charge' by paying money; or
- providing a benefit in kind

**4.2** The Government published a Circular in July 2005 Circular 05/2005, setting out its policy on planning contributions, which replaced Circular 1/97.

Regulations, detailing how the new system would work, are not expected until early 2006.

- 4.3** This SPD will be updated to take account of any reforms accordingly.

## **5.0 The Use of Obligations**

- 5.1** The High Peak Local Plan provides the context for this SPD. The Local Plan refers to a variety of circumstances in which planning obligations may be used. However, planning obligations may be appropriate in certain circumstances even if these particular policies are not relevant, provided that the five tests of national policy guidance are met.
- 5.2** New development, both commercial and residential, may place increased demands on existing services in the Borough in terms of, for example, social, educational, community, sport, recreation and leisure facilities and public transport provision. The Council will wish to ensure that private developers, where appropriate, make a contribution to meeting these community requirements. Additionally, there may be circumstances where a broader planning obligation (such as the provision of affordable housing, or a long distance footpath) can only be achieved if it is included in the development concerned. There is current Government guidance on the provision of affordable housing.
- 5.3** Where the existing infrastructure is inadequate to meet the needs of new development, the costs of providing new or improved infrastructure directly related to those needs is a developer cost and should be met by the landowner or developer. Planning obligations can ensure relevant infrastructure and facilities are provided, enhance the quality of a development and enable schemes to go ahead which would otherwise be refused planning permission.
- 5.4** Planning obligations are intended to provide services, infrastructure and facilities, both on-site and off-site. Planning obligations may also include measures to ensure the development takes place in an agreed way, for example, by setting out the appropriate phasing of development, and measures to meet other policies and objectives, such as the protection of the environment or securing the preservation or enhancement of heritage assets including Conservation Areas. Requirements for individual developments will depend on the nature of the proposals and specific site circumstances. The table below sets out the types of benefits, which could be included in an obligation.
- 5.5** Most planning applications will not require an obligation. There are many developments where planning conditions can adequately deal with on-site works and even the provision of works or facilities outside the application site. This may be achieved through the imposition of a condition preventing the occupation or commencement of a development until the works or facilities in question have been provided (such conditions are often known as 'Grampian conditions'). When considering applications, the Council will consider whether planning conditions can adequately control all the direct and indirect impacts

of the development and secure the desired benefits, before it decides that a planning obligation is necessary. The circumstances where an obligation will be required will be determined by the precise merits of the case, taking into account the location, scale and nature of the proposal. Pre-application discussion will be particularly useful in giving consideration to whether an obligation is likely to be required.

- 5.6** In the case of highway works, the provisions of s278 of the Highways Act 1980 enable land owners to make financial contributions towards the carrying out of highway works. This is the preferred option for dealing with highway works.
- 5.7** Except for affordable housing, the basis for any contribution is that there is an identified impact arising from the development, and that the contribution is a measure designed to mitigate the impact. The contributions may involve payment of capital or revenue contributions, or, in appropriate circumstances, a commuted sum for maintenance. On the other hand, the developer in the form of provision may make contributions in kind, including the dedication of land or the provision of buildings and public transport facilities, for example. There is no direct link between impact and mitigation in the special case of affordable housing, which is based solely on Government advice.

Topic Area	Local Plan Policies Supporting Requirement	Benefits Could Include
<b>Housing &amp; Affordable Housing</b>	H2 (housing & infrastructure in Glossop town) H4 (housing in Buxton) H9 (affordable housing for local needs) H10 (rural exceptions affordable housing) H12 (public local open space)	<ul style="list-style-type: none"> <li>• Infrastructure provision</li> <li>• Open space provision Financial contributions to open space improvements</li> <li>• Maintenance of open space</li> <li>• Affordable housing</li> </ul>
<b>Environment &amp; Open Space</b>	OC4 (landscape character & design) OC8 (sites of nature conservation importance) OC9 (protected species) OC10 (trees and woodlands) BC8 (demolition in conservation areas) BC11 (demolition of listed buildings) BC12 (archaeological and other heritage features) BC13 (historic parks and gardens) H12 (public local open space)	<ul style="list-style-type: none"> <li>• Tree planting / landscape improvements</li> <li>• Environmental conservation measures</li> <li>• Restoration and improvements to listed building</li> <li>• Preservation and enhancement of conservation areas</li> <li>• Preservation or enhancement of historic features</li> <li>• Financial contributions to open space improvements</li> <li>• Maintenance of open space</li> <li>• Improvements to playgrounds and sports facilities</li> </ul>
<b>Transportation</b>	TR4 (traffic management) TR5 (access, parking & design) TR6 (buses & public transport) TR8 (freight) TR10 (pedestrian facilities) TR12 (cycle facilities) TR14 (protection & construction of trails)	<ul style="list-style-type: none"> <li>• Production of a Transport Assessment</li> <li>• Green Travel Plans</li> <li>• Highway improvements</li> <li>• Pedestrian/cycle routes</li> <li>• Park &amp; ride facility</li> <li>• Financial contributions to public transport projects and facilities</li> <li>• Provision of public car parking</li> </ul>
<b>Community</b>	CF2 (school and college facilities)	<ul style="list-style-type: none"> <li>• Upgrading education facilities</li> <li>• Other community facilities</li> </ul>
<b>Drainage</b>	GD10 (flood prevention)	<ul style="list-style-type: none"> <li>• Flood prevention scheme</li> </ul>

