



**Tamworth Borough Council  
Planning Obligations  
Supplementary Planning Document  
DRAFT XXXX 2018**

## **Contents**

Introduction.....	1
Status of the document .....	1
Purpose .....	1
Policy context .....	2
National policy .....	2
Local policy.....	2
Developer contributions.....	3
Planning obligations .....	3
Community Infrastructure Levy .....	3
Section 278 agreements .....	4
Pooling .....	4
Other agencies .....	5
Viability .....	5
Planning obligations process.....	6
Types of infrastructure.....	7
Affordable housing .....	7
Open space .....	8
Education .....	9
Highways.....	10
Other infrastructure .....	10
Neighbouring authorities .....	11
Monitoring.....	11
Enforcement .....	12
List terms and abbreviations .....	12
Terms used .....	12
Abbreviations used.....	13

## **Introduction**

The purpose of the planning system is to contribute to the achievement of sustainable development, which the National Planning Policy Framework states has three dimensions; economic, social and environmental. One of the key elements of sustainable development is the identification and provision of appropriate infrastructure to support development.

Local planning authorities can use planning obligations to assist in mitigating the impact of development which benefits local communities and supports the provision of local infrastructure.

Where planning permission is sought for new development within Tamworth, it will be expected to be supported by appropriate infrastructure and, where new or improved infrastructure is required, developers will be expected to contribute towards its provision.

This document sets out how the Council will seek to ensure that developers can make appropriate contributions towards infrastructure to support sustainable development.

## **Status of the document**

This document is a Supplementary Planning Document that forms part of the development plan for Tamworth and is, where relevant, a material consideration in the determination of planning applications.

The document was adopted on **XXXX 2018** and supersedes the previous Planning Obligations Supplementary Planning Document dated July 2007.

## **Purpose**

The purpose of this document is to build upon and provide more detailed advice and guidance on the policies in the adopted Local Plan, in particular policy IM1 (Infrastructure and Developer Contributions) which states:

*'Planning permission for new development will only be granted if it is supported by appropriate infrastructure at a timely stage. Developer contributions will be sought where needs arise as a result of new development, the infrastructure delivery plan specifies the infrastructure required, when and where it will be needed in the plan and how it could be funded.'*

It is intended that this document will provide greater clarity and certainty to developers, landowners, the community and the Council by setting out how the Council will seek to collect contributions from developers to support the funding of appropriate infrastructure in Tamworth. It is not a standalone document and should be read in conjunction with the adopted Local Plan and

other supporting documents including the Infrastructure Delivery Plan and the Community Infrastructure Levy Charging Schedule and local policies.

## **Policy context**

### **National policy**

Section 106 of the Town and Country Planning Act 1990 provides the framework for allowing any person interested in land in the area of a local planning authority to enter into a planning obligation for certain purposes. Further information on what obligations can be used for is set out later in this document. In relation to the Community Infrastructure Levy (CIL), the relevant legislation is contained within the Community Infrastructure Levy Regulations 2010 (as amended).

Paragraphs 203 - 205 of the National Planning Policy Framework (NPPF) states that planning obligations should only be sought where they meet the tests of being necessary, directly related to the development, and fairly and reasonably related in scale and kind. The NPPF goes on to say that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

Further guidance on the use of planning obligations and CIL is set out in the National Planning Practice Guidance (NPPG).

The Council is aware that the Government is undertaking a review of the NPPF and the use of developer contributions to support housing delivery. At the time of writing, there are draft proposals out to consultation. Whilst this has the potential to affect how the Council collects and/or spends developer contributions, it is not anticipated that any changes will be so significant as to affect the contents of this document in the short-term. This document will be kept under review and, where any changes to national policy or guidance require it, the document will be updated accordingly.

### **Local policy**

The Tamworth Borough Council Local Plan 2006 – 2031 was adopted in February 2016 and the policies within it aim to protect the environment of the town whilst enabling sustainable development to take place to meet identified needs. In order to ensure that development is delivered sustainably, the plan seeks to ensure that the necessary social and environmental infrastructure is delivered at the appropriate time.

In conjunction with the Local Plan, the Infrastructure Delivery Plan (IDP) sets out a list of infrastructure projects that the Council will seek to deliver in support of the objectives of the Local Plan. The IDP forms the basis of the list of infrastructure projects to be funded by CIL.

