
Planning Obligations

Supplementary Planning Document

Consultation Draft

June 2007

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Supplementary Planning Document (SPD)

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Contents

Introduction

Part One

Purpose of SPD

Planning Policy Context

Background to Planning Obligations

Dudley Council's Approach to securing Planning Obligations

Drafting Agreements

Financial Contributions

Monitoring

Part Two

Affordable Housing

Economic Well Being

Education Provision

Environmental Protection

Site Specific Measures

Highway Infrastructure

Historic Environment

Library Facilities

Nature Conservation

Open Space, Sport and Recreation

Public Art

Public Realm

Transport Infrastructure Improvements

Travel Plan Policies

Appendix One – Thresholds for Planning Obligations

Introduction

The aim of this Supplementary Planning Document (SPD) is to set out detailed guidance on the way the Council expect policies within the plan, with respect of planning obligations, to be applied in particular circumstances. The SPD will provide greater clarity to developers, the community and the Council regarding the basis for negotiating Planning Obligations. The SPD will also set out how planning obligations will be used to promote sustainable development and ensure the infrastructure necessary to support future residential and commercial growth is delivered.

Furthermore it is the intention of this guidance to inform the operation of the Development Control process, and to provide a guide for developers and land use managers about the general principles applicable to planning obligations and how these are considered through the planning process.

Whilst this guidance will not have equivalent status to Development Plan Documents, compliance with Supplementary Planning Document guidance is a material consideration in the making of planning decisions and therefore carries significant weight in the decision making process.

Dudley's Planning Obligations Policy (Policy DD7) (see Part One) is set out in the Council's Unitary Development Plan 2005 (UDP). The proposed Planning Obligations SPD will be a separate document which will provide more guidance and detail on how Policy DD7 and other associated policies will be implemented.

The SPD has been produced with regard to National Planning Guidance, the Regional Spatial Strategy, the Development Plan (i.e. the Council's Adopted Unitary Development Plan 2005), the Community Strategy and drawing upon best practice elsewhere. It has been subject to a Sustainability Appraisal (SA) and screening for a Strategic Environmental Assessment (SEA).

Public Consultation has taken place in line with the Statement of Community Involvement (November 2006). A statement of the consultation undertaken, the representations received and the authority's responses to these representations will be found in the Consultation Summary Report. (NB. This section will apply once public consultation has been carried out).

PART ONE

1. Purpose of SPD

The following paragraphs set out the key aim and objectives of the Planning Obligations SPD.

Aim of the SPD

The key aim of this guidance is to provide clarity for developers, the community and the Council regarding the basis for negotiating Planning Obligations. The SPD will set out how planning obligations will be used to promote sustainable development and ensure the infrastructure necessary to support future residential and commercial growth is delivered.

Objectives of the SPD

The main objectives for the SPD are identified as follows:

- To set out the principles that guide the Council's approach to planning obligations
- To set out a scale of standard formulae and charges for a profile of needs that may be generated by a development and to justify these formulae and charges
- To set out the policy basis for a full range of planning obligations

2. Planning Policy Context

National Policy Context

The legal basis for Planning Obligations is provided by Section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). It should however be noted that Sections 46 and 47 of the Planning and Compulsory Purchase Act 2004 give the Secretary of State the power to make regulations to replace S.106, when seen as appropriate.

Government advice on the application and use of planning obligations is set out in Circular 05/2005 'Planning Obligations'. This guidance seeks to ensure that planning obligations are used as effectively as possible.

In July 2006 this was followed by the 'Planning Obligations Practice Guide'. This guidance aims to provide Local Planning Authorities and developers with practical tools and methods to help the development, negotiation and implementation of planning obligations.

Further guidance is also contained within PPS1 'Delivering Sustainable Development'. Indeed paragraph 24 states:

"Planning authorities should ensure that sustainable development is treated in an integrated way in their development plans. In particular, they should

carefully consider the interrelationship between social inclusion, protecting and enhancing the environment, the prudent use of natural resources and economic development – for example, by recognising that economic development, if properly planned for, can have positive social and environmental benefits, rather than negative impacts, and that environmental protection and enhancement can in turn provide economic and social benefits.”

Regional Planning Guidance

Regional Spatial Strategy 11 (RSS11) for the West Midlands

The Regional Spatial Strategy (RSS) for the West Midlands RSS11 was published in June 2004. The RSS has a similar stance to PPS1 with respect of delivering sustainable development in the region. Indeed the key role of the RSS is stated as:

“ ... enabling all parts of the Region to sustainably meet their own needs, in a mutually supportive way”.

This will be achieved through:

“... Protecting and enhancing the Region’s environmental assets, and where appropriate making economic use of them, together with the prudent use of natural resources ... will be particularly important in guiding the nature and location of development and improvements at sub-regional and local levels.”

(Paragraph 3.6, Page 14, RSS11, 2004)

As set out in the purpose and objectives of the SPD, Planning Obligations have a key role to delivering sustainable development, not only in Dudley but, across the region.

Local Guidance

Dudley Unitary Development Plan (October 2005)

One of the key aims of the plan is to promote sustainable development in the Borough. The significance of Planning Obligations in achieving this aspiration is noted in the Plan, indeed there are several policies within the document which refer to the potential use of Planning Obligations in achieving this aim. The key Policy upon which this document is based on is:

UDP POLICY DD7 – PLANNING OBLIGATIONS

Reasons for the Policy

The Council, in applying the policies set out in this Plan to new developments, will, when necessary and appropriate, require developers to enter into planning obligations. These obligations will only be sought where it is considered necessary to safeguard the local environment and/or compensate for additional burdens placed by the development on community facilities and infrastructure.

The key principle in the use of planning obligations is that any gain sought in response to a planning proposal must be a direct consequence of, and related to it. It may be more appropriate to consider such requirements as mitigating planning loss resulting from the affects of development and it is not intended that the community should have to underwrite any hidden costs of development. The only exception to this is the provision of affordable housing which legally represents genuine additionality.

In accordance with national guidance the Council will apply the established tests of reasonableness in respect of what constitutes properly related planning gain so that each development is treated on its own merits and appropriate judgments made of what is necessary and justifiable. Planning obligations do not make an unacceptable development acceptable; it is a subordinate requirement and should not be the primary purpose of any development proposal. Conversely if a development is considered acceptable, in respect of its impact on local community and infrastructure provision planning gain would not be justified.

Against this background, development must provide for its direct infrastructure requirements, whether on or off site, and will only be acceptable where there is not a significant net cost to those living and working in the vicinity of the proposed development. “Planning loss” will arise whenever, as a result of development, there is a loss of capacity within a given category of infrastructure available to the existing community, or inadequate provision for a new community.

Where there is a clearly identified impact on the community or infrastructure arising from a development proposal, the Council will undertake detailed analysis to assess the type and level of measures necessary to mitigate planning loss and will negotiate an appropriate planning obligation.

The Council’s approach, consistent with circular and case law will consider whether mitigation is required when the proposal is tested against the implications for a range of community provision and infrastructure requirements which may include the following:-

1. *Open space, sport, leisure and recreation provision.*
2. *Traffic and transportation (including Public Transport and Green Transport Plans).*
3. *Education Provision.*
4. *Social Service Provision.*
5. *Crime prevention and public safety.*
6. *Economic and community development.*
7. *Nature Conservation.*
8. *Historic Environment.*
9. *Environmental Health.*
10. *Public Art.*

If mitigation is required, the specific provisions which are needed and are reasonable in the individual circumstances will be identified. Where appropriate, account will be taken of site specific constraints affecting the overall viability of the proposed development. As a consequence an appropriate and justifiable planning obligation will be negotiated with the applicant, and/or the applicants agent.

DD7 PLANNING OBLIGATIONS

The Council will require applicants to enter into planning obligations where the scale and impact of development proposals can be shown, in accordance with government advice, to result in a consequential planning loss to the existing community.