## 6.0 Scheme Viability

- 6.1 The use of obligations will vary depending on the type of development proposed. It may be necessary to take account of the viability of a scheme when considering the extent and nature of the obligation.
- 6.2 In some cases the imposition of all the legitimate planning obligations could render the development of a site unviable. This will often be the case where a site has abnormal constraints (e.g contamination and/or poor bearing capacity) or a development involves the re-use of an existing building, particularly if the building is listed or in a conservation area.
- 6.3 In the worst case a development may be rendered unviable by the imposition of any obligations. In other cases it may be reasonable to impose some obligations but not all. In such cases it will be necessary to prioritise the list of potential obligations.
- 6.4 Whilst each case needs to be assessed on its own merits as a general rule the priority order will be as follows:
  1. Site infrastructure works, on and off-site needed to achieve the development of the site (e.g highway and drainage works)
  2. Obligations needed to protect important features on the site (e.g nature conservation management, etc.)
  3. Affordable housing
  4. Open space/sustainable transport provision directly serving the site
  5. Provision/improvement of community facilities

***Requirements***

The Council do not wish to prevent the development of sites within the Borough by seeking obligations, which would render the proposal unviable financially. However, the Council will require evidence from the developer to substantiate a claim that the obligation sought would render the scheme unviable. Such evidence would be expected to include a financial appraisal of the development or additional survey work to substantiate existing reports, for example contamination surveys. Commercially sensitive information will be treated as confidential. The Council may decide that a s106 obligation is still required and will seek to ensure that the benefit sought is reasonable in scale and in kind to the specific development proposal and local circumstances.

## 7.0 Procedure

- 7.1 For some development sites there will be a concept statement, development brief or reference in the Local Plan indicating the Councils requirements with regard to s106 obligations. For other sites the requirements will be determined through negotiation.

**7.2** If it is considered that a planning obligation is necessary to enable planning permission to be granted, then the following will occur: (this sequence is set out in more detail in the flow chart overleaf).

