

DERBYSHIRE COUNTY COUNCIL

CABINET

22 February 2018

Report of the Strategic Director - Economy, Transport and Environment

**DEVELOPER CONTRIBUTIONS PROTOCOL (HIGHWAYS, TRANSPORT
AND INFRASTRUCTURE)**

(1) **Purpose of Report** To approve the publication of an interim updated edition of the County Council's Developer Contributions Protocol (DCP) the indexation of sums within the DCP, the implementation of future annual indexation and to note the planned fundamental vision to protocols for developer contributions.

(2) **Information and Analysis** The DCP was originally published in May 2012 and refreshed in November 2013, with a further review and update having taken place in 2016, and agreed by Cabinet at its meeting on 20 September 2016 (Minute No. 278/16 refers). The County Council committed to reviewing the DCP every three years, or earlier if triggered by significant policy changes.

This current update is triggered by the need to apply indexation to contributed sums to ensure they keep pace with inflation. It is necessary for annual indexation to be applied going forward for the same reason. This particularly applies to contributions for school places which have not been updated since 2010-11 when the Department for Education last issued guidance. It is proposed that the costs of school places indexation uses the Building Cost Information Services (BCIS) All in Tender Price Index from April 2018 and is indexed annually every April from then on. The attached draft Protocol therefore refers to this Index, and subsequent annual indexation, and presents a revised level of contributions. It also contains updated text on several topics, including health and other minor amendments.

The County Council is consulted by the district and borough councils in Derbyshire on planning applications of 11 dwellings or more, or where a development is over 1,000m². Section 106 Agreements (securing developer contributions by planning obligations) are requested when it is considered a development will have significant impacts on the local area that cannot be resolved by means of conditions attached to a planning decision. Any requests for developer contributions to mitigate the impact of a development must meet the three tests as set out in the National Planning Policy

Framework (NPPF) and the Community Infrastructure Levy Regulations (CIL) 2010 (as amended) which are that contributions 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.

This DCP sets out the scope of included services and specifically, how the County Council:

- responds to consultations on planning applications for housing development;
- negotiates Section 106 Agreements; and
- monitors the income and expenditure of Section 106 monies.

This scope is based on current, long-standing practice but now further action is required to undertake a fundamental review of the DCP to assess whether those functions currently excluded (e.g. highway and transport which are dealt with separately) waste, energy and libraries should be included in a single DCP in future.

The need for this interim update to address indexation within the DCP has provided the opportunity for further revisions to the document and, as such, the DCP has been subject to informal internal consultation with officers and amended to reflect comments received. The draft DCP is attached as Appendix A to this report and, subject to Cabinet approval, will be published on the County Council's website and serve as the basis for the County Council's response to planning applications on the strategic infrastructure implications of major housing development.

Next Steps

As noted above, the existing DCP only covers Education, Health and Broadband. To ensure the County Council continues to secure the range of contributions required to offset the impact of development, the following actions are required:

- a) Review the DCP to become fully inclusive of all relevant County Council service areas that potentially are impacted by new development and for which contributions should be sought (see Appendix A, Section 2). It is recognised that district/borough councils have supplementary planning documents which comprehensively cover the contributions they require in line with local plans and to mitigate the impact of a development. Strategic coordination is required to work with other services within the County Council to develop the DCP to become a comprehensive framework addressing the range of services/infrastructure dealt with by the County Council in order to ensure sustainable development. This framework would

promote a consistent and transparent approach for the development industry so that communities are able to see and understand how development is making a fair and positive contribution to sustainable communities.

- b) Take account of the CIL consultation and resultant, emerging revisions to the legislation. The Ministry for Housing, Communities and Local Government (MHCLG) will be consulting on a number of measures to remove existing restrictions on how Section 106 planning obligations can be pooled, speeding up the process of introducing and revising the CIL, making it more market responsive, and bringing forward a Strategic Infrastructure Tariff. The reforms proposed on CIL will align with those also proposed on viability and Section 106. The resultant legislative changes will need to be addressed within any revisions to the DCP.
- c) Work closely with districts/boroughs to ensure implementation of the DCP.
- d) Alongside the review of the DCP, additional work is being undertaken to anticipate the infrastructure needed to accelerate development and the available funding mechanisms which the Council could use to recoup the cost of any early investment in infrastructure (including potentially Section 106 mechanisms).

This approach will be supported by:

- The introduction of a new developer contributions monitoring system accessible across all County Council departments. The Planning Service is currently obtaining specialist monitoring software to help drive improvement.

Planning obligations range from simple payment to complex agreements between several parties with multiple clauses and triggers, all of which require monitoring over several years. Within the County Council, the collection and monitoring of funding secured through these various planning obligations is carried out by four separate divisions. The use of a single monitoring system for planning obligations, accessible to all relevant services will allow more efficient monitoring of the obligations and enable more effective claiming of monies, thereby supporting improved cash flow/income.

Futureproofing will be built into any system procured to ensure the software is adaptive to any changes to legislation with regard to planning obligations.

- Working with relevant local planning authorities to ensure strategic coordination of activity.

The on-going development of the Derbyshire Infrastructure and Investment Plan will provide a strategic framework to identify and prioritise the infrastructure that is considered fundamental to supporting development.