The planning obligation must, where appropriate and necessary:-

- a) make appropriate provision for the infrastructure requirements of the development
- b) ensure that there is no unacceptable adverse impact on the environment, nor consequential unacceptable loss to the existing level of services enjoyed by the community.

Other Relevant UDP Policies

Other relevant policies with respect of planning obligations are referred to within the specific sections in Part Two.

Dudley Borough Challenge: Community Strategy 2005 – 2020

The Dudley Unitary Development Plan provides the mechanisms for delivering the aspirations of the Dudley Borough Community Strategy (2005). The aim of the Community Strategy is to set out a vision up until the year

2020 for a prosperous and attractive Borough. The Community Strategy identifies a series of six key priorities, all of equal importance, which together contribute towards an overall vision for a 'Stronger Community'. These are:

- Creating a prosperous borough
- Promoting a sense of well-being and good health for everyone
- Celebrating our heritage and the diversity of local culture
- Safeguarding and improving the environment
- Promoting individual and community learning
- Making Dudley a safe and peaceful place to live.

Progress within each of these priorities will contribute towards the creation of stronger communities and help deliver the national, local and regional objective of sustainable development within the Borough. Planning Obligations secured from new development will also play a significant role in contributing to the priorities identified within the Borough Challenge. It is therefore clear that the Planning Obligations Supplementary Planning Document will have a key role in supporting the aims and objectives of the Community Strategy.

3. Background to Planning Obligations

The following section aims to provide a background to Planning Obligations. Firstly setting out **what** they are, **how** they are used and **when** they are needed. The final paragraphs will provide further background as to the circumstances by which off-site contributions may be sought and how contributions may be pooled. Also discussed is the impact viability issues may have on contributions sought.

Ways in which planning obligations may be used?

As set out in paragraph B3 of Circular 05/2005 'Planning Obligations', obligations may be used;

- to **prescribe** the nature of development (e.g. by requiring that a given proportion of housing on a site is affordable); or
- to secure a contribution from a developer to **compensate** for loss or damage created by a development (e.g. loss of open space); or
- to **mitigate** a development's impact (e.g. through increased public transport provision).

When they are needed?

The use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold

There are no hard and fast rules about the size or type of development that should attract Planning Obligations. However, government guidance in Circular 05/2005 'Planning Obligations' (Paragraph B5) stipulates that they should only be sought where they meet all of the following tests:

- i. relevant to planning;
- ii. necessary to make the proposed development acceptable in planning terms;
- iii. directly related to the proposed development;
- iv. fairly and reasonably related in scale and kind to the proposed development; and
- v. reasonable in all other respects.

How can they be obtained?

There are four standard methods by which Planning Obligations can be negotiated/ obtained – these are as follows;

1. Site by site basis;
2. Use of standard formula/ tariff, e.g. Off site public open space;
3. Provision of area based infrastructure, e.g. where developments occur within close proximity to each other and the cumulative effect will result in the requirement for public realm improvements, the Council may pool contributions from each of the developments to fund improvements in an equitable way, for example improvements to public realm and conservation areas;
4. Strategic infrastructure, e.g. extensions to metro and bus routes.

How can they be used?

Planning Obligations can be used in the following ways, to:

- a) Restrict the development or use of the land in a specified way;
- b) Require specified operations and activities to be carried out on the land;
- c) Require the land to be used in a specified way;
- d) Require that a sum or sums to be paid to the authority on a specified date or dates or periodically.

They provide a means of ensuring that developers contribute towards the infrastructure and the services that Dudley Metropolitan Borough Council believe necessary to facilitate proposed developments. Contributions may be either in cash or kind.

Off Site Provision and Pooled Contributions

Off site provision; On suitable sites provision of affordable housing, open space, community facilities and transport infrastructure etcetera may be provided on-site, subject to agreement by the Council and the developer, i.e. a S.106 agreement or Planning Obligation. However, in some cases on-site provision may not be appropriate. In these instances the Council may enter

into an agreement with the developer for off-site provision of the necessary facilities and/ or infrastructure or seek financial contribution towards off-site provision.

Pooled Contributions; For certain smaller scale developments the contributions raised through planning obligations may not be of a level that could contribute significantly towards improvements in an area. However, if considered cumulatively the contributions raised through smaller scale development may be pooled together to allow the Council to make a single improvement to an area. Similarly for larger infrastructure improvements, including strategic infrastructure projects, contributions may also be pooled so that they can be used more cost effectively. It is important to note that the financial contributions pooled will be ring-fenced to contribute towards the programmes and schemes that have been identified in the relevant planning agreements. In the unlikely event that financial contributions secured from developers cannot be spent within the timescale provided for in the agreement, the money will be refunded to the developer.

Impact on viability

If a developer considers that the level of obligations required would render their proposal unviable, then the developer will be expected to provide the full financial details of the proposal to the Council, in a financial appraisal submitted and signed by an appropriately qualified and independent financial professional. For the Council to consider an “unviable” argument, it will be essential that the developer shares information substantiating this on an open book basis. If there is any disagreement on the financial appraisal the Council will expect the developer to agree to an adjudication by an independent financial body and any costs of the adjudication funded by the developer.

Any deviation from the Council’s standard obligations will be considered as an unusual exception. Where these occur the developer will be required to demonstrate what exceptional circumstances would give rise to the case made. If the Council agrees that a scheme cannot reasonably afford to meet all the normal requirements after going through the above process, then these requirements may be prioritised. Prioritisation would be agreed through negotiation with the developer and consultation with other parties (subject to the scheme being acceptable in all other respects).

4. Dudley Council’s Approach to securing Planning Obligations

This section sets out Dudley Council’s approach to securing Planning Obligations. This will include looking at the procedures for drafting agreements and dealing with financial contributions and for carrying out monitoring of Planning Obligations.

Process of Securing Planning Obligations

The policies in the Council’s Adopted Unitary Development Plan provide the policy framework within which planning obligations will be sought. In addition

Supplementary Planning Documents can provide a further more detailed framework for determining what planning obligations will be sought when a planning application is being considered.

Following receipt of a planning application other Council Departments will be consulted (e.g. Highways, Education, Regeneration and Housing amongst others) as well other external service providers and statutory consultees. The planning Case Officer will rely on these other services to identify where there is a need, arising from the development, for infrastructure and/ or services. The Case Officer will then advise the developer of these requirements and seek the developers agreement for their inclusion within a S106 legal agreement. Failure to agree to these services/ infrastructure may well result in the Council refusing planning permission for the development.

Providing the developer agrees to the requirements then the planning application will go to Committee (in accordance with the Council's scheme of delegation) where it will be recommended for approval subject to the prior completion of the S.106 agreement. For smaller developments that still need a similar agreement it may be that the scheme can be approved subject to a planning condition which will not allow any works to commence before a binding agreement has been provided which ensures the provision of the needed services/infrastructure. In the latter case the developer will still need to provide written confirmation that he/she agrees to provide the services/ infrastructure necessary before the application is determined. Failure to agree to the provision of these services/infrastructure may well result in the Council refusing the development.

5. Drafting Agreements

Planning agreements will be drafted by the Council's legal services team, or by solicitors acting on the Council's behalf. Developers will be required to pay the Council's costs in drafting the agreement.

In order to ensure that agreements are dealt with promptly and efficiently as possible developers are encouraged to provide the following information on submission of the planning application:

- evidence of title to the land;
- a draft heads of terms for the agreement and a solicitor's undertaking to pay both the Council's reasonable legal costs; and
- the relevant fee for the Council to manage and monitor the legal agreement.

Developers should also inform the Council immediately of any change in ownership of the application site, as failure to do so can lead to delays in determining the application.

Finally, the Council's legal services team has standard wording to cover affordable housing provision, financial contributions to public open space and play areas and highway works, which should enable standard agreements to be concluded quickly in many cases.

Further information can be obtained from the Council's Corporate Litigation team, or from the Principal Planning Obligations Officer.