## **Developer contributions**

Developers may be asked to provide contributions towards infrastructure in several ways such as by way of the Community Infrastructure Levy or planning obligations in the form of section 106 agreements and section 278 highway agreements. In some instances a combination of these methods may be required. Further details on the types of contributions that may be sought are set out below.

## **Planning obligations**

Planning obligations are one of the tools that can be used by a local planning authority to help make a proposed development acceptable in planning terms. They are used where it is not possible to address unacceptable impacts through a planning condition and must be:

- 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.

Planning obligations take the form of an agreement entered into by the applicant (and any other interested party) under section 106 of the Town and Country Planning Act 1990 (as amended) and are often referred to as s106 agreements. These agreements can be used for:

- restricting the development or use of the land in any specified way;
- requiring specified operations or activities to be carried out in, on, under or over the land;
- requiring the land to be used in any specified way; or
- requiring a sum or sums to be paid to the authority on a specified date or dates or periodically.

The Council will use planning obligations, where appropriate, to make proposed developments acceptable in planning terms where it would otherwise not be possible to do so. This often takes the form of requiring a financial contribution towards infrastructure

## **Community Infrastructure Levy**

The Community Infrastructure Levy (CIL) is a tool for local authorities in England and Wales to help deliver infrastructure to support the development of the area. The levy is a charge on certain types of development at a rate set by the charging authority and set out in the CIL Charging Schedule. Levy rates are expressed as pounds per square metre and are applied to the gross internal floorspace of the net additional development liable for the levy.

Further information on what developments are liable for CIL and calculating the levy rate can be found on the CIL pages of the Council's website.

The levy can be used to fund a wide range of infrastructure, including transport, flood defences, schools, health and social care facilities, play areas, parks and green spaces, cultural and sports facilities. The Council has published a list of infrastructure projects that it intends to fund wholly or partly through CIL and this can be found along with the CIL charging schedule on the website. This list (the regulation 123 list) will be regularly reviewed in order to ensure that it is effective in helping to deliver the infrastructure required to support development during the plan period.

### **Section 278 agreements**

Section 278 of the Highways Act 1980 (as amended) allows for a highway authority to enter into an agreement with any person for the carrying out of works to the highway, including modifications or additions, where that person will pay the whole or part of the costs associated with the works (a S278 agreement).

S278 agreements are made between the highway authority (in the case of Tamworth, Staffordshire County Council) and the applicant or developer, and so the Council is not normally party to negotiations or a signatory to any agreement.

### **Pooling**

The current CIL regulations restrict the use of pooled contributions towards items that may be funded via CIL. The restrictions mean that no more contributions may be collected in respect of a specific infrastructure project or a type of infrastructure through a S106 agreement, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy.

The pooling restrictions relate only to developments granted planning permission within the area of the charging authority (in this case within the Tamworth borough boundary) and, where a S106 agreement makes provision for a number of staged payments as part of a planning obligation, these payments will collectively count as a single obligation in relation to the pooling restriction.

For provision that is not capable of being funded by the levy, such as affordable housing, there is no restriction in terms of the numbers of obligations that may be pooled.

As part of the Government's current review into the use of developer contributions, it is proposed to lift the restrictions on pooling contributions

collected through S106 agreements in a number of circumstances including where the local authority has an adopted CIL in place. Therefore, if the Government introduce the proposed changes to the pooling restrictions during the lifetime of this document, the restrictions as set out above, and any further reference in this document to pooling restrictions, will no longer be apply.

## **Other agencies**

Tamworth Borough Council is the local authority responsible for deciding the level of contribution and how it should be secured for Borough Council functions together with enforcing any on-site or off-site measures within the applicant's control. If infrastructure requirements relate to County Council functions, the County Council will be party to negotiations and obligations and will be responsible for the enforcement of any on-site measures and obligations for County Council functions.

In instances where any other third party has a significant interest in the land or the proposed development they may be party to any agreement. In these situations, responsibility for negotiating and monitoring any obligations will be determined with regard to the particular set of circumstances involved.

## **Viability**

Most developments will be expected to satisfy all of the infrastructure requirements identified. Applicants who cite non-viability as a reason for not meeting all infrastructure requirements will be required to support their case with financial evidence, which should be submitted as part of the planning application. This evidence will be open to public scrutiny and, where necessary, will be audited by experts. Where the Council is required to engage the services of an expert to assess viability evidence, it is expected that the associated costs will be met by the applicant.