(3) **Financial Considerations** It is important to ensure that as part of the delivery of housing and economic development, appropriate infrastructure is provided to mitigate the impacts that such developments bring. The DCP guides the County Council's approach to mitigating these impacts on communities through the provision of infrastructure and services. Specifically the proposals in this report to adjust the indexation of contributions means the Council is securing the appropriate level of funding.

Since 2014-15, the contributions due to the County Council, through signed Section 106 agreements for education, libraries and waste amount to in excess of £31 million.

These monies are only payable should a development be built.

(4) **Legal Considerations** Section 106 of the Town and Country Planning Act 1990 (as amended) makes provision for legal agreements to be secured with developers. This is the legal mechanism that makes development acceptable in planning terms and is taken into account when determining a planning application.

The three legal tests, as set out in the NPPF and CIL Regulations 2010 (as amended) against which requests for contributions are made, are set out in the body of this report.

(5) **Social Value Considerations** The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development with three dimensions to sustainability, namely economic, social and environmental. The social role is to support strong, vibrant and healthy communities by providing housing required to meet the needs of present and future generations; and creating a high quality built environment with accessible local services that reflect the community's needs and support its health, social and cultural well-being. In applying the DCP, the services and infrastructure provided through the County Council are supporting the delivery of sustainable communities via the planning system.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(6) **Key Decision** No.

(7) **Call-In** Is it necessary for the call-in period to be waived in respect of the decisions being proposed in the report? No.

(8) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details – Alison Richards, extension 39667.

(9) **OFFICER'S RECOMMENDATIONS** That Cabinet:

- 9.1 Approves the publication of the updated Developer Contributions Protocol for 2017 which is based substantially on the draft at Appendix A including the contribution levels set out in it.
- 9.2 Agrees that indexation should apply to sums within the Developer Contributions Protocol referred to in this report and that indexation be applied annually.
- 9.3 Notes the pending fundamental vision of developer protocols to a single framework against which all relevant development will be considered and contribution negotiated.

Mike Ashworth
Strategic Director - Economy, Transport and Environment

**Developer Contributions Protocol
September 2017**

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1. Consulting the County Council on Proposed Housing Development

As Local Planning Authorities, it is the borough and district councils and the Peak District National Park Authority that determine planning applications for housing development. However, it is the County Council and other providers that are responsible for delivering much of the vital infrastructure and services which can face extra demand resulting from such development.

The County Council should be involved at the earliest possible stage in the assessment of proposed residential schemes and the negotiation of Section 106 planning obligations. The Principal Planner (Economy, Transport and Environment Department) acts as a **single point of contact** for services covered by this protocol as described in Section 2. All correspondence should be sent from Local Planning Authorities electronically via email to planningpolicy@derbyshire.gov.uk.

Pre-application discussions help to speed-up decision making and provide clarity. Developers are encouraged to engage in discussions and meetings with Local Planning Authorities prior to submitting planning applications. The County Council will only respond to pre-application enquiries that are sent via Local Planning Authorities. The County Council will no longer respond to pre-application enquiries received directly from developers, landowners and their agents.

At the earliest opportunity, Local Planning Authorities should notify the County Council of any **residential planning applications of 11 dwellings or more, or applications where a development is of 10 dwellings or less with a gross floorspace over 1,000 square metres**. The County Council should be provided with sufficient information to identify the site of the proposal (location plan), and the type and nature of the proposed development (total gross number of dwellings, number of dwellings with one bedroom and those restricted to those aged 55 and over). All correspondence should be sent electronically via email to planningpolicy@derbyshire.gov.uk.

As a Statutory Consultee, the County Council Highways Development Control Team must be consulted by all Local Planning Authorities separately on all planning applications which have a potential impact on the County's highway network and transportation infrastructure. The Highway Authority is obligated to provide a substantive response to all consultations within 21 days. The Principal Planner (Economy, Transport and Environment Department) and the County Council Highways Development Control Team liaise to ensure that responses back to Local Planning Authorities are broadly consistent. Correspondence for the County Council Highways Development Control Team should be sent to ETE.DevelopmentControl@derbyshire.gov.uk. See Section 9 for further information.

2. The County Council's Response

The following County Council services and infrastructure **are covered** by this Protocol (see Sections 6-8):

- Education
- Broadband
- Health

The following services and infrastructure **are not covered** and developers and Local Planning Authorities should refer to the organisations named for further advice (see Section 9):

- Highways (County Council Highways Development Control Team)
- Public Rights of Way (County Council Highways Development Control Team)
- Travel Planning (County Council Highways Development Control Team)
- Local Authority Collected Waste (District and Borough Councils)
- Libraries (County Council Libraries and Heritage Service)
- Waste Management Service
- Flood and water management (County Council Flood Risk Team)
- Biodiversity (Derbyshire Wildlife Trust)
- Archaeology (Derby and Derbyshire Development Control Archaeologist based at County Council)
- Landscape Character (Local Planning Authority)
- Canals and Waterways (County Council Countryside Service)
- Fire and Rescue (Derbyshire Fire and Rescue Service).