6. Financial Contributions

Contributions could be requested from developers on entering into a section 106 agreement with Dudley MBC. The areas where contributions may be requested are detailed in Part Two of this document and include affordable housing and recreational facilities. The amounts to be paid can include:

- A planning obligation amount as detailed in each individual agreement;
- An agreed amount to cover officer time in preparing and managing the agreement with the developer. Amounts which can be charged for include allowances for legal, engineering and landscape architect input into the agreement;
- An additional charge for the service provided by a dedicated Planning Obligations officer employed by Dudley MBC. The charge for this element will be 10% of the planning application fee or £1,000 whichever is greater (this charge is subject to review and may change).

Trigger for Payment

The developer contribution is payable as defined in the agreement. Potential points when these amounts become payable include:

- On signing the agreement;
- On starting development on site;
- When an agreed percentage of the works has been completed; or
- When the development is complete.

Payment

Contributions are payable to Dudley MBC and are banked into Dudley MBC's Receipts Suspense account. Payments can be made by cheque or electronic methods such as BACS

Accounting for the use of these contributions

Individual financial (project) codes are set up by Accountancy Services in order to keep individual balances separate in order to aid monitoring. These contributions must be spent within a timescale defined by the agreement.

The contributions are spent in 2 ways:

- Physical improvements (i.e. capital works) – these are allocated by means of officer working groups such as the Greenspace S.106 PIT

meeting. This meeting uses a detailed prioritisation mechanism to allocate these funds to sites. These decisions are then reported through to the Council's Cabinet and ratified at Full Council meeting in order to receive member approval

- Maintenance/establishment works as defined by the agreement

Balances remaining unspent after the defined timescale are paid back to the developer with accrued interest.

7. Monitoring

Monitoring of Planning Obligations will be undertaken by Dudley Council's Planning Obligations Officer to ensure all obligations are complied with, both by the developer and by the Council. The Council will track compliance with each provision contained in a legal agreement as a development proceeds. This will ensure that all services are spending the financial contributions and completing non-financial obligations in accordance with the terms of agreements.

Planning Obligations Monitoring Reports will be presented to the Development Control Committee on an annual basis and will detail-

- Information on the obligations entered into
- Financial contributions received
- Affordable housing negotiated
- Completion of schemes funded from financial contributions

PART TWO

Affordable Housing

Policy Background

The justification for requiring obligations in respect of affordable housing is set out in Planning Policy Statement 1 (PPS1) (2005) 'Delivering Sustainable Development', Planning Policy Statement 3 (PPS 3) (November 2006) 'Housing', Policy H5 - Affordable Housing of the Council's Adopted Unitary Development Plan (UDP) (October 05) and the Council's Supplementary Planning Document on 'Affordable Housing' (May 2006).

Trigger for obligation

Affordable housing will be sought on any proposals involving 15 or more dwellings (in accordance with the most recent government guidance in PPS3). On suitable sites the Council will seek 30% of the dwellings as affordable. The Council's preferred option will be to secure **on-site provision**, however, there may be exceptional circumstances where this is not realistic and so off-site provision or a commuted sum, may, in rare circumstances, be appropriate.

What is expected from developers?

It is expected that developers should make early contact with Planning and Housing to discuss the affordable element of any proposed residential developments.

The following will be expected when agreeing obligations in respect of affordable housing:

- Number, type and proportion of units to be provided.
- The standards to be applied to the construction of those units. The Council expects developers to comply with the Council's latest minimum standards for social rented housing.
- The phasing of their provision.
- The location of the units within the site.
- The Registered Social Landlord (RSL) and other agencies to be involved. The Council expects developers to involve Dudley Housing Partnership (DHP) members in bringing forward new schemes in the Borough.
- Any other relevant considerations.

Basis of calculation

Dudley MBC Housing Needs Survey (August 1998) and Housing Needs Survey Re-Analysis (March 2002). A new Housing Needs Survey has been completed for the Council. (June 2006). This will be used to inform and guide future policy and may result in revisions in due course.

Further Information

Detailed information relating to Planning Obligations in respect of Affordable Housing can be found in Dudley MBC's Affordable Housing – Supplementary Planning Document (May 2006).

A list of Dudley Housing Partnership (DHP) members is available from the Directorate of Adult Community and Housing Services.

Economic Well Being

Policy Background

Economic Well being for the residents of Dudley will be achieved when unemployment levels in all areas of the Borough are lower than the England average and continuing to improve, when all people have access to and are engaged in and succeeding in training that equips them with skills demanded by employers and finally when the employment offers made have resulted in an average weekly earnings rate which is consistently at or above the average for England and our Gross Value Added (GVA)¹ rate is keeping pace with the national average.

The justification for requiring obligations towards achieving economic well being in the Borough comes from the Urban Regeneration, Community Services and Employment and Economy Chapters of the Unitary Development Plan. These chapters contain several policies which reference the need for development to provide employment opportunities to the benefit of the community.

Dudley Council is looking to secure, through the Planning Obligations process, both commitment to and resources to fund;

- A number of local jobs for local people;
- Interventions that can support activities to up-skill local unemployed people of a working age and support them into sustainable employment.

The focus of resources gained would be the Borough's defined priority areas and groups that are most need. The aim will be to narrow the gap between the most advantaged and disadvantaged areas of the borough and to reach a local working age employment rate of 80%.

Trigger for Obligations

Where appropriate all developments will be encouraged to contribute towards economic well being, either through financial contributions or in kind. The following list sets out how planning obligations may be used in achieving economic well being in the Borough:

- Gaining access to and promoting opportunity: Dudley has a Construction Initiatives Development Manager who has been successful in negotiating agreements with contractors / developers with respect of training and employment opportunities within their development and or supply chain for the construction stages. This has extended to jobs within the development, where new ones are created. Any assistance in this endeavour, through a planning obligation, that

¹ GVA (Gross Value Added) is a measure of productivity in an area and shows how much an area contributes toward the UK economy.

could insist or suggest a role for the developer and its supply chain will be essential to promote the success of this approach.

- Funding the delivery of services that support the unemployed into work; Dudley Council holds limited resources to deliver the training and jobs brokerage services required, particularly when obliged to respond and make the best of our known or planned 'Capital Investment Hotspots'.

The Council are looking to develop an income stream through the Planning Gain process to support these activities and services.

- *For large scale developments* - The resources gained through Planning Gain (Section 106) from these developments will directly fund services that will link future residents of that development with training and employment. For larger commercial development opportunities for local employment and use of local services will be sought; and
- *From a range of smaller developments* - The funding received will go some way towards mitigating the effects of unemployment or skills gaps of future disadvantaged residents of the development or, as a result of housing schemes, any increase in population levels that in turn will lead to higher unemployment numbers throughout the borough.

What is expected from developers?

Developers are encouraged to make early contact with Planning and the Economic Well Being section of the Economic Regeneration Division to discuss;

- The development of proposals that can both support / facilitate and benefit from the training and the Local Jobs for Local People initiatives / interventions, which are currently available.
- Discuss the contributions (financial) which will be expected through the Planning Obligations process that will be expected from the developers to support a range of tailored activities that are / could be matched into their proposed scheme, but will improve the chances of local unemployed people gaining employment.

Basis of Calculation

Residential Developments

Residential developments will use the following formula:

- Calculate the total expected number of Working Age Adults that will reside within the development.

- Multiply this figure by the WACG² benefit claimant rate of 16.2%
- This will provide a projected figure of the level of potential unemployed that could statistically reside within such a development.
- Once known this figure will be multiplied by an agreed amount that would fund a level of intervention to support WABC clients into work helping to mitigate the effects of future developments on the Economic Well being of our population.

Example;

Development creates 100 new adult residents, multiply by 16.2% (WACG benefit Claimants) = 16 people, multiplied by £1,250, which is the estimated figure of the cost to support an average client into employment = £20,000.

Commercial Development

For Commercial developments we will look at the need to improve employment rates. The current employment rate for Dudley is 72%, with a target to reach the England average of 80%, Dudley's employment rate is higher than the England average by 8%.