When applicants submit evidence of non-viability, the Council will expect to see calculations for the important factors set out in enough detail for the viability to be clearly assessed. Any assumptions made must be clearly explained and justified. The Council will consider the evidence and make an assessment as to whether the submitted information sufficiently demonstrates that the proposed development would be unviable if it was required to meet all planning obligation requirements.

The Council expects developers to have considered the total cost of all relevant policy requirements including contributions towards affordable housing and infrastructure, CIL and any other relevant policies or standards when buying land for development or taking an option to buy the land. The Council are aware that developers will often try to maximise the land value for landowners, however the guidance is clear that relevant policy requirements should be taken into account when defining land value. Land cost will

therefore not normally be accepted as an argument for reducing the value of required contributions including the proportion of affordable housing to be provided.

### **Planning obligations process**

Where an agreement is required to secure a financial contribution, it may take the form of either a unilateral undertaking or a planning agreement. Applicants and their agents are encouraged to enter into pre-application discussions to help highlight the likely impacts of a proposed development and the most appropriate means of mitigation.

Where any contribution is required solely towards infrastructure for Tamworth Borough Council, developers will be encouraged to use a unilateral undertaking. Unilateral undertakings should ideally be submitted with the planning application, or as soon as practicable after any required contributions have been identified, and must be accompanied by proof of title. Payments required under a unilateral undertaking will usually be required to be paid in full on commencement of development unless otherwise agreed by the Council.

Planning agreements will be used when a contribution is required towards infrastructure which is the responsibility of the County Council or any other relevant third party. Where a legal agreement is required, applicants will be expected to meet the reasonable costs of the Council in negotiating, and producing the obligation. These costs will depend on the scale and complexity of the development, and applicants are advised to seek an estimate of the amount at the earliest opportunity.

The Council will seek to ensure that any agreement has been negotiated and signed by the relevant parties within the statutory timeframe for determination of the application to which it relates. Where an unavoidable delay in completing the agreement would lead to the application process extending beyond the statutory timeframe for a decision, the Council will seek to agree with the applicant an extension of time for the determination of the application.

Where the delay is caused by the applicant without good reason, and no extension of time has been agreed, the Council may seek to take the application forward for determination with a recommendation for refusal.

Where a proposed development is liable for CIL, the Council will follow the relevant CIL procedures set out in legislation or, where appropriate, set out in the Council's own CIL guidance. Further information on CIL processes and procedures can be viewed on the Council's website.

In instances where a developer considers that a S106 Agreement requires amendment, the developer is advised to contact the Council. The Council may

wish to enter into a renegotiation voluntarily or may require the developer to make an application under Section 106A of the Town and Country Planning Act 1990 to modify an obligation where it no longer serves a useful purpose or would continue to serve a useful purpose in a modified way. Such an application can only be made where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old. Further information can be found in NPPG.

## **Types of infrastructure**

### **Affordable housing**

Income collected through CIL can't be used to fund the provision of affordable housing, instead the Council expects affordable housing, where appropriate, to be delivered on site. Local Plan policy HG4 Affordable Housing sets out the minimum expected level of affordable housing to be provided on each development which, in most cases, is a minimum 20% for all sites meeting the threshold. The exception to this is the small number of allocated sites that can viably provide a minimum of 25%.

Whilst this level of affordable housing is considered to be deliverable, the Local Plan recognises that there may still be factors which make a site unviable and the Council will need to be flexible on a site by site basis whilst still seeking to deliver an appropriate proportion of affordable housing.

The Council will seek to secure affordable dwellings on appropriate sites through negotiating a S106 agreement to provide an appropriate number and mix of units on the site. The precise nature of the affordable housing to be provided shall be determined by negotiation between the Council, acting as planning and housing authority, and the applicant.

Previously the Council has sought financial contributions towards affordable housing on developments of between 3 and 9 dwellings. Following the order of the Court of Appeal dated 13 May 2016, which gave legal effect to the policy set out in the written ministerial statement of 28 November 2014, the Council determined (by way of a Cabinet decision dated 29 September 2016) not to seek affordable housing contributions on residential developments of 10 dwellings or fewer. The exception to this is where the maximum combined gross floorspace would be greater than 1,000 square metres (gross internal area).

On developments comprising 11 or more dwellings, or where the maximum combined gross floorspace would be more than 1,000 square metres, the Council will continue to seek on-site provision of affordable housing in line with the requirements set out in Local Plan policy HG4.