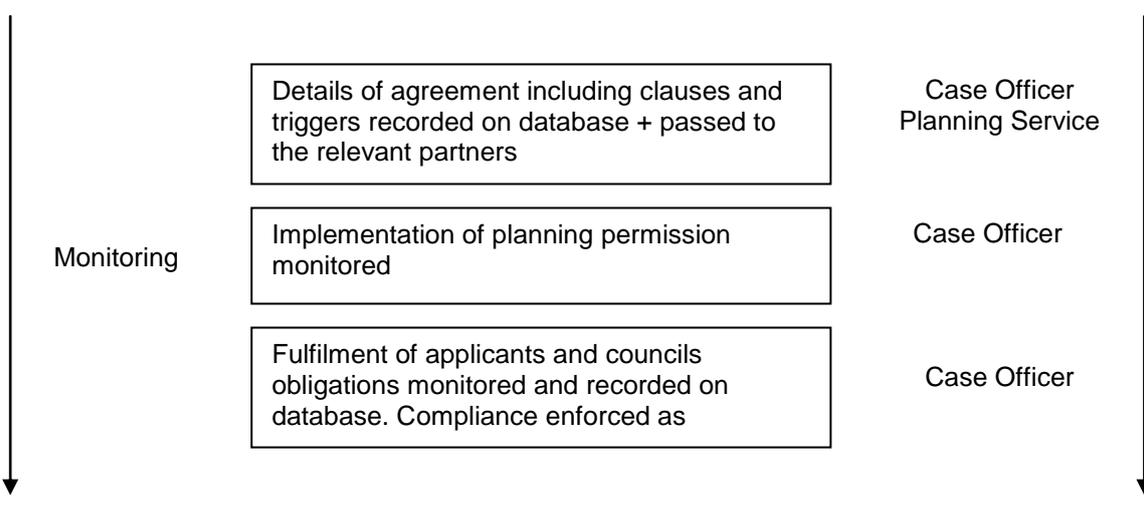
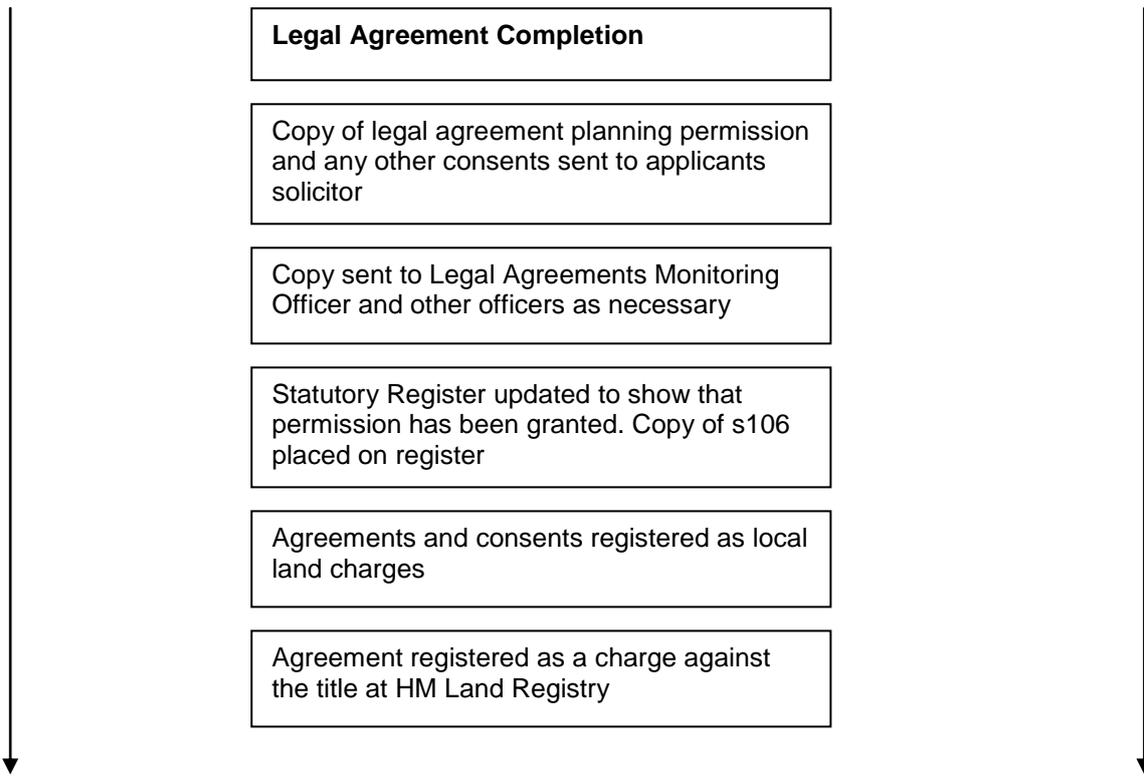
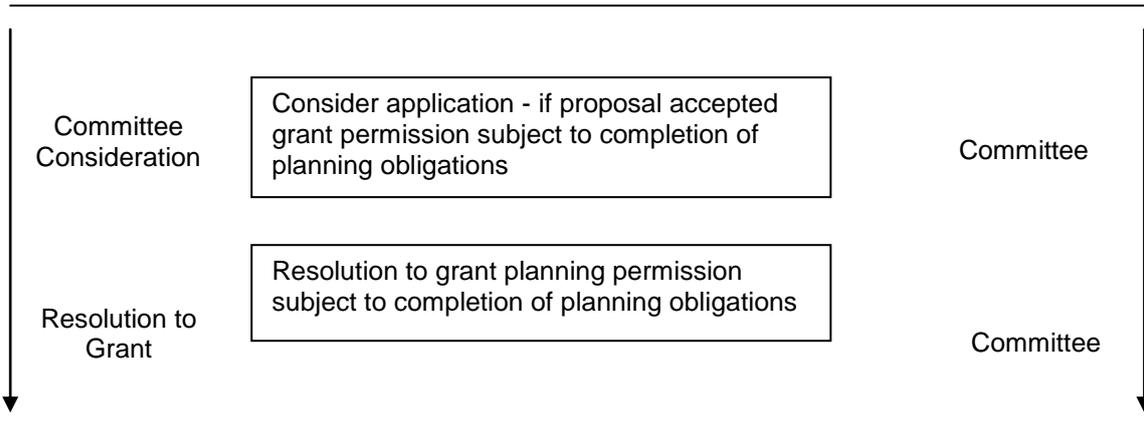
- The case officer will raise the potential requirement for an obligation with the applicant/developer at the earliest opportunity in order to facilitate the obligation. Developers are actively encouraged to seek pre-application meetings so that the likely need for an obligation can be identified before the application is submitted.
- In the case of an outline application, the requirement for an obligation will generally be introduced at this stage rather than reserved matters stage.
- The relevant Council officers and the applicant should normally seek to agree the scope (heads of terms) of the obligation before Committee considers the planning application. (A case study with an example of heads of terms is included in the Appendix).
- Once the Committee has resolved to grant planning permission and agreed the terms of the obligation, the Council's Legal Service will prepare the legal document and the applicant will be expected to meet their reasonable costs.
- Alternatively, the applicant may prepare a draft agreement and submit it to the Council.