We will therefore look to;

- Calculate the total expected number of Working Age Adults that will work within the development.
- Multiply this figure by the gap in employment rate of 8%
- This will provide a projected figure of the level of growth potential that needs to be achieved to reach the England average for the new developments.
- This figure will then be multiplied by an agreed amount that would fund a level of intervention to support WABC clients into work helping to mitigate the effects of future developments on the Economic Well being of our population.

Example

Development creates 100 new jobs, multiply by the gap of 8% = 8 people, multiplied by £1,250, which is the estimated figure of the cost to support an average client into employment = £10,000 requested from the developer.

Further Information

Further detailed information relating to Planning Obligation with respect of Economic Well being contributions can be obtained from the Economic Well Being team.

² WACG- Working Aged Client Group are people between 18 – 64 in receipt of benefits.

Education

Planning Policy Background

The justification for requiring obligations in respect of Education Provision is set out in Circular 05/2005 (Para B15), and Policies DD7 'Planning Obligations' and CS3 'Community Facilities' of the Dudley Unitary Development Plan.

The Directorate of Children's Services core function is to ensure that every child has a school place in good quality provision and that their individual needs are met by making sure that they are able to achieve their potential through a quality service in Children's Centres, Nursery, Primary, Secondary and Sixth Form provision. Some children have Educational Needs that cannot be effectively met in local schools, and the Statement of Special Educational Needs for these children will set out that their needs will be met in special schools. In addition to local schools and special schools, there will be Pupil Referral Units and Home & Hospital. A broader range of provision is required for increased flexibility in capacity to meet educational needs through out-reach professional support from special schools to local schools.

Trigger for Obligations

Educational Obligations will apply to residential developments if the development is likely to result in the generation of additional pupil numbers in excess of that which local schools can accommodate. In these circumstances a financial contribution for ensuring on-site provision will be required if the size of the development justifies the provision of new educational facilities.

Obligations may be required for both Primary (3-11 year olds) and Secondary School Facilities (11-16 year olds), and in exceptional circumstances for 0-5 year olds and Special Education Facilities.

The following types of residential accommodation will not be subject to Educational Obligations: sheltered housing, rest homes, nursing homes, hostels, student accommodation, one bedroom dwellings and studio flats.

Basis of the Calculation

Basic Need (BN) **cost multipliers** are prepared in August/September as taken from the Department for Education and Skills for the following financial year. These are a cost per pupil for building new accommodation. There is currently one cost multiplier figure for each phase of education (primary, secondary & post 16) each using different area standards.

The BN cost multipliers are based on the weighted average of two separate multipliers, one for totally new schools and one for extensions to existing schools. Each of these multipliers has two main components – an area per place factor derived from Building Bulletin 98 or 99, and a cost per m² derived from actual tendered projects.

The area and cost factors are multiplied together to give the building cost per place. To this are added percentages to provide for the cost of site works, furniture and equipment and professional fees. VAT and land purchase costs are not covered by the multipliers. The two multipliers are then weighted to reflect the national balance of basic need places provided in new and extension projects and give the published multiplier values. Location adjustments are then applied as above.

Our area assumptions per pupil are standardised on a 1 Form Entry Primary (210 places 5-11) and a 6 Form Entry Secondary school (900 places 11-16)

Calculation

The standard used to assess educational provision requirements for Primary and Secondary pupils within a defined area (two mile or three mile radius of the proposed development) is:-

- 42 pupils per hundred dwellings of which
 - 60% are Primary age (4-10) and
 - 40% are Secondary age (11 to 16)

The cost per school place and specific to Dudley are:

- £9,646 cost per Nursery and Primary School
- £14,739 cost per Secondary School
- £15,822 cost per Post 16

All Primary schools within a 2-mile radius of the development and all Secondary schools within a 3-mile radius of the proposed development are tabled and their capacities are then scheduled out to ascertain if the development can be absorbed into any surplus capacity of the local schools, if so then no contribution would be required. However, if there were not enough capacity to accommodate the development then a contribution would be required. The amount is ascertained based on the above data.

Further Information

Further information can be obtained from the Buildings and Estates Manager within the Directorate of Children's Centres, or the Planning Obligations Officer in the Council.

Environmental Protection

Policy Background

The justification for seeking obligations with respect of Environmental Protection principally lies with Policy DD7 'Planning Obligations' of the Dudley Unitary Development Plan. Policies EP7 'Noise Pollution', EP5 'Air Quality' and UR9 'Contaminated Land' also set out the local policy framework for which planning obligations, related to Environmental Protection will be sought.

Trigger for Obligation

Noise Emissions

It may be necessary to enter into a planning obligation for noise in circumstances where the proposed development is for a sensitive development, i.e. residential, hospital, school, etc and there is an existing industrial use / railway / busy road, etc, located nearby. The planning obligation will be required to enable the developer to undertake works outside the boundary of the development site to reduce noise at source or provide an off site barrier. The purpose of this action will be to effect a reduction in noise at the development site which is sufficient to enable the proposed development to go ahead without adversely affecting the operation of the existing industry while providing an acceptable noise climate at the location of the proposed development.

Conversely, it may be necessary to enter into a planning obligation where a noisy industrial / commercial process is being located close to existing houses or other noise sensitive development. In this case it will enable the developer to provide acoustic treatment to the existing houses/ development and external amenity areas in order to prevent noise from the proposed use adversely affecting the existing residents or occupants of the noise sensitive development.

The trigger for a planning obligation for noise;

The trigger for a planning obligation for noise is normally where the officer considers that there is a noise source which will affect the proposed development and is likely to cause a statutory noise nuisance to proposed future residents or be seriously detrimental to the amenity of the future residents. It is normal practice in such circumstances for the applicant to provide a report to the LPA on noise affecting the development site using BS4142 as guidance. The report should detail the action proposed by the developer to mitigate the noise issues.

Air Quality

A planning obligation for air quality would be entered into where the proposed development is likely to have a detrimental effect on air quality. For example, a new housing estate which is serviced by an already busy road which has air

quality problems will place an additional burden on the road through extra traffic movements which is likely in turn to increase concentrations of pollutants in the air. In such circumstances, especially where an Air Quality Management Area has been declared in the area concerned by the Local Authority, it may be appropriate for the developer to be given permission to develop only where a S.106 agreement can be reached which requires the developer to either undertake specific off site works to help minimise the effect of the development on air quality or to provide monies to the Council for equipment and staff to monitor the effect that the development will have on air quality in the area.

Contaminated Land

There are only a few circumstances where it would be necessary for a planning obligation to address contaminated land issues. The first is where the venting/ burning of landfill gas from a landfill site is required to enable a development to proceed and the location of the vent or flare stack was located on land owned by a third party.

The second circumstance is if there is a proposal to develop part of a contaminated site, where it may be necessary for the parties to enter into a planning obligation to allow offsite works to be undertaken to prevent contamination on the undeveloped part of the site from adversely affecting the remediated and developed part of the site, such as an impervious membrane/ barrier.

Planning Policy Statement 23; Planning and Pollution Control, and particularly paragraph 2.66 of Annex 2 relates to planning obligations.

“Where it is not appropriate to impose conditions to deal with the issues, planning obligations can provide an effective mechanism to ensure that appropriate measures are taken to deal satisfactorily with contamination. Planning obligations can be particularly useful in ensuring that any necessary offsite treatment works, such as the installation of gas-migration barriers, water treatment or monitoring arrangements are put in place. In doing so, it is important to avoid fragmentation of the site which might prejudice necessary monitoring and maintenance provisions. Planning obligations may restrict the development or use of land or require payments to the LPA, e.g. for ongoing monitoring or maintenance or as a bond to cover the contingency of future action triggered by the monitoring.”