The Developer Contributions Protocol does not cover local services or specific funding schemes established by the Local Planning Authorities and County Council Planning Authority including:

- Affordable housing
- Public realm and art
- Open space
- Recreation and leisure
- National Forest
- River Mease Catchment
- Minerals

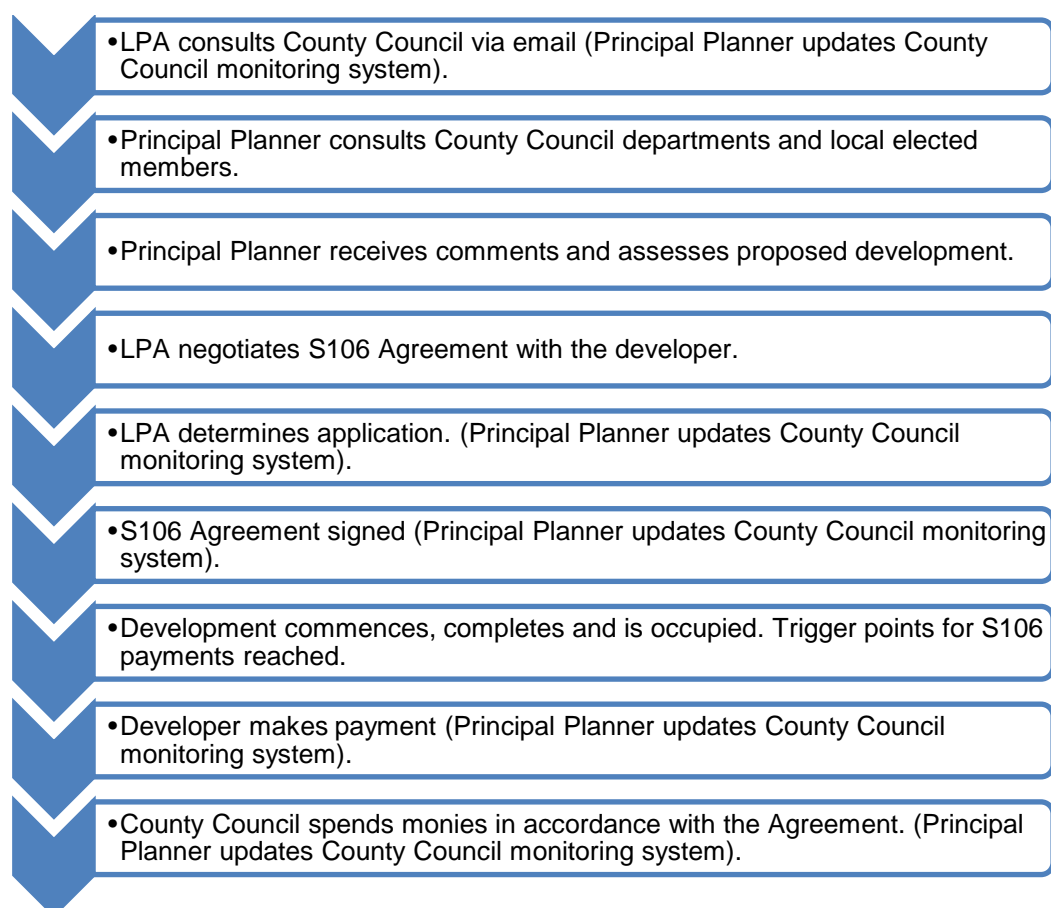
The County Council responds to pre-application enquiries and consultations on planning applications from Local Planning Authorities within 21 days of receiving them. The Principal Planner, Economy, Transport and Environment Department, coordinates comments from County Council departments and elected members to assess the proposed development and prepare a response.

For pre-application enquiries Derbyshire County Council elected members are consulted for their views on the developer contribution implications only

unless the Local Planning Authority requests that the enquiry is treated in confidence. The details and design of the proposed development may change before it is finalised into a formal planning application. If a formal planning application is submitted, the Local Planning Authority will carry out a wider public and member consultation. At the pre-application stage, consultations sent to County Council elected members will be for their attention only.

The County Council's response advises the Local Planning Authority on how the development could impact on strategic infrastructure and services. Where necessary, the County Council will request the mitigation of impacts identified, including (for example) through maintenance and service delivery, the improvement or enhancement of existing infrastructure, and the delivery of new infrastructure. Requests will comply with Community Infrastructure Levy Regulations.

It remains the responsibility of the Local Planning Authority (LPA) to consider the County Council's advice and determine the application, including any decision to require developer contributions via Section 106 (S106) planning obligations.



3. Mitigation – Planning Obligations and Community Infrastructure Levy

The County Council's response advises the Local Planning Authority on how a proposed development could impact on infrastructure and services. The response will also advise how planning obligations can assist in mitigating the impact of unacceptable development to make it acceptable in planning terms and also informs the Local Planning Authority of any opportunities to enhance existing or provide new infrastructure and services. It may be possible to resolve identified impacts through the use of planning conditions.

However, it may be necessary to use planning obligations by entering into a legal agreement in order to resolve the impacts identified. Planning obligations are negotiated on a case-by-case basis, based on the characteristics and impacts of the proposed development in question.

Section 106 Agreements (where the district/borough councils and the County Council may enter into obligations) and Unilateral Undertakings (given by the developer unilaterally to the district/borough council and the County Council) can include planning obligations that secure financial contributions towards improving or expanding existing infrastructure or providing new infrastructure, the direct provision of services, land and buildings, or payments towards ongoing maintenance and service delivery costs.