**7.3** Planning permission will not be issued until such time as both parties have signed the obligation. Planning obligations run with the land and therefore if ownership changes, the new owner will also be bound by the obligation.

**7.4** The Council is required by legislation to put planning obligations on the planning register so that the decision-making process is as transparent and open as possible.

## Procedure for Negotiating, Preparing and Completing a Planning Obligation

Stage	Actions	Responsibility
Pre Application	Applicant to consider relevant SPD and Development Plan policies prior to submitting application and submit proposals for planning obligations where appropriate	Applicant Case Officer
Formal Consideration of Planning Application  and	Need for planning obligations established and applicant informed	Case Officer
	Standard letters sent to applicant e.g. title information	Legal
	Agreed heads of terms and triggers included in committee report	Applicant/Case Officer/Legal
Preparing the Planning Obligations	Draft obligations sent to applicant's solicitors for consideration	Legal
	Further negotiation meetings held if necessary	Applicant/Case Officer/Legal
	Before agreement is signed, the Council to ensure all financial and title matters are in order	Legal



## 8.0 Topic Areas for Which Obligations will be sought

8.1 This section provides guidance on particular types of contributions that might be sought from individual developments. Whilst the guidelines provide a helpful start point, it is important to emphasise that each application will be dealt with on its own merits on a case-by-case basis. The list is not exhaustive and it is recognised that there may be other areas where planning obligations may be sought.

### a) **AFFORDABLE HOUSING**

#### **National Policy Guidance**

8.1.1 PPG3 'Housing' sets out the Government's policy on housing and how the planning system can contribute to the overall supply of affordable housing. Circular 6/98: 'Planning and Affordable Housing', provides a clearer framework both in the preparation of Local Plans and practical advice on how affordable housing can be provided through negotiation with developers. Both documents emphasise that the provision of affordable housing is a material consideration and where the need for an element of affordable housing is established, a failure to apply this policy could justify the refusal of planning permission.

8.1.2 The ODPM Consultation Paper on a Proposed Change to PPG3 'Housing' (January 2005) states *'Government policy is to create sustainable communities that offer a wide range of housing and are socially inclusive...Planning has an important role to play through the provision of a mix of housing which addresses the needs of households, including in terms of what they can afford.'*

8.1.3 Regional Spatial Strategy for the East Midlands (RSS8) recognises a substantial need for additional affordable housing which is to be addressed at the local level in the light of housing needs surveys.

#### **Local Plan Policy**

8.1.4 In line with Planning Policy a significant level of affordable housing will be delivered through the consideration of planning applications to meet the Council's assessment of housing needs in the Borough. Policy H9 of the Local Plan provides policy guidance to developers on the Council's requirements for affordable housing when considering planning applications for housing development.

8.1.5 Guidance on the use of conditions and planning obligations in the provision of affordable housing is provided in the separate SPD 'Housing need in the Council'. This should be referred to for further information on this topic.

## **Requirements**

Where the threshold for affordable housing is exceeded, the need identified and the amount of provision agreed in accordance with the thresholds and requirements of Local Plan policy and the SPD 'Housing Need in the Council', applicants will be expected negotiate an obligation to secure the provision of affordable housing. Where appropriate it will be beneficial to involve a Registered Social Landlord at an early stage (R.S.L.) and it may be helpful for them to be a signatory to the agreement where possible.