The following paragraphs refer to planning obligations for off-site treatment or works with respect of the installation of gas-barriers and the provision of plant to treat gas or leachate:

Installation of gas- barriers:

The installation of gas-barriers and any associated on-going monitoring requirements. In circumstances where the partial development of a

contaminated site is proposed it is important to avoid fragmentation of the site which might prejudice necessary monitoring and maintenance provisions. The planning obligation can help prevent re-contamination of the developed portion of the site and restrict the development or use of land or require payments to the LPA, e.g. for ongoing monitoring or maintenance or as a bond to cover the contingency of future action triggered by the monitoring.

Provision of plant to treat gas or leachate;

The provision of plant to treat gas or leachate originating from contaminated land which forms a part of a development. This could be in the form of plant to burn flammable gases being discharged from a contaminated site or plant to capture and treat leachate discharge from a contaminated site where the location of the plant is over the boundary of the developed site. Ongoing monitoring issues for the operation of such plant and equipment may also be a consideration of a planning obligation.

Further Information

Further information relating to Planning Obligations with respect of the provision of Environmental Protection can be obtained from the Council's Environmental Protection team.

Highway Infrastructure Works (including fees for processing Traffic Regulation Orders (TRO's))

Policy Background

The justification for requiring obligations in respect of highway and infrastructure works is set out in Circular 05/2005 'Planning Obligations' (Para B.15) and Policy DD6 'Access and Transport Infrastructure' of the Dudley's Unitary Development Plan

What is expected from developers

Section 278 or S38 Agreements under the Highway Act

Agreement for the private sector funding of trunk road works are made under section 278 of the Highways Act 1980. A developer may enter into a section 278 agreement with the local highway authority for improvement works for local roads. A section 278 agreement is essentially a financial mechanism, not a contract to carry out works.

In addition to the above, a common way of creating new highways is by an agreement between developers and local highway authority under Section 38 of the Highways Act 1980. Section 38 agreements are often made with housing developers, who agree to build up roads to standards laid down by the Highway Authority. In return the Council will agree to adopt the roads and to maintain them thereafter as public highways. However until a road has been adopted it remains private and the responsibility of the developer/ house owners.

If Highway Infrastructure Works are required as a result of a new development then a S.106 agreement or Planning Obligation will be required to ensure that the planning permission not to be implemented until such time as the land owner or developer has entered into the necessary S278/ S38 agreement.

Traffic Regulation Orders (TROs)

If the Highway Infrastructure Works result in the introduction of new, or an amendment to an existing TRO's, a fee of £1,900 will be required to cover the Council's costs in introducing or amending it.

If any payment due under any of the provisions of this Agreement is not made on or before the ("due date") the Developer shall pay interest on the payment due of 2% above the base rate for HSBC Bank Plc as at the due date for the period starting with the due date and ending with the date on which payment of the sum on which interest is payable is made. Furthermore, the Council will require third party insurance liability of £10m and indemnity against all liability claims, demands and expenses under the Land Compensation Act 1973 (Parts I and II) and regulations made under it or the equivalent statutory provisions for the time being in force arising from the Highway Works

Site Specific Measures

Definition

Site specific measures are those obligations required from a particular development which relate specifically to matters not covered through formulae based financial contributions or on site provision. Examples could include: • Funding of a pedestrian crossing where a residential development is proposed on the opposite side of a heavily trafficked road to the local shops and play facilities.

- Funding of improved public transport facilities where a development generating significant level of trips is proposed on or near a bus route/ railway station. The improvements could include improvements to the bus stop / railway station, the street environment within which the bus stop / railway station is located, or hardware/software to enable real-time information to be provided on Showcase Public Transport Routes.
- Funding of Air Quality monitoring and mitigation measures where a major development will result in the generation of a significant number of vehicular trips in the vicinity of the site.
- Funding towards the costs incurred in setting up a Car Club, where a residential development that proposed little or no off street parking is located in an area where there is limited on-street availability.
- Funding towards the cost of long stay coach parking provision from developments such as hotels /stadia /concert halls that attract significant levels of coach borne visitors.

Generic improvements to access networks will be considered as part of the emerging Local Development Framework (LDF) Core Strategy.

Policy Background

The justification for requiring obligations in respect of Site Specific Measures is set out in Circular 05/2005 (Paras B12 – B16), PPS23 (in relation to Air Quality Issues).

Trigger for Obligation

Site Specific obligations could be applied to any development type, irrespective of size, and consequently there is no trigger below which an obligation will not be required. The obligation must satisfy the policy tests set out in Circular 05/2005 which states that obligations must be "...fairly and reasonably related in scale and kind to the proposed development". Consequently a relatively small development may be required to contribute a proportion of the cost of delivering the obligation rather than being required to fully fund it.

Further Information

Information regarding Showcase Bus Routes and other bus based public transport is contained in the West Midlands Bus Strategy. This can be obtained from the Council's Transport Team The Passenger Transport Executive Centro / PTA.

Historic Environment

Policy Background

The justification for requiring planning obligations in respect of the Historic Environment is set out in ODPM Circular 05/2005 Planning Obligations (Para B11) and Policy DD7 of the Unitary Development Plan (UDP).

Local Historic Environment policy is also outlined in Dudley's UDP and is expanded upon within the Historic Environment Supplementary Planning Document (SPD). Planning Policy Guidance Notes 15 (Planning and the Historic Environment) and 16 (Archaeology) provide advice on the controls for the protection of historic buildings, conservation areas and archaeological remains.

The overarching aim of the council's Historic Environment policies and SPD are to identify, protect, conserve and enhance the Borough's diverse historic environment and local distinctiveness as a whole. Within this wider context there are buildings, areas, landscapes and features that make an important contribution to local character which must also be conserved and enhanced. In order to assist the local authority in achieving this objective, planning obligations will be sought.

Triggers for planning obligations

Where new development will have an impact on the historic environment, measures will be required to address the impact. Each case is unique; therefore it is not possible to provide general guidance as to what the trigger would be for planning obligations with respect of the historic environment. However it is possible to group the planning obligations which result from impact on the historic environment into three categories, these are:

- Developments affecting areas of 'Local Character and Distinctiveness', i.e. all developments.
- Developments impacting upon archaeological/ historical/ architectural assets, i.e. damaging actions.
- Developments impacting upon Landscape Heritage Areas, Castle Hill Special Landscape Heritage Area, Conservation Areas, Buildings of Local Historic Importance, Listed Buildings, Canals, Scheduled Ancient Monuments and Other Sites of National Importance and Sites of Regional Importance (Ancient Monuments), i.e. location based

What is expected from Developers?

Developers are encouraged to make early contact with the Historic Environment section of the Development Services Division to discuss:-

- The development of proposals that can both support/facilitate environmental enhancements to relevant historic environment assets/areas and secure the relevant 'heritage objective'.
- Discuss the potential contributions (financial) which will be expected from Developers through the Planning Obligations process to support a range of activities that will identify, protect, conserve and/or enhance the historic environment.

The Role for Planning Obligations

In order to secure the relevant 'heritage objective' the types of planning obligations that may be used by the local authority in respect of the historic environment fall into three broad categories: -

1. To require the carrying out of specific operations or activities to a Heritage Asset (see glossary of terms for definition of 'heritage asset');
2. To require a sum or sums of money to be paid towards the cost of the carrying out specific operations or activities to an Heritage Asset; and
3. To restrict the development or use of the land until the identified 'heritage objective' has been met.

Planning applications which are close to certain types of Heritage Asset (e.g. Canals, publicly owned Listed or Locally Listed Buildings etc), or that directly impact upon or fall within a Heritage Asset may present an opportunity to ask a developer to either carry out specific improvement works or to set aside a commuted sum of money.

