

Main Issue 8

Planning obligations



**How do we
provide essential
facilities alongside
development?**

Background

It is important that new development does not have an adverse impact on the local community by unacceptably increasing pressure on local services and facilities. Developers can therefore be required to contribute towards mitigating the impacts of their developments on services and facilities. These contributions are referred to as 'planning obligations', and can take the form of cash payments or the provision of new or improved facilities. Contributions of this nature are usually secured through a legal agreement attached to a planning permission. These agreements are often referred to as 'section 75 agreements' because the legal basis for drawing them up comes from section 75 of the Town and Country Planning Act.

However, planning obligations can only be sought in certain circumstances. These are set out by Scottish Government guidance in Circular 3/2012 'Planning Obligations and Good Neighbour Agreements', which states

that planning obligations should only be sought where they meet all of the following tests:

- necessary to make the proposed development acceptable in planning terms;
- serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of the development in the area;
- fairly and reasonably relate in scale and kind to the proposed development; and
- be reasonable in all other respects.

Further Scottish Government guidance in Circular 6/2013 'Development Planning' states that Local Development Plans must include information on the items for which financial or other contributions will be sought, and the circumstances (locations, types of development) where they will be sought.



Preferred Option

The current Local Development Plan includes a policy on planning obligations, but it is fairly general in nature. It includes a list of items for which planning obligations may be sought, including schools, libraries, healthcare, recycling and waste, sustainable travel, community facilities, landscaping and open space, and natural heritage. However, there is no specific guidance on what obligations apply in individual settlements and we do not currently seek contributions towards most of the items that are listed in the policy when planning applications are determined.

The instances in which planning obligations can be justified vary across the National Park. For instance, there are some settlements in the Park where school rolls are currently at or near to full capacity. In these cases new housing development is likely to result in the existing capacity of the school being exceeded. Planning obligations towards the provision of additional school capacity will therefore be necessary in order to make these developments acceptable.

Conversely, there are other settlements in the Park in which school rolls are currently operating well below capacity. In these cases it is unlikely that new housing developments will need to contribute towards increasing education capacity, as the new pupils they will generate can be absorbed within the existing school capacity.

Similar situations exist in relation to other facilities such as healthcare, where existing facilities are likely to have capacity to absorb the additional demand created by new development in some areas but not others.

In addition, current good practice makes clear that it is only reasonable to require planning obligations towards particular items where there is a clear strategy and programme for delivering these items. It is therefore not appropriate, for example, to require developers to make a financial contribution towards new community facilities where there are no firm proposals for what such facilities might be or when and how they will be delivered.

For these reasons, we think that the new Local Development Plan will need to include an amended policy approach to planning obligations. This will need to include a revised over-arching policy to outline the overall approach we will take towards planning obligations supported by more specific guidance in the Plan about what planning obligations will be required in different settlements/locations. This will result in a more locally tailored approach, with different contributions applying in different locations based on local circumstances.

In order to inform this amended approach we are currently undertaking an assessment of infrastructure needs across the Park. We are working with infrastructure providers and other key stakeholders such as local authorities and the NHS to help inform this revised approach.



Reasonable Alternative Options

We could seek to continue applying the existing Local Development Plan's approach to planning obligations. This would mean including a general policy within the new Local Development Plan to outline the items for which planning obligations might be sought without including any further guidance on what obligations will be required in different settlements/locations. This would allow planning obligations for individual planning applications to be determined on a case-by-case basis. However, we think this option is unlikely to be appropriate in the light of current best practice. We also think this option would deliver less certainty for developers and communities.



Questions

- Do you agree that the new Local Development Plan should include a revised and more rigorously justified policy on planning obligations?
- Do you agree that this should be supported by more specific guidance in the Plan about what planning obligations will be required in different settlements/locations?