The planning obligation is likely to include the following clauses:

1. Ensure that affordable dwellings are transferred to a R.S.L at a price that will allow the R.S.L. to rent or enter a shared equity agreement at affordable levels;
2. State the number and types of units and specify their location on a plan;
3. Ensure that affordable dwellings are built to a suitable specification;
4. Ensure a suitable financial contribution in lieu of on-site provision where the Council agrees this approach;
5. Ensure that rented accommodation is genuinely affordable;
6. Ensure that shared equity accommodation is genuinely affordable;
7. Ensure that local people in housing need occupy affordable accommodation;
8. Ensure that monies gained from stair-casing sales in shared equity housing are used to provide affordable housing in the area of need identified;
9. Prevent completion/occupation of a specified proportion of the general housing until the affordable housing has been built/occupied;
10. Ensure the affordable housing element in a scheme remains affordable in perpetuity.

## **b) OPEN SPACE**

### ***National Policy Guidance***

- 8.2.1** PPG17 'Planning for Open Space, Sport and Recreation' calls for local authorities to carry out assessments and audits of needs, existing provision and opportunities, in respect of open space, sports and recreational facilities. These *'will allow local authorities to identify specific needs and quantitative or qualitative deficits or surpluses in their areas. They form the starting point for establishing an effective strategy for open space, sport and recreation at the local level and for effective planning through the development of local policies in plans.'* The Council plans to undertake such an assessment during 2004.

## **Local Plan Policy**

- 8.2.2** Local Plan Policy H12 contains open space standards and requirements to be provided as part of residential developments. The Audit of Sports Facilities undertaken by the Derbyshire and Peak Sport & Recreation Forum has recently supplemented this policy. A series of greenspace strategies are also to be prepared.
- 8.2.3** Policy H12 states that assessments and standards of children's outdoor sports facilities are based on those recommended by the National Playing Fields Association Standard which requires a minimum of 2.4 hectares of outdoor playing space per 1,000 population. It sets out how the standard should be met and the criteria which public open space should meet.

### **Requirements**

Applicants will be expected to enter into an obligation to secure the delivery of open space in accordance with Policy H12, the Audit of Sports Facilities and the Greenspace Strategies.

The Council require that open space provision will normally be made on site. Off-site provision will be considered in accordance with Policy H12 which states that *'occasionally in place of direct provision of open space a contribution can be made towards the improvement of a nearby existing public recreational facility which will meet the needs of the occupiers of the new housing'*. The site will be identified by the Council and agreed with the developer. A plan will be included in the agreement. The plan should identify how the open space will be laid out.

As an example, the areas on which contributions could be spent are as follows:

- Artificial pitches and ancillary facilities;
- Improvements to pavilions/changing facilities where they are necessary to meet new health and safety standards and/or the unmet demand generated by the facilities they serve;
- Seating, lighting and other similar facilities that enable the safe, practical and reasonable use of the open space they serve; or
- Ground drainage, fencing or safety surfacing necessary to enable the facility to meet any relevant adopted standards and at an acceptable level and frequency of use.
- Open space and parks management strategies and operational requirements.

In the case of phased developments, or those which will cumulatively comprise larger-scale developments, the Council will require that an area of larger-scale open space is provided, rather than individual parcels of lands with each phase. This is in order to meet the Local Plan standards and to provide quality areas of playing space.

Satisfactory arrangements will need to be put in place for the long term management and maintenance of the open space by the developer or where appropriate, through transfer of the open space to the Council. In such cases, the Council will seek payment of a commuted sum to provide for future management and maintenance costs. Further details are provided in Policy H12 of the Local Plan. The maintenance contribution will be specified in the s.106 obligation.

## c) EDUCATION

### *National Guidance*

- 8.3.1** Non-statutory guidance on minimum provision standards is provided in the Department for Education's document Building Bulletin 82: Area Guidelines for Schools (currently under review).

### *Local Plan Policy*

- 8.3.2** Policy CF2 (School and College Facilities) of the Local Plan provides guidance on School and College Facilities and states that where new residential development necessitates a **significant** upgrading of existing educational facilities, the Council will negotiate developer contributions for their improvement. Large scale new housing development in the Council has the potential to increase the number of children within the Borough and therefore to place greater demand upon existing educational resources.
- 8.3.3** Derbyshire County Council, as Local Education Authority (LEA), is responsible for securing the provision of primary and secondary education. The County Council's School Organisation Plan reviewed annually, sets out how the Local Education Authority intends to ensure the availability of school places to meet the requirements of the population over the next five years. It is important that the effects of residential developments on schools and other educational facilities are carefully assessed.
- 8.3.4** Some types of residential development may be excluded from providing contributions towards education facilities, such as the following:
- Developments comprising one-bedroom dwellings or flats;
  - Developments for sheltered or elderly housing;
  - Developments for student accommodation;
  - Developments for other specialist housing where it can be demonstrated that the accommodation will not be occupied by children;
  - Developments comprising 2 bedroom flats or apartments will attract a 50% contribution.