Types of Planning Contribution

The type of contributions or specific operations or activities likely to be required for the Borough's Historic Assets is as follows:

- To contribute towards the repair, restoration or maintenance of an historic asset.
- To contribute towards improved signage to and from an historic asset
- To contribute towards the provision of Interpretation panels/material illustrating the history of an historic asset. *(Please note that where proposed development directly involves sites of historic or local interest (e.g. canal side development, or sites that contain listed or locally listed buildings) developers will be expected to make full use of this historic asset as an information resource and as such, new development will be expected to be accompanied by relevant interpretation material of the historical and archaeological background of the historical asset).*
- To contribute towards environmental improvements of an historic asset e.g. public realm improvements in a conservation area
- To contribute towards the cost of producing planning guidance notes that will be of benefit to the historic environment

- To contribute towards the cost of producing and implementing up-to-date Conservation Area Character Appraisals and Management Proposals for designated conservation areas (*Please note: Local authorities have a duty to draw up and publish proposals for the preservation and enhancement of the conservation areas in their districts. The recognised vehicle for doing this is by publishing up-to-date Conservation Area Character Appraisals and Management Proposals for each of its conservation areas, which is to be periodically reviewed every 5 years. Such documents will be as specific as possible about the type and scope of planning contributions expected in relation to the management and enhancement of the conservation area.*)
- To contribute towards better understanding, education and research of an archaeological site or resources that have wider community benefits e.g. contribution towards post-excavation costs for Dudley Castle excavation

The above list is by no means exhaustive but provides some indication of how the planning obligations may be used. The type of agreements and level of contribution will be assessed on a case-by-case basis.

Further information

For further detailed information relating to Planning Obligations with respect of Historic Environment or to discuss the implications for your proposed development please contact the Historic Environment Team.

Libraries

Policy Background

The justification for seeking obligations in respect of Library Facilities is set out in Circular 05/2005 (Para B15) and Unitary Development Plan Policies DD4 'Development in Residential Areas', DD7 'Planning Obligations' and CS3 'Community Facilities'.

The Department of Culture Media and Sport sets out Public Library Standards which all authorities are required to meet. The Government identified libraries as key players in the regeneration of communities in their document "Framework for the Future" published in 2003 which outlined their priorities for libraries over the next 10 years.

Dudley Library Service

To support the priorities for Libraries mentioned above the Government has laid down a set of standards that public libraries should achieve. Dudley Library Service meets some but not all of the standards. The key standards not met are:

- Opening hours per 1000 population
- Additions to stock per 1000 population.

Dudley Library Service is rated 11th in a comparison with 15 other similar metropolitan authorities for the above standards.

The Library Service is provided through a network of 18 libraries within Dudley. In addition there is a home library service for housebound members of the public and a service to residential homes for the elderly. The Library Service also has some 150 public access computers which form part of the "People's Network" providing e-access & leisure, learning and information for the public.

Any new residential development in Dudley will create additional demand for library services and impact on the Service's ability to maintain existing standards.

Trigger for Obligation

Library Facilities Obligations will apply to all new residential development providing 1 additional dwelling including conversions and change of use.

Basis of the Calculation

- Build costs for Library Floor Space
Build costs for provision of library floor space for the West Midlands Region is £2966m²
- Dudley Library floorspace/1000 population

- The average library floorspace per 1000 population in Dudley is 20.8m²
- **Additional Stock**
Public library standards require 216 items of stock per 1000 population. The average (discounted) cost of a book is £8.68, therefore stock per 1000 population of 216 books is £8,680
- **Public Access Computers**
Public Library standards indicate a target of 6 public access computers per 10,000 population or 0.6 per 1000 population. The average cost of installing a public access computer is £750 with an additional £250 for security. Therefore the cost per 1000 population is £600.

Cost per 1000 population

Build costs	£61,693
Additional stock	£8,680
Extra public access computers	<u>£600</u>
	<u>£70,973</u>

An average occupancy of 2.43 persons per unit of accommodation will be used.

Example

Proposal for 30 dwellings in Stourbridge

Number of persons: $30 \times 2.43 = 72.9$

Library contribution: $\frac{72.9}{1000} \times £70,973 = £5,173.93$

Further Information

Further information relating to Planning Obligations with respect of the provision of Library Facilities can be obtained from the Council Library Service and/ or the Principal Planning Obligations Officer.

Nature Conservation

Policy Background

The justification for requiring obligations with respect of Nature Conservation is set out in Circular 05/2005 (Paras B15 and B16), PPS9 and Policy DD7 of the UDP. Furthermore the Nature Conservation chapter of the UDP and the Nature Conservation Supplementary Planning Document contain a number of references to circumstances whereby planning obligations may address the impacts of new development.

Trigger for Obligation

Where new development will have an impact on the natural environment, including habitat and wildlife, measures will be required to address this impact. Each case is unique; therefore it is not possible to provide general guidance as to what would trigger the requirement for planning obligations with respect of nature conservation. However it is possible to categorise the planning obligations which result from impact on the natural environment, into four categories, these are: avoidance, mitigation, compensation and enhancement. These are defined by the Office for the Deputy Prime Minister (ODPM) in Biodiversity and Geological Conservation – A Guide to Good Practice as:

- **Avoidance:** measures taken to avoid adverse impacts of change, such as locating a development away from areas of ecological interest.
- **Mitigation:** measures undertaken to limit or reduce adverse effects resulting from development or other change taking place including modifications, deletions or additions to the design of the development, adaption of methods or timing or adjustments in the nature, scale or location of the project.
- **Compensation:** measures to offset or make up for losses caused as a result of development or other change, including residual adverse effects which cannot or may not be entirely mitigated.
- **Enhancement:** measures to increase the quality, quantity, net value or importance of biodiversity or geological interest.

The role of avoidance, mitigation, compensation and enhancements

Avoidance of damage is the primary mechanism required in policy and may be the only one possible in certain circumstances. Where this is not achievable mitigation should be used as far as possible to neutralise any negative effects of the proposed development. Where mitigation cannot be achieved through conditions it may be necessary to enter into a Planning Obligation. Given the individual nature of the sites involved obligations would need to be calculated on a site by site basis.

Where, after consideration and discussion with the Nature Conservation Officer, avoidance and mitigation will still result in a negative outcome,

compensation can be considered as the final resort to balance the damage. Again Obligations in respect of compensation against loss, would need to be calculated on a site by site basis.

Enhancements for nature conservation are in addition to the neutralising effects of avoidance, mitigation and compensation. Enhancements may be general or based on particular policy requirements. Whichever they may be, they should be considered as part of the initial design of the proposal, and in discussion with the Nature Conservation Officer. The aim of these enhancements should be to maximise benefits for the nature conservation value of the site. Planning Obligations for enhancements would need to be calculated on a site by site basis.

Work in Progress

Work is currently in progress by the Council to develop a standardised system for enhancements. Once in place this will provide increased clarity on the level of requirements set out within a Planning Obligation and offer a more fair evaluation between developments.

Further Information

Further detailed information relating to Planning Obligations with respect of Nature Conservation can be obtained from the Council's Nature Conservation Supplementary Planning Document and the Nature Conservation Officer within the Planning Policy team.

Open Space, Sport and Recreation

Policy Background

The justification for requiring obligations in respect of open space, sport and recreation, which is taken to include Public Open Space, Children's Play and Playing Fields, is set out in Circular 05/2005 (Para B15, B18 & B20), PPG17 and Policies DD8, LR2, LR3 and LR4 of the Unitary Development Plan.

The Council is also progressing a Supplementary Planning Document (SPD) on Open Space, Sport and Recreation Provision, which is currently at draft stage. This will include a detailed assessment of the following:

- Consideration of whether an on-site or off-site contribution is required;
- Criteria used by the Council to help identify where to spend a particular Section 106 commuted sum for off-site public open space and play area improvements; and
- Calculation of commuted sum payments for cost of set up and maintenance of the open space and play equipment.

Triggers for the Obligations

Off Site Contributions

Schemes from 1 to 49 residential units (which are not considered by the Council as major residential sites). The Council will require the provision of commuted sums for children's play & open space provision as an alternative to on site provision.

On Site Contributions

Schemes of 50 residential units and above (which are considered by the Council as major residential sites). On such sites the Council will explore the requirement of on-site public open space provision within the residential layout. Each proposal site will be assessed by the Council, on a case-by-case basis, based on its individual planning merits.