In exceptional circumstances the Council may, as an alternative, consider off-site affordable housing where the required amount of affordable housing is provided on a site other than the one being developed. The provision of such housing will be subject to a planning obligation secured through a S106 agreement. Such housing would be required to be in addition to the amount of affordable housing that would otherwise be required on the alternative site.

If neither the on-site nor off-site provision of affordable housing is possible then, as an alternative, the Council will consider a commuted sum towards alternative affordable housing provision. As part of any settlement the Council will consider accepting suitable land in lieu of all or part of any payment.

In order to calculate off-site contributions, the Council will monitor and update changes to the Land Registry average market values for a range of housing types. Contributions will be calculated using the following formula:

Contribution Amount = Net Number of Units Proposed x Average Market Value X Affordable Requirement (20%) x Transfer Cost (35%)

The transfer cost is based on the equivalent transfer value for an intermediate or shared ownership unit built on site as assumed in the Whole Plan Viability Study that supports the Local Plan.

The Council will monitor development activity, land values and market signals to ensure it adopts a flexible approach to negotiations to achieve the above targets. This monitoring will inform discussions over viability, local needs and where appropriate lead to a review of targets.

### **Open space**

The Council may use a combination of CIL and S106 agreements to contribute towards the enhancement of existing open spaces. Collected CIL funds will be used to enhance existing open space where it would benefit the whole of the borough, for example for the enhancement of the urban parks which would attract visitors from a wider area than local open space.

The Council will expect that, where appropriate, developments will provide on-site open space in accordance with the policies of the Local Plan. Where it is not possible or appropriate to provide on-site open space, residential developments may be required to make a contribution towards the enhancement of existing local open space through a S106 agreement. These obligations will be sought towards local open space projects where they:

- are set out in the IDP;
- relate directly to the proposed development;
- are not included on the regulation 123 list; and

- would not contravene the pooling restrictions.

Where financial contributions are sought for the enhancement of existing open space, the contribution will be based on the size of the proposed dwelling(s) in accordance with the following<sup>1</sup>:

1 or 2 bed dwelling - £660 per dwelling  
3 bed dwelling - £990 per dwelling  
4 bed dwelling - £1,320 per dwelling

These criteria will apply to changes of use from non-residential properties to residential use and conversion of existing dwellings to flats/apartments. In the case of conversion, the contribution will be based on the net increase in the number of bedrooms.

### **Education**

Education infrastructure is an integral part of new residential development and is important in achieving sustainable communities. Staffordshire County Council is the local authority responsible for education provision across the eight borough/districts of Staffordshire, and has a statutory responsibility to ensure that every child living in the county is able to access a mainstream school place in Staffordshire if they want one. The County Council will therefore be responsible for identifying the potential impact of proposed development on education infrastructure and will seek to secure appropriate contributions from developers where necessary to mitigate those impacts.

Where housing developments are likely to generate demand for additional school places, developers will reasonably be expected to contribute towards education facilities and infrastructure to mitigate the impact of housing development and the likely associated costs. This may include financial contributions towards providing additional school places and, where an appropriate project has been identified, the cost of delivering the project will be met relative to the size of the development. Where applicable, contributions may also include the necessary additional land, access and relevant services to enable schools to be extended or completely new schools to be constructed.

In line with national policy, the threshold beneath which contributions will not usually be sought is for housing developments of ten dwellings or fewer (and which have a maximum combined floor space of no more than 1,000 square metres). Where a proposed development would exceed the threshold, the Council will consult the County Council who will determine if a contribution is required to mitigate against the impact of the development.

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<sup>1</sup> The rates set are based on those set out in the previous Planning Obligations Supplementary Planning Document with inflation applied from 2007 to 2017 based on an average of 2.8% per year.

On receipt of a planning application consultation, the School Organisation Team will consider how many additional pupil places the proposed development would add and will undertake a detailed review of local school places and pupil projections. The detailed analysis is undertaken in line with the latest Staffordshire Education Planning Obligations Policy which is available on the County Council's website.

Any planning obligations required in respect of education infrastructure, whether financial or otherwise, will be secured through a S106 agreement between the applicant or developer, the Borough Council and the County Council.

The School Organisation Team welcomes and encourages discussions before a developer submits a planning application to the Borough Council. All information provided in the pre-application advice will cover the relevant level of detail and supporting information necessary to provide a valid assessment of school place planning issues and whether an education contribution is likely to be required. This advice can be obtained via the Developer Online Advice Form (available on the County Council's website) and there will be an appropriate fee charged determined by the type of enquiry.