### ***Requirements***

Where large-scale residential development leads to a requirement for the upgrading of existing educational facilities obligations will be used to secure developer contributions. The Borough Council will seek advice from Derbyshire County Council regarding the assessment of contributions.

If it can be demonstrated that there is, or will be, no spare capacity in local schools, and no additional capacity is programmed by the Education Authority, then the proposed housing development would impose a burden or 'planning loss' on the local community which the developer will be required to resolve. A contribution will be required to enable additional places to be brought into use. Whilst this might, exceptionally, for very large developments, generate the need for a new or replacement school, most often an existing school or schools will have to be extended.

The basis for calculation of contributions may need to take into account the school catchment areas within the Council boundaries, in order to establish the level of potential demand. Contributions will always be for permanent facilities and will not be used for providing temporary accommodation.

To assess the above, two main sources of information are required. These are:

**Pupil generation figures:** defined as the estimated pupil numbers to be generated by the proposed development.

**Capacity and catchment:** the capacity of the local catchment area schools and existing and forecast school rolls.

Where 'need' is clearly identified from existing school capacity, pupils on roll and forecasts, then the Council will not accept unduly onerous monitoring requirements being included in legal obligations.

### ***Level of Contributions***

When a development is sufficiently large to justify a school extension, then guidance on the cost of pupil places adopted by the Department for Education and Skills (DfES) for determining capital allocations to Local Education Authorities will be used to set levels of contributions. This will result in a fixed contribution per dwelling. Derbyshire County Council will calculate the level of contribution.

Information will need to be updated annually to take into account changing rates and changing population levels.

**d) HERITAGE**

***National Policy Guidance***

**8.4.1** PPG15, 'Planning and the Historic Environment', provides advice on controls for the protection of historic buildings and conservation areas.

***Local Plan Policy***

**8.4.2** The Local Plan contains policies on demolition in conservation areas (BC8), the demolition of listed buildings (BC11), archaeological and other heritage features (BC12) and historic parks and gardens (BC13). The policies state that where a conservation area, listed building, archaeological feature or historic park is affected by a planning permission planning obligations may be sought.

***Requirements***

Where conditions are inadequate, the Council will seek to negotiate a s.106 obligation in relation to development within or affecting conservation areas, listed buildings, archaeological and other heritage features or historic parks and gardens.

Examples of types of development where s.106 obligations may be negotiated include:

- To control the timing of demolition of a listed building or building in a conservation area. In cases where the demolition of a listed building is required to facilitate a new larger development a s.106 obligation may be required to control the timing of the demolition works, so that demolition cannot take place prior to the contract being let for the new development.
- Enhancing Conservation Areas - development where works outside the application site are required to offset the impact of the development, for example tree planting within a conservation area.
- Cases where permission would not usually be granted, but enabling works (for example residential development) are required to secure the restoration of a listed building or building in a conservation area. In such cases the developer will be required to ensure the restoration works are completed prior to the completion or occupation of the enabling works.

**e) ENABLING DEVELOPMENT**

***National Policy Guidance***

**8.5.1** PPG1 'General Policies and Principles' promotes mixed use development, particularly within town centres.

### ***Local Plan Policy***

- 8.5.2** Policy EMP9, Change of Use from Industry or Business and policies within the Town Centre section (TC11, 12, 13 and 14) aimed at regenerating town centres allow for a small amount of residential or other development as part of a larger scheme where it is necessary in order to allow the larger scheme to go ahead. This is most likely to occur in regeneration areas where enabling development is required to make the development viable.

#### ***Requirements***

The Council may require a s.106 obligation where the proceeds from one part of a development are necessary to cross subsidise other parts of the scheme.

### **f) *TRANSPORTATION***

#### ***National Policy Guidance***

- 8.6.1** PPG13 'Transport' addresses the role of land use planning in delivering the Government's integrated transport strategy and provides guidance on the use of obligations when considering transport provision.

#### ***Local Plan Policy***

- 8.6.2** Policies within the Transport section of the Local Plan set out the Council's requirements regarding transport provision. These policies generally seek to reduce the need to travel, to ensure that there is access to a choice of travel mode and to integrate transport and land use. They also seek to ensure safe and convenient access for pedestrians, cyclists and public transport users, who in policy terms have priority over access by the private car. Policies allow for obligations for appropriate works to be undertaken or sums to be paid to help achieve this objective.