The County Council requests and enters into planning obligations using Section 106 Agreements only where they comply with the legal requirements set out in the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and the National Planning Policy Framework (NPPF). Obligations 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.

Where Local Planning Authorities have chosen to introduce a CIL, a £ per square metre is charged to fund infrastructure identified on the respective authority's Regulation 123 list. At the time of writing, only Chesterfield Borough Council has introduced a CIL in Derbyshire.

Where a CIL is in place, Section 106 planning obligations can still be used provided that:

- the obligations meet the three tests set out in the CIL Regulations (Reg 122);
- the obligation is not being used to deliver a project that is on the Regulation 123 list (to ensure developers are not 'double charged' for the same project); and
- it complies with the 'pooling' restrictions.

The CIL Regulations restrict the pooling of Section 106 planning obligations. No more than five Section 106 obligations dating from April 2010 can be pooled together towards a single 'infrastructure project'. The term 'infrastructure project' is not clearly defined in the Regulations, but the County Council takes it to mean a specific single project, such as the construction of a classroom at a named school, rather than a broad infrastructure type, such as 'education', for example.

The restriction imposed by the CIL Regulations since April 2010 on pooling funds from Section 106 planning obligations presents a real risk that Local Planning Authorities will reach the limit of five obligations for certain projects and will be unable to enter into additional obligations for those projects.

If the pooling limit of five obligations would be exceeded for a specific single project, and there is no CIL in place, the County Council may decide to object to the proposed development because the mitigation necessary to resolve any negative impacts identified cannot be funded, and therefore the proposed development would not be acceptable in planning terms.

It remains the responsibility of the Local Planning Authority to consider the County Council's advice and determine the application, including any decision to require developer contributions via Section 106 planning obligations.

4. Section 106 Legal Agreement Checklist

Where Section 106 planning obligations are to be undertaken, the following checklist should be used when drawing up legal agreements.

- Drafting - Section 106 Agreements should be prepared in draft form once an assessment of the impacts of the proposed development has been completed, in advance of any report being submitted to the Local Planning Authority's planning committee. Drafting the legal agreement ahead of issuing a delegated decision notice or taking a report to planning committee meetings (and public inquiries) enables all parties to review the provisions and helps to avoid delays in issuing decisions once applications have been determined. Section 106 Agreements, however, **should not be** dated before an application has been determined by the Local Planning Committee or the Planning Inspectorate on appeal. See also Section 3 about the pooling restriction, the penultimate bullet point below about repayment and the requirement for Section 106 Agreements to include a clause that says where funds are committed they should be treated as spent.
- Signatories - The County Council should be a signatory to Section 106 legal agreements which relate to services that are the responsibility of the County Council. Being a party to the agreement enables the County Council to know if and when contributions are due or should have been paid. Copies of signed legal agreements should be provided to the County Council's Director of Legal Services, Commissioning Communities and Policy Department, so that monitoring records can be updated.
- Indexation – The County Council prefers to index financial contributions to the All in Tender Price Index of Building Cost Information Services published by the Royal Institute of Chartered Surveyors. This index tracks construction material costs much more accurately than the Retail Price Index.
- Pooling restrictions – To ensure that planning obligations do not exceed the restrictions on pooling imposed by the CIL Regulations, obligations should be as specific as possible and should refer to a particular named project (for example "School x Project A: additional classroom"). Projects will be specified to this level of detail in the County Council's response.
- Triggers – Standard trigger points include 'prior to commencement', 'upon occupation', or 'upon completion'. Developers may wish to delay paying financial contributions until they have received some income from the sale of dwellings to help with cash flow. However, this can mean that the impact on infrastructure and services of households occupying new dwellings is felt before funding is received to mitigate that impact. Therefore, payments should be phased for early in the occupation of developments and in fewer larger tranches rather than

several smaller ones. However, the County Council is willing to enter into negotiations regarding triggers where viability issues can be demonstrated.

- **Viability** - The County Council can be flexible to assist developers where schemes are showing marginal viability. For example, there may be scope to collect contributions in instalments or to phase payments later in the development process (although as stated above this is not ideal). The County Council may decide to 'forward fund' infrastructure by spending money out of its budget in advance of receiving money from the planning obligation. In these circumstances, the County Council would expect developers to provide financial information on the viability of their scheme to the Local Planning Authority. Where the timely need for the delivery of a named Section 106 project is identified and the County Council intervenes to deliver such project using public funding, the County Council will then apply the contribution monies once received to offsetting the amount spent from public funds.
- **Repayment** – The County Council requests contributions once the trigger point(s) have been reached using Form 1 - Planning Obligations Payment Request (see Appendix A). The County Council endeavours to spend contributions as soon as possible and in accordance with the Section 106 Agreement. Cabinet approval is required to authorise the expenditure of funds. This, plus the time it takes to tender and contract the works, can mean that the time limit for repayment is reached. Therefore, Section 106 Agreements should include a clause that says where funds are committed they should be treated as spent. If funds are not committed within the time limit specified by the legal agreement the contribution would be returned to the developer. The County Council may alternatively require the funds to be deposited into an ESCROW account, which it will draw down once Cabinet has approval the project.
- **Legal fees** – considering a draft, obtaining instructions, negotiating amendments and executing the agreement requires input from a County Council solicitor. The County Council will seek to recover legal fees from the developer by using a clause in the Section 106 agreement. At the time of writing, the legal fees for a Section 106 agreement or unilateral undertaking is £1,000 for up to ten hours work and £46 per hour thereafter.