### **Highways**

Staffordshire County Council is the local authority responsible for the strategic highway network within Tamworth, with the exception of major trunk roads, which are the responsibility of Highways England. The County Council will therefore be responsible for identifying the potential impact of proposed development on the majority of roads within Tamworth.

As a statutory consultee, the County Council will be consulted on planning applications where the development would be likely to result in a material increase in the volume or material change in the character of traffic entering or leaving a classified road or proposed highway. The County Council will be responsible for identifying measures required to mitigate against the impact of a proposed development and, where a planning obligation is required, will be party to any negotiation and agreement.

As any required mitigation measures would be site and development specific, highways planning obligations will be secured by legal agreement. This could be in the form of a S106 agreement, but will often be secured by an agreement under section 278 of the Highways Act 1980 (as amended) which will be made directly with the County Council as highways authority.

### **Other infrastructure**

The list of types of infrastructure set out above should not be considered exhaustive as there may be situations where other contributions will be sought towards mitigating the impact of a specific proposed development. In these

instances, specific obligations will be negotiated on a case by case basis between the applicant, the Council and any other relevant third party.

### **Neighbouring authorities**

The Council will seek contributions from developments in neighbouring authority areas where those developments would impact on infrastructure within Tamworth.

The Council will also work with its neighbours to ensure that, where development within Tamworth would impact on their infrastructure, suitable contributions are secured towards infrastructure in neighbouring authority areas.

On the basis that development outside of Tamworth's administrative boundary would not fall within the charging zone for Tamworth's CIL, all contributions sought from development in neighbouring authority areas will be through S106 agreements which will be negotiated in collaboration with the relevant neighbouring authority. This includes where the neighbouring authority has CIL in place but development in Tamworth is not included on their list of infrastructure projects on which CIL is to be spent (regulation 123 list).

In any instances where Tamworth infrastructure is included on a neighbouring authority's regulation 123 list, the Council will seek, through the relevant processes and procedures, to secure proportionate contributions towards infrastructure in the borough.

Similarly, where development in Tamworth would require a contribution to infrastructure in a neighbouring authority area, and there is no specific project for that infrastructure on Tamworth's regulation 123 list, contributions will be sought through a S106 agreement which will be negotiated in conjunction with the relevant neighbouring authority.

In the event that an appropriate infrastructure project or specific item of infrastructure in a neighbouring authority area is included on the Council's regulation 123 list, the relevant neighbouring authority will be expected to seek a contribution through the appropriate allocations process.

### **Monitoring**

The Council will undertake monitoring of planning obligations to ensure that all obligations are complied with, both by the developer and by the Council. The Council will track compliance with each provision contained within each legal agreement as developments proceed to ensure that all developers are paying obligations and delivering on-site obligations in accordance with the legal agreement.

Where an obligation is required by the County Council or another interested party who is a signatory to the agreement, the relevant party will be responsible for monitoring compliance with those provisions of the agreement. The Council will work with the County Council and any other relevant party to ensure that the monitoring process is as comprehensive and efficient as possible.

The Council undertakes monitoring to ensure that Council services are spending the financial obligations in accordance with the terms of the Agreement.

## **Enforcement**

Once Planning Obligations have been agreed it is important that they are implemented or enforced in an efficient and transparent way, in order to ensure that infrastructure is provided in accordance with the terms of the legal agreement, and to ensure that the associated development contributes to the sustainability of the area.

Planning Obligations are enforceable by the Council under Section 106(5), (6), (7) and (8) of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.

If it is evident that the Planning Obligations requirements are not being complied with, the Council may instigate the relevant legal or enforcement action.

## **List terms and abbreviations**

For ease of reference, below is a list of terms and abbreviations used in this document and their meaning.

### **Terms used**

Unless the context implies otherwise, the following terms used above have the stated meaning.

The Council – Tamworth Borough Council

The County Council – Staffordshire County Council

The highways authority – Staffordshire County Council highways

Regulation 123 list – The list of those projects or types of infrastructure that the Council intends to fund, or may fund, through CIL

School Organisation Team – Staffordshire County Council School

Organisation Team

S106 agreement – An agreement under section 106 of the Town and Country Planning Act 1990 (as amended)

S278 agreement – An agreement under section 278 of the Highways Act 1980 (as amended)

**Abbreviations used**

CIL – Community Infrastructure Levy

IDP – Infrastructure Delivery Plan

NPPF – National Planning Policy Framework

NPPG – National Planning Policy Guidance

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