#### ***Highway Works***

- 8.6.3** Virtually all new development will have transport implications. For schemes with significant transport implications a Transport Assessment will be necessary (in accordance with Local Plan Policy TR4) to help assess the impact of the development on its surroundings and what works may need to be undertaken to help overcome any detrimental impact the development will have.

#### ***Requirements***

Where it is identified that off-site highway works are necessary to facilitate the development these will be secured through an obligation (or through uses of conditions if more appropriate). The developer will be required to either carry out these works directly or meet the Council's costs in doing so.

Where development is likely to have an impact on the strategic road network, it may be appropriate for the developer to contribute towards major highway schemes identified in the Local Plan. In such circumstances appropriate proportional contributions will be sought.

Where appropriate, and demonstrated through the Transport Assessment developers may be required to contribute to additional public car parking, traffic calming or traffic management measures.

It should be noted that an obligation involving highway works may also need to refer to the provisions of Section 278 of the Highways Act 1980 that enables landowners to make financial contributions towards carrying out highway works.

### ***Sustainable Transport Provision***

- 8.6.4** As sustainable transport becomes increasingly important in the planning process, contributions are becoming more commonplace. For schemes with significant transport implications, the degree of the choice of travel mode should be identified through a Transportation Assessment and Travel Plan (in accordance with policy TR4) and therefore the likely extent of the level of contribution. The planning obligation process may also be used to tie a developer into the provision and implementation of a Travel Plan but this is more often dealt with under a planning condition.

### ***Requirements***

If it is identified that a development has significant transport implications then an obligation may be necessary to address the implications. The Borough Council will follow advice from Derbyshire County Council as highway and public transport authority.

Obligations will be based around securing improved accessibility to sites by all travel modes, focussing on public transport, walking and cycling. Specific examples where contributions may be used are as follows:

- Funding for the provision / improvement of a bus service
- Funding to allow the diversion or extension of a bus service to better serve the development, but not at the disadvantage of other areas
- Improvements to a infrastructure such as a rail station, bus stop, bus lanes etc
- Travel Plan
- Provision of pedestrian / cycle routes or funding to allow their development and linking them to a network of green spaces
- Provision of a park and ride facility

Developers may also be required to contribute to an overall fund to contribute towards a range of transport measures planned for an area.

Contributions are not normally paid to public transport operators (as private companies) but will be paid to the County Council as the overriding public transport body and the local highway authority. Agreements may therefore be between the three parties – the developer, the Borough Council and County Council.

**g) DRAINAGE WORKS**

***National Policy Guidance***

- 8.7.1** PPG25 'Development and Flood Risk', sets out the Government's policy on the role of land use planning in reducing the risk of flooding.
- 8.7.2** The Environment Agency is responsible for protecting and improving the environment. In particular the Agency is concerned with flood risk, sustainable drainage, pollution control and prevention, protection of ground water and water resources, remediation of contaminated land, waste management and enhancement of biodiversity.

***Local Plan Policy***

- 8.7.3** Policy GD10 relates to Flood Prevention.

***Requirements***

Where a flood risk assessment has been undertaken which identifies the mitigation measures necessary for a development to proceed, developers will be expected to enter into an obligation to deliver these measures and secure a proper maintenance regime.

Where developments increase demand for water services developers may be required to support off-site infrastructure costs. An appropriate contribution will be sought from developers.

A planning obligation may be necessary to overcome environmental risk. The Environment Agency promotes the use of obligations to promote justifiable environmental outcomes, where the scope of improvement lies outside the scope of planning conditions. Where an Environmental Impact Assessment has been carried out planning obligations may be used to secure the necessary mitigation measures that are proposed in the Environmental Statement.

**h) LAND MANAGEMENT (WOODLAND AND NATURE CONSERVATION SITES)**

***National Policy Guidance***

**8.8.1** PPS 9 'Nature Conservation' sets out the Government's objectives for nature conservation.

**8.8.2** The promotion of biodiversity and the encouragement of sustainable development patterns are increasingly important national and regional policy aims. The continued existence of a wide variety of flora and fauna depends on the conservation of their natural habitats and the creation of new ones. Regional Spatial Strategy for the East Midlands (RSS8) includes guidance on the protection and enhancement of natural and cultural resources in the region. It includes a series of targets and guidelines for managing and creating habitats (Appendix 3 Regional Targets for Biodiversity). There are opportunities for these to be delivered through the development process and obligations will be used to secure their delivery. The Peak District Biodiversity Action Plan has guidance on the use of native species. Development should consider negating its negative impacts on the biodiversity of the area.