5. Monitoring, Income and Expenditure

The County Council:

- keeps records of its responses to pre-application enquiries and planning applications;
- monitors progress with planning applications and records decisions; and
- monitors Section 106 Agreements and planning obligations to ensure compliance with the pooling restrictions introduced by the CIL Regulations.

The County Council and Local Planning Authorities in Derbyshire use a land use monitoring and reporting system called CDPSmart. Each Local Planning Authority should input data on planning permissions and planning obligations regularly. Each Local Planning Authority should regularly update the system with information on the progress of development, noting how many dwellings are under construction or completed. The County Council uses CDPSmart to monitor progress with developments and to check whether trigger points for planning obligation payments have been reached.

When trigger points for planning obligation payments are reached, the County Council uses 'Form 1 - Planning Obligations Payment Request' to request that the payment is made (see Appendix A). The County Council states which development the request relates to, how much the request is for, and specifies a project to demonstrate how the monies are to be spent in accordance with the Section 106 Agreement.

The contribution is received by the County Council's Corporate Finance Team (Capital) and attributed to the relevant service. The County Council's records are updated. The County Council monitors expenditure to ensure that contributions from planning obligations are spent in accordance with the Section 106 Agreement. Where specified in the legal agreement, any contributions that are not spent are returned to the developer (usually within five or seven years).

Data on developer contributions under this Protocol is reported internally each quarter. Data on developer contributions relating to the Highway Authority can be made available on request.

6. Education

Assessing the Proposed Development

The County Council, as the Local Education Authority, has a statutory duty to make education provision available for each young person and elects where possible to provide a school place for each child at their normal area school. This duty applies across all schools and includes Academies. Although a new school must be established as a Free School, and some existing schools have opted to become an Academy, the statutory duty to plan provision remains with the Local Authority. The provision of additional school places is required to ensure that proposed housing development is acceptable.

When the County Council responds to a consultation on a proposed development, it assesses the total gross number of dwellings proposed within the application site. One bedroom dwellings are excluded from the assessment as it is unlikely that families with children would occupy these dwellings. Dwellings that will be restricted to occupation by people aged 55 and over are also excluded from the assessment.

The County Council response includes information on the number of pupils that the development is expected to generate, the net capacity of the normal area school, the current number of pupils on roll and the projected number of pupils on roll for the next five years at the normal area school.

The number of pupils that the development is expected to generate is calculated using the formula that for every 100 dwellings there will be 20 primary, 15 secondary and six post-16 pupils. This formula is based on a statistical assessment of birth rate and housing occupancy data in Derbyshire.

The net capacity of the normal area school is the Department of Education's nationally agreed measure of a school's ability to accommodate pupils. Following any building work at the school, the net capacity is reviewed and may change to reflect refurbishment, extensions or adaptations to the building.

The information on the current and projected number of pupils on roll is kept as up to date as possible, but many factors impact on pupil numbers and the situation can change very quickly. Therefore, pupil projection information is a snapshot in time. At any time during the year, families may move into or out of a school's normal area, the Head Teacher or other staff may change, or Officer for Standards in Education (OfSTED) may publish a report which influences public perception of a school. These factors, amongst others, can impact on pupil numbers and can change projection trends.

The pupil projection information only accounts for trends within the existing population. The projections **do not** account for planned new housing developments (with or without planning permission) within the normal area of a school.

Therefore, when assessing a proposed development, the County Council must consider the impact of other development within the normal area over and above any impacts anticipated as a result of demographic trends within the existing population. The County Council looks at the impact of all major residential development with extant planning permissions within the normal area to assess the impact that committed development coming forward will have on school capacity.

The County Council's assessment advises the Local Planning Authority on whether the normal area primary and secondary (including post-16) schools can accommodate the additional pupils arising from the proposed development or not.

Where a development proposal is within the normal area of a Derby City school, the County Council will consult Derby City Council for its views on the education impacts of the proposed development and incorporate those views into its assessment.

Mitigation

Where the County Council's assessment concludes that the normal area schools would have sufficient capacity to accommodate the pupils arising from the proposed development, the County Council will advise that no mitigation is required.

Where the County Council's assessment concludes that the normal area schools would not have sufficient capacity to accommodate the pupils arising from the proposed development, the County Council will request financial contributions to provide additional capacity.

To deliver the additional capacity, the County Council looks first at whether the existing accommodation at the school can be reconfigured. If it is not possible to reconfigure existing accommodation, the County Council next looks at whether the existing school can be expanded, for example, by providing new classroom accommodation.