Playfield Contributions

Will be determined on the overriding priorities in the local area on a site by site basis.

What is expected from developers

The following list sets out the calculations of commuted sums payments for open space, sport and recreation in terms of set up costs and maintenance charges. Contributions will relate to local needs and will seek to address the priorities identified for particular areas, i.e. in respect of Public Open Space, Children's Play or Playing Fields. The below costing figures apply from the 13th June 2007, which is the date when the Open Space, Sport and

Recreation Provision SPD was adopted. The cost of maintenance and provision is:-

Public Open Space:	<p>Maintenance – £46.67 per dwelling per annum (pa).</p> <p>Set up - £484.71 per dwelling</p> <p>(Please note that the Council require a 15 maintenance sum. Therefore all the “maintenance” costings figures referred to throughout this table will need to be multiplied by 15)</p>
Children’s Play:	<p>Maintenance – £37.78 x bed space (pa), minus £284.92 where this is greater than zero</p> <p>Set up – (£659.79 x bed space) plus £298.39 where this is greater than zero.</p> <p>NB: The minus figure allows the equation to be applied to all developments where the resultant contribution to be made by the developer is greater than zero.</p>
Playing Field:	<p>Maintenance – £31.11 per dwelling per annum (pa)</p> <p>Set up - £950.35 per dwelling</p>

(Costs for maintenance and set up will be reviewed annually in line with inflation and calculated based, initially, on an assumption of 2.43 persons per dwelling. Maintenance payments will be to cover a period of 15 years after construction).

Where necessary, commuted sums from developers will be pooled into a ‘ring fenced’ fund, this will be used in the local area within a 10 year period. When sufficient contributions have accrued, it will be used to provide appropriate local facilities, based on deficiencies, needs, requirements and priorities identified.

Basis for calculations

Residential development

Requirements for children’s’ play and open space (construction and establishment) are calculated on the basis of a formula basis which is set out in draft Open Space, Sport and Recreation Provision SPD. These formulae are derived from an evidence base of true implementation costs which has been prepared by the Council. Provision is made for an annual uplift in costs on an annual basis to allow an inflationary allowance. The formulae provide either for a quantitative provision in event of the developer providing facilities directly, or for a commuted sum equivalent.

Where facilities are to be provided directly by the developer, qualitative standards and guidance are set out in the Draft Open Space, Sport and Recreation Provision SPD.

Non-residential development

Negotiations based on one-third of the requirements for residential development.

Further information

Detailed information relating to Planning Obligations in respect of Open Space, Sport and Recreation can be found in the draft 'Open Space, Sport and Recreation Provision' SPD or by contacting the Planning Policy or Design and Projects teams.

Public Art

Policy Background

The justification for requiring obligations in respect of Public Art is set out in the Council Public Art Strategy and Policy DD9 'Public Art' of the Dudley Unitary Development Plan (2005).

The Strategy provides a definition for public art, outlines how public art relates to the Council's corporate agenda and sets out the various commissioning and delivery mechanisms used by the Council to pursue and develop its approach to public art in addition to setting objectives for future development. The strategy states that:

"The Council will normally seek to negotiate the allocation of at least one-percent of design and development costs to the integrated provision of public art as part of the development. In all instances, however, the Council will seek to negotiate a percentage of cost which is constant which is consistent with the practical achievement of a significant public art product".

Triggers for the Obligations

Residential Development

Obligations will be required for developments of 10 or more dwellings or, where this is unknown, the site area of 0.5 hectares or more.

Other Developments

In other cases obligations will be required where the floorspace to be created exceeds 1,000 square metres (gross) or the site area is 1 hectare or more.

What is expected from developers

The Council will normally seek to negotiate the allocation of at least 1% of design and development costs to the integrated provision of public art as part of the development. In all instances, however, the Council will seek to negotiate a percentage of cost which is consistent with the practical achievement of a significant public art product. This may be provided directly by the developer as an integral part of the development, or by way of a commuted sum for complementary initiatives in the vicinity of the development.

Further information

Detailed information relating to Planning Obligations in respect of Public Art can be obtained by contacting the Council's Design and Projects team.

Public Realm Improvements (PRI)

Policy Background

The justification for requiring obligations in respect of Public Realm is set out in Circular 05/2005 (Para B15) and the Design and Development and Town Centre chapters of the Dudley Unitary Development Plan (2005). Accommodating public realm improvements is necessary to ensure that the Council can achieve its aims of delivering sustainable development in the Borough, in particular in its town and local centres.

Of further relevance is the Dudley Area Development Framework, adopted as Supplementary Planning Guidance in December (2005) and the Lye District Centre Action Plan, adopted as Supplementary Planning Guidance. July (2004).

Triggers for the Obligations

Development within centres and sites falling within designated Area Development Frameworks/ Action Plans

Where the development site falls within a priority location, within one of the Borough's designated centres, as set out under Policy CR1 'Hierarchy of Centres', or within the scope of an adopted Area Development Framework/ Action Plan the provision of contributions towards public realm enhancements will be required.

Residential

Public realm obligations will apply to all new residential developments providing 1 additional dwelling or more, including conversions and change of use.

Other developments

Contributions will be required for sites within, or within walking distance of centres where floorspace to be created exceeds 100 square metres (gross) or where the site area is 0.1 hectare or more.

What is expected from developers

There are 3 town centres, 4 district centres and 12 local centres in the Dudley Borough where existing and new residents will be encouraged to shop to meet their daily needs. The Council seeks to improve the quality of the public realm in these centres to encourage their greatest possible use, hence minimising unsustainable journeys to further shopping and service centres.

Assessment of Public Realm Area

Based upon the survey work undertaken in Dudley and Lye the total area of public realm in the 19 centres is some 334,000 sq m. On suitable sites, new development within these centres will be expected to contribute towards improvements in the public realm.

Within the town centres identified within the Unitary Development Plan the split between new residential and commercial development is expected to be in the region of 60% residential and 40% commercial. Therefore, for the 136,000 sq m of public realm identified within the town centres there would be a split of 81,600 sq m for the residential split and 54,000 sq m for commercial.

Based upon the Lye Action Plan, where the boundaries are more tightly drawn around the retail core than in the main centres, a 50/50 split between new commercial and residential development is considered more appropriate. Therefore the 198,000 sq m of public realm identified for district and local centres is split down into 99,000 sq m for the residential development and 99,000 sq m for commercial development.

Based on the above calculations the total area of public realm improvements that will be funded from residential development will be 180,600 sq m (i.e. 81,600 + 99,000), the remaining 153,400 sq m funded will be from commercial development.

Cost of Public Realm

The existing residents of Dudley contribute towards public realm improvements through their Council Tax on their dwelling. To mitigate the effects of new residents on the existing public realm it is expected that each new dwelling will pay a sum of money based upon establishment and future maintenance costs of public realm.

There were 130,591 dwellings in Dudley as of 31st March 2006. The Annual Monitoring Report (AMR) has a projected net completion rate of 648 dwellings per annum up to 2011³. The time period sought for future maintenance of public open space is 15 years and this timescale will be used for the provision of new public realm.

Using this 15 year timescale 8,706 existing dwellings (130,591/15) will contribute annually towards the establishment and maintenance of public realm. Taking into account the projected net completion rate of 648 new dwellings per annum this figure is raised to 9,354 dwelling. Therefore an annual residential public realm contribution is required from 9,354 dwellings.

Using the recent figures from private contractors tendering for public realm improvement works the implementation costs are £305 per sq m. The annual

³ Please note that the 2006 projections may be subject to change on the production of subsequent Annual Monitoring Reports. In this event the calculations in this document will be updated accordingly.

maintenance costs are £4.31 per year which equates to £64.65 for a 15 year maintenance period, giving a total of £369.65 per sq m.