***Local Plan Policy***

**8.8.3** Policies OC8, OC9 and OC10 of the Local Plan relate to nature conservation.

***Requirements***

Where developments, either housing or commercial, will have an impact on habitat and wildlife, measures will be required to address this impact. Reference should be made to the Council's Supplementary Planning Document on Landscape Character Assessment. Each case will be unique, and it is therefore difficult to provide general guidance, appropriate measures may involve retaining some features on site, replacing them elsewhere, or measures such as additional planting to strengthen and reinforce wildlife corridors, or development and implementation of a management plan for the site. Contributions may be sought to mitigate the impact of a development on wildlife.

As an example, a potential development site may include a green area consisting of hedgerows, a pond, trees and grassland. A planning obligation would then be implemented to manage this part of the site and perhaps create footpath links to it for people to enjoy. A management agreement or plan, prepared by the developer, would set out the strategy and responsibilities for the future of the site.

There may also be opportunities to create new habitats in association with new development, such opportunities will be explored with developers and secured through obligations where appropriate.

The expenditure of developer contributions arising from planning obligations on nature conservation may be carried out by parties other than the Council such as the Wildlife Trust or Parish Councils.

## **9.0 *Implementation and Monitoring***

- 9.1 Further detail is included in the Flow Chart on page 8. Following the Committee's decision, a draft agreement will be prepared. The draft agreement will be sent to the applicant's solicitors for comment and any negotiations will be progressed through each party's legal team. Where it appears to the Council that progress on the agreement is unnecessarily slow, the Council will actively seek progress. At the time the legal agreement is completed, the planning permission and any other consent will also be issued.
- 9.2 The Council will register the agreement or undertaking and consents as local land charges and the applicant will be required to register the agreement as a charge against the title to the property at HM Land Registry.
- 9.3 Methods of implementation will vary depending on the nature of the development. In general, the Council will wish to implement obligations as early as possible in relation to the development process to ensure that impacts are mitigated before they arise. The delivery of the obligations may take considerable time and resources. Financial contributions should therefore be paid as early as possible in the development period, generally prior to the commencement of the development or at a specified time in the build process.
- 9.4 The Council will maintain a central register and monitoring system of planning obligations and will seek to ensure that benefits arising from planning obligations are realised as early as possible. It is recognised that delivery of planning obligations can, however, take time and require public consultation, Committee resolutions or involvement and support of third parties.
- 9.5 The Council will undertake financial monitoring to track the flow of payments.
- 9.6 An appointed officer will track compliance with each obligation in the agreement as the development proceeds. Where necessary, the Council will take legal action to ensure that planning obligations have been complied with or are being complied with on an ongoing basis as appropriate.

## **APPENDIX 1: CASE STUDY – EXAMPLE OF HEADS OF TERMS**

The example is intended to show the level of detail required rather than the content of the agreement.

Residential development on a 1.1 Ha site within the town. Development involves building 30 – 40 homes on a conventional layout. Main issues are provision of open space, highway safety and affordable housing. In view of the latter the Council, the Developer and a Registered Social Landlord (RSL) are party to the agreement.

### **Heads of terms**

#### *Affordable housing*

- Affordable homes to comprise X rented units and Y shared equity units
- The developer will transfer the land for the affordable homes to the RSL at nil value
- The developer will build the units for the RSL at a fixed price.
- This fixed price will enable the RSL to allow rent out the units at no more than £X per week and sell the shared equity homes at no more than £Y thousand.
- The developer will serve notice on the Council after construction of affordable homes
- The developer will complete construction of affordable homes prior to the occupation of 50% of units in the development
- The RSL will maintain social rented properties for minimum of 80 years
- The RSL will maintain rents at The Council benchmark levels
- The RSL will grant the Council full nomination rights for all initial and every alternate subsequent occupation

#### *Highways safety*

- To provide a visibility splay on the new junction with Buxton Street in accordance with submitted plan X
- To implement a scheme of traffic calming on Glossop Road in accordance with a scheme to be submitted and approved.

#### *Open space*

- The Developer will lay out the open space in accordance with plan X
- The open space shall be available to the public at the first planting season after the occupation of the first dwellings on the site
- The developer will replace any plants within a maintenance period of Y months
- The developer shall dedicate the open space to the Council with a maintenance contribution of £x thousand