Where a contribution is required to provide additional school place capacity at an existing school, the level of contribution is determined by using figures provided by the Department for Education for the cost per pupil of capital development in schools. These figures are based on the Department for Education's analysis of national building costs per pupil, adjusted to reflect regional variations in costs. The Department for Education costs are no longer updated. Therefore, contribution levels have been brought into line with price changes using the BCIS All in Tender Price Index and will be indexed annually from April to ensure contributions keep pace with rises in inflation. The cost per place figures shown below has been indexed from 1Q 2011 when the pupil place calculations were first made. This will be updated annually with the BCIS All in Tender Price 1Q Index. The thresholds and levels of contribution for providing additional school place capacity at an existing school in Derbyshire for 2017-18 are provided in the following table:

2017-18 Level of Contributions

	Places per 100 dwellings	Cost per pupil place	Cost per 1 dwelling	Cost per 10 dwellings	Cost per 100 dwellings
Primary school	20 places	£14,938.43	£2,987.69	£29,876.86	£,298,768.57
Secondary school	15 places	£22,509.41	£3,376.41	£33,764.11	£337,641.15
Post-16 education	6 places	£24,411.91	£1,464.71	£14,647.14	£146,4713.43

Where the County Council's assessment concludes that it is not possible to provide additional capacity by reconfiguring or expanding the existing school, the County Council will advise that a new school is required.

It is anticipated that a proposed development scheme of around 1,000 dwellings will require provision of a new one-form entry primary school and proposed development schemes of around 6,000 dwellings will require provision of a new secondary school. However, these thresholds are only a guide. As stated above, if existing schools cannot be expanded, the County Council may advise that a new school is required for smaller scale residential developments.

Currently, a new one-form entry primary school costs the County Council between £5 million and £6 million to build. Currently, a new secondary school of 900 pupils costs the County Council approximately £25 million+ to build. Where a new school is required, the County Council will require funding for construction **and** funding for or provision of suitable land for the new school. Developers may choose to provide the site and construct the school themselves, to the County Council's specification, as often they can deliver the school at a lower cost.

Where it is feasible and necessary to do so, the County Council will pool contributions from up to five sites towards provision of the new school, and pro-rata the cost of providing the new school between each development site accordingly. This approach would be dependent on the timing of housing delivery and the different developers working together with the County Council to deliver the new school. This approach is dependent on compliance with the CIL pooling restrictions.

Projects

Where a financial contribution is requested towards the provision of school places, the County Council's response identifies which specific project would be funded by the contribution. This ensures compliance with the pooling restrictions introduced by the CIL Regulations. It provides certainty and clarity for developers and communities on how the funds are to be spent. See also sections 3 and 4 regarding pooling restrictions.

7. Broadband

Assessing the Proposed Development

Broadband service quality varies across the County with access to Next Generation Access (NGA) broadband infrastructure (capable of delivering download speeds of speeds of at least 30 Mbps) improving. Investment in the County's broadband infrastructure, to support the future economic prosperity of the County, continues to be a priority for the County Council.

The Digital Derbyshire programme is a partnership between Derbyshire County Council and BT to provide access to NGA fibre broadband services for residents and businesses. The Council's ambition is that 98% of homes and businesses in Derbyshire will be able to access speeds of at least 24 Mbps by the end of 2018ⁱ.

The Digital Derbyshire programme applies to existing households and businesses. New residential developments coming forward will not necessarily be covered by the Digital Derbyshire programme.

Therefore, all developers proposing housing developments should look to provide for NGA broadband infrastructure and services as part of the design of their development schemes at the outset.

Mitigation

It is not expected that the County Council will require broadband to be provided to make a development acceptable in planning terms, however, developers should look to provide for NGA broadband infrastructure services as an integral part of the development scheme at the outset.

Openreach is now offering fibre-based broadband to all new residential developments. In the majority of cases, connection will be provided free of charge to developers although in some cases, a part-contribution from the developer may be required. Openreach will make a significant contribution before seeking any funds from developers.

NGA broadband connectivity is a crucial factor for homeowners when deciding to buy a house. The Home Builders Federation (HBF) is promoting and supporting the uptake of this funding amongst its members to ensure that high quality broadband services are provided as an integral part of new build homes. More information can be found here:

<https://www.ournetwork.openreach.co.uk/property-development.aspx>

Openreach is not the only provider of high-speed broadband services. Developers may wish to make enquiries with other service providers to explore whether other more cost-effective options are available.

ⁱ Based on the number of Derbyshire premises as of August 2014 and contractual target with BT

Local Planning Authorities should attach advisory notes to planning permissions to request that developers work with broadband providers to ensure NGA broadband services are incorporated as part of the design of new development. However, if it can be shown that this would not be possible, practical or economically viable. In such circumstances, suitable ducting should be provided within the site and to the property to facilitate future installation.

Guidance on the characteristics of qualifying NGA technologies is available from BDUKⁱⁱ

ⁱⁱ <https://www.gov.uk/government/publications/2016-nbs-tech-guidelines>

8. Health

Assessing the Proposed Development

The built and natural environment where we live, work and play is inextricably linked to health and wellbeing, and can determine the health outcomes of individuals and populations. The mechanisms by which the built and natural environment impact on health include neighbourhood design, quality of homes, exposure to air pollution, access to greenspace and sustainable active travel options.

The potential impact on population and human health should be considered early in planning proposals, to enhance the design of places from a health improvement perspective (PHE 2017)ⁱⁱⁱ (PHE 2017)^{iv}. For example, Developers can make positive contributions to enhance the physical and mental wellbeing of future residents through the design and layout of their housing schemes and surrounding green spaces to facilitate community connectedness. See comments on Health Impact Assessment below.

Public Health

County Council Public Health is responsible for a range of services to help its population make healthier choices, stay healthy, provide protection against threats to health and minimise the risk and impact of illness. Public health programmes are revenue funded and are delivered by the County Council, therefore, currently the County Council is not seeking developer contributions towards these but is potentially seeking developer contributions for infrastructure to support healthier lifestyles, such as active travel.

Primary Care

An individual's first point of contact with the NHS is primarily through primary care services, with around 90% of patient interaction occurring through these services. This includes GP practices, dental practices, community pharmacies and high street optometrists. The Health and Social Care Act 2012 places an obligation on NHS England to secure the provision of primary medical services for patients throughout England, and have regard to the need to reduce inequalities in access. Derbyshire Primary Care is commissioned by Clinical Commissioning Groups (CCGs) whose contact details are listed below.

Erewash CCG

Melanie Foster Green, Primary Care Lead

Melanie.foster-green@nhs.net

Southern Derbyshire CCG

Rob Hill, Senior Primary Care Commissioning Manager

Robert.Hill8@nhs.net

ⁱⁱⁱ Public Health England (July 2017) Health and Environmental Impact Assessment: A briefing for Public Health Teams in England. PHE gateway number 2016712.

^{iv} Public Health England (June 2017) Spatial Planning for Health An evidence resource for planning and designing healthier places. PHE gateway number 2017151.

North Derbyshire CCG

Hannah Belcher, Head of Primary Care Commissioning
hannah.belcher@nhs.net

Hardwick CCG

Jean Richards, Primary Care Commissioning Manager
jeanrichards@nhs.net

Tameside and Glossop CCG

Elaine Richardson, Head of Delivery and Assurance
Elaine.Richardson@nhs.net

The County Council is working with Local Planning Authorities to develop mechanisms to systematically consider health impacts of Local Plans during their preparation and review. The County Council is also supporting CCGs to develop a shared approach for assessing the impact of development proposed through planning applications on the delivery of primary care services and the health care facilities (buildings).

Once an approach has been agreed, the CCGs will consider the impact of the proposed development on healthcare services and facilities, and will advise Local Planning Authorities on potential mitigation.

Health Impact Assessment

Planning applications for major residential development of 100 dwellings or more should ideally be accompanied by a Health Impact Assessment (HIA). In May 2017, changes were made to the Environmental Impact Assessment (EIA) Regulations for major developments to include 'population and human health' as one of the considerations in an EIA.

During 2016, the County Council worked with the Homes and Communities Agency, North East Derbyshire District Council, Bolsover District Council, Chesterfield Borough Council, NHS Hardwick and North Derbyshire CCGs, Data Orchid and Lincolnshire County Council to pilot the use of a HIA of a major development scheme, which could then be used for this purpose. The final report was published in 2016 and can be found at:

https://observatory.derbyshire.gov.uk/IAS/Custom/resources/HealthandWellbeing/Health_Impact_Assessments/HIA_the_Avenue_development_2016.pdf#view=Fit

The learning from this work can be used to inform future HIA proposals.

Developer guidance around reducing the impacts of air pollution is currently being developed. Of all the environmental factors, air pollution has the greatest adverse effect on health outcomes across all population groups. (PHE 2017)^{vi}.

^{vi} Public Health England (June 2017) Spatial Planning for Health An evidence resource for planning and designing healthier places. PHE gateway number 2017151.

Mitigation

Mitigation of any adverse impacts on health will depend very much on the individual circumstances of the proposed development and the health care facility to which it directly relates. Mitigation could include for example, financial contributions through Section 106 or CIL for healthcare facilities, and infrastructure to facilitate health and wellbeing, such as open spaces and active travel infrastructure.

9. Other Services

The following services and infrastructure **are not currently covered** in the County Council's response. For further information, developers and Local Planning Authorities should contact the named organisation.

9.1 Highways and Public Rights of Way

As the Highway Authority, Derbyshire County Council must be consulted as a statutory consultee on highway matters, including Public Rights of Way. New development provides an opportunity to provide new strategic green infrastructure through the inclusion of Public Rights of Way within the design of a proposed development scheme. The County Council's Highways Development Control Team will advise separately on opportunities for development to contribute to the county's green infrastructure. Contact ETE.DevelopmentControl@derbyshire.gov.uk.

9.2 Travel Planning

Travel Plans are a cost-effective tool for encouraging behaviour change towards low carbon, healthier active travel. As part of the 6C's Design Partnership, Derbyshire County Council's Travel Plan advice accords with that available from Nottinghamshire County Council, see:

<http://www.nottinghamshire.gov.uk/transport/public-transport/plans-strategies-policies/travel-plans> and click on 'guidance on the requirements for travel plans submitted in support of planning applications'. Travel Plans will be dealt with separately by the Highway Authority. Financial contributions may be required from developers to fund Travel Plan measures and costs incurred by the County Council in reviewing and monitoring the Travel Plan and agreeing any adjustments or additional measures that might be required. Contact ETE.DevelopmentControl@derbyshire.gov.uk.

9.3 Low Emission vehicle Infrastructure

Currently, the majority of vehicles run on either petrol or diesel fuel which are known to cause pollution which is dangerous to public health and contributes to climate change. Industry-led research and development is working to build interest in, and use of alternative fuels. Nationally, the low emission vehicles' market share is increasing.

It is the intention of Derbyshire County Council, working with partners and which includes the Local Planning Authorities within Derbyshire, to assess and where practical, provide the infrastructure necessary to enable residents, businesses and communities to use low emission vehicles every day and for any purpose. Low Emission Vehicle Users will be confident that they will be able to recharge their vehicles quickly and conveniently, taking advantage of their lower cost operation and, in doing so, making a major contribution to air quality in the County through reduced emissions from road transport. For further information please contact richard.lovell@derbyshire.gov.uk.

9.4 Libraries

The County Council is not normally able to match-fund developer contributions that may come forward for improvements to existing libraries or the provision of new libraries. However, whilst the County Council is not actively seeking developer contributions, proposals for developers for improvements to existing libraries or the provision of new libraries should be addressed to the library service in the first instance. For more information on libraries, visit: <http://www.derbyshire.gov.uk/leisure/libraries/default.asp>

9.5 Waste

The County Council is not currently in a position to match-fund developer contributions that may come forward for improvements to existing waste facilities or the provision of new waste facilities. Therefore, the County Council is not currently seeking developer contributions for waste. For more information visit: http://www.derbyshire.gov.uk/environment/rubbish_waste/default.asp

Enquiries relating to waste collected by Local Authorities (e.g. domestic waste and recycling collections) should be directed to the relevant District or Borough Council. Enquiries relating to Household Waste Recycling Centres (HWRCs) should be directed to the County Council's Waste Management Service.

9.6 Flood and Water Management

As a Lead Local Flood Authority, the County Council is responsible for the Local Flood Risk Management Strategy and should be engaged and consulted in both the development planning and development management process. The County Council has prepared a Preliminary Flood Risk Assessment for Derbyshire which can be used to inform the preparation of land use policies and decisions on planning applications. Further information regarding flood risk is available by contacting Derbyshire County Council's Flood Risk Team – flood.team@derbyshire.gov.uk.

9.7 Biodiversity

All Local Planning Authorities in Derbyshire have Service Level Agreements with Derbyshire Wildlife Trust to provide advice on ecological issues. These service level agreements should be used to obtain advice on request.

9.8 Archaeology and the Historic Environment

There are over 9,000 sites and features of archaeological interest in the County. Local Planning Authorities have Service Level Agreements with the Derby and Derbyshire Development Control Archaeologist to provide planning advice on archaeological issues when requested. Where advice is required, details of planning applications should be emailed to: stephen.baker@derbyshire.gov.uk.

9.9 Landscape Character

Derbyshire has a varied and diverse landscape. Local Planning Authorities are responsible for determining whether a landscape character assessment

and a study of the visual impact on the surrounding landscape is required. Local Planning Authorities can use planning conditions and financial contributions to help secure long-term management plans and to conserve, enhance and manage landscape character.

9.10 Canals and Waterways

The canals and canal routes are an important element of the Derbyshire's green infrastructure. Derbyshire County Council has large land and asset liabilities on the Chesterfield, Derby and Sandiacre and Cromford Canals, and is the Navigation Authority for the in-water sections between Chesterfield and Staveley and at Cromford. Refer to the County Waterways Strategy and the County Council's Countryside Service for more information:

Susan.White@derbyshire.gov.uk.

9.11 Fire and Rescue

It is vitally important that new housing is well-designed and addresses safety and the needs of vulnerable people. Houses must provide adequate safety for the occupant throughout the occupiers' lifetimes. Derbyshire Fire and Rescue Service should be consulted on all proposals for housing growth so that the implications for fire safety can be considered. Local Planning Authorities should consider the use of conditions and information notes/recommendations on planning permissions to secure the provision of sprinkler systems and associated water supply infrastructure. For more information contact:

Bolsover, Chesterfield and North East Derbyshire

northareaadmin@derbys-fire.gov.uk

High Peak and Derbyshire Dales

westareadmins@derbys-fire.gov.uk

Amber Valley and Erewash

eastareaadmin@derbys-fire.gov.uk

Derby City and South Derbyshire

south_area_admin_derby@derbys-fire.gov.uk

Appendix A: Form 1 – Planning Obligations Payment Request

Local Planning Authority:
Planning application or permission reference:
Site location:
Developer:
Date of Section 106 Legal Agreement:
Section 106 Legal Agreement schedule or paragraph numbers:
Infrastructure project:
Amount requested:
Cost of project:
Project delivery timescales:

I confirm that:

1. I am authorised to make this request to xxx District/Borough Council on behalf of Derbyshire County Council
2. The funds are to be spent on the scheme as set out and in accordance with the terms of the relevant legal agreement
3. In the event that it is found that the funds are not spent in accordance with the terms and/or timescales set out in the legal agreement the funds and interest accumulated will be returned to xxx District/Borough Council (or the developer as may be deemed most appropriate)

Name:

Job Title:

Email Address:

Funds should be paid via bank payment to:

Sort Code 30 00 02
Account Number 02055231

'S106' and the planning application number should be included in the payment reference. Remittance should be sent to County Council finance via email to income@derbyshire.gov.uk and copied to the Principal Planner via email to planningpolicy@derbyshire.gov.uk.