Calculation of contributions;

Using the 15 year time frame, it is the aim that each year 12,040 sq m of public realm will be improved from residential funding (i.e. 180,600/15). The cost will be £4,450,586 (i.e. 12,040 x £369.65). Each dwelling, both existing and proposed (9,354) will fund public realm improvements, **a cost of £475.79 per dwelling** (i.e. £4,450,586/ 9,354).

Contributions will be put into a ring fenced fund where monies will be pooled to be spent on improving the public realm in the closest centres where the future occupiers would reasonably be expected to regularly visit.

Further Information

Detailed information relating to Planning Obligations in respect of Public Realm Improvements can be obtained by contacting the Design and Projects team.

Transport Infrastructure Improvements

Policy Context

The justification for requiring obligations in respect of Transport Infrastructure Improvements is set out in Circular 05/2005 (Para B15). The Access and Movement Chapter of the UDP and the Parking Standards and Travel Plans SPD also contain a number of policies/ references to the need for Transport Infrastructure Improvements. Accommodating growth in transportation infrastructure is also a key part of the planning responsibilities of the Council in sustaining its communities and is set out in Planning Policy Statement 1 (PPS1) "Delivering Sustainable Development".

Trigger for obligation

Contributions towards transport infrastructure improvements in the Borough will be sought on any developments that generate a net increase in the number of trips from a site.

What is expected from the developer

The following paragraphs set out in stages the methodology which the Council will use to determine what is expected from developers in terms of contributions towards new transport infrastructure in the Borough.

Step 1: Calculation of spending per trip;

The current Local Transport Plan (LTP), published in March 2006, contains a five year 'Transportation Capital Programme' which runs until 2011 for major schemes and Integrated Transport block allocations within the Borough.

Table 1 - Transportation Capital Programme

	2006/7	2007/8	2008/9	2009/10	2010/11	
Major Schemes						
Burnt Tree	0	0	1,211,000	2,015,000	1,873,000	
Integrated Transport Block	3,770,000	3,880,000	4,109,000	4,353,000	4,610,000	
Total (£)	3,770,000	3,880,000	5,320,000	6,368,000	6,483,000	Total: <u>25,821,000</u>

Table 1 show that the transport infrastructure funded via the Transportation Capital Programme up to 2011 is £25,821,000. This Central Government funding is intended to accommodate the additional trips generated by the current population.

The Government provides national and local statistics and projections from its national trip end and various planning trend models to predict background or natural growth. Access to this information is available via "TEMPRO", a freeware computer package that is downloadable from the DfT web site. The

average weekday trip growth for the current LTP programme period, by transport mode, is shown on Table 2.

Table 2 - TEMPRO

Dudley M.B.C. Growth 2006 to 2011

Average Weekday Trips

		Orig's	Dest's	Total
	Car Driver	11732	8544	20276
	Car Passenger	954	639	1593
Sustainable Modes	Rail	66	-21	45
	Bus/Coach	-943	-1036	-1979
	Walk	-1952	-2707	-4659
	Cycle	-85	-101	-186
	Combined	9772	5318	15,090

It can be seen from Table 2 that the total extra trip generation from the existing households and businesses in Dudley is **15,090**. Given that the transport infrastructure funded via the Transportation Capital Programme over 5 years totals **£25,821,000** spending per trip equates to **£1,711** (i.e. $£25,821,000 / 15,090 = £1,711$).

Step 2: Planning for Additional Growth

Extraordinary growth attributed to development and in particular with the aspirations of the Regional Spatial Strategy to reverse the outward migration of population has been assessed for these purposes by the West Midlands multi modal model, "PRISM". Over the same Local Transport Plan period as the Transport Capital Programme it has been shown that additional growth of 8% (from the Black Country Study) can be expected. Taking the identification of £25,821,000 needed for the 5 year Transportation Capital Programme then 8% additional growth from extra households and businesses will necessitate an additional £2,065,680 needed for Transport Capital Infrastructure Improvements.

On the basis of the above developer contributions will be sought on the basis of **£1,711** per additional trip arising from the development to be pooled to meet the additional **£2,065,680** needed. The contributions pooled will be used to accelerate or enhance current transport infrastructure improvements to reflect the increased demand resulting from developments. The monies will be spent in the local area to the benefit of the occupiers of the development be they residents, visitors or workers.

Basis of calculation

The Council seeks to encourage developments at sustainable locations that benefit from good access to sustainable modes of transport and utilise previously developed or brownfield land. In order to achieve this aim the Council require developers, in the absence of a Transport Assessment, to complete a Sustainability Assessment form (see tables 4 and 5 below) which will provide a sustainability weighting. This weighting, when applied to development, will result in highly sustainable areas achieving high scores (and lower contributions towards additional transport infrastructure) and less sustainable locations achieving lower scores (and thus paying more towards transport infrastructure).

Sustainability Assessment

Sustainability Assessment Forms are required to obtain a Sustainability Score, once this score is known the trip contributions can be calculated. The trips contributions can be calculated by dividing the £1,711 trip generation cost by 30 in the case of non residential development or 48 in respect of residential developments (these being the maximum scores from the Sustainability Assessment). The resulting figure is then multiplied by the maximum Sustainability Assessment score minus the actual Sustainability Assessment score. The resulting figure gives a price per trip. This is finally multiplied by the trip rates for the relevant type of development (see worked examples below).

The trip generation from the existing uses on site can be used to determine the net additional trip generation. The developer contribution will only be sought where there are additional trips generated as a result of the development. Robust and detailed evidence on trip generation from previous uses must be submitted at the same time of initial submission of the planning application if a developer is seeking a reduction in trip generation arising from the scheme. Weekday trip contributions can be derived from the Transport Assessment (TA) or for smaller scale developments from Table 5.

Worked Examples;

The examples below relate to the Sustainability Assessment forms below (Tables 3 and 4). These forms need to be completed with respect of all proposals, i.e. residential or non-residential developments and those that have been submitted with or without a Transport Assessment. As mentioned previously a Transport Assessment may be used to calculate the net number of trips expected as a result of the proposed development, otherwise developers may use the figures set out in Table 5.

Example 1, Table 3 (Non-residential development);

Example 1 illustrates the process as applied to a non – residential development (i.e. any of the use classes listed in Table 5, except C3 'Dwellings'). This example relates to a proposal for A1 Food Retail (edge of centre) which has been subject to a Transport Assessment:

The Sustainability Score achieved through the Sustainability Assessment form is 10, giving:

$$\frac{1711}{30} \times (30 - 10) = £1141. \text{ This is the contribution required per trip.}$$

Having discounted for previous, brownfield land, uses the Transport Assessment (TA) indicates that the site will attract 1300 trips per day. However the TA argues that of these trips only 5% are truly new therefore giving:

$$1300 \times 0.05 \times £1141 = \mathbf{£74,165}$$

This figure would then form the basis for negotiation with the developer. Further reductions could be achieved by relatively simple improvements such as building additional bus stops closer to the site.

Example 2, Table 4 (Residential development, 19 Dwellings)

Example 2 illustrates the process as applied to a small residential development (19 dwellings) with reasonable accessibility on a previously undeveloped (green field) site.

The Sustainability Score achieved through the Sustainability Assessment form is 35, giving:

$$\frac{1711}{48} \times (48 - 35) = £463. \text{ This is the contribution required per trip.}$$

The trip rate as set out in Table 5 is 3.9 trips per dwelling:

$$3.9 \text{ trips per dwelling} \times 19 \text{ dwellings} = \text{Trip rate of } 74.1$$

The net gain in the number of trips is 74.1, therefore the total contribution will be:

$$74.1 \times £463 = \mathbf{£34,308.3}$$

Table 3: Example Sustainability Assessment (Non-Residential Development, A1 Food Retail – Maximum Score 30)

Non Residential

Access Type	Criteria	Criteria Scores	Score	Sub-Score
Walking	Distance to nearest bus stop from main entrance to building (via direct, safe route)	<200m	5	0
		<300m	3	
		<500m	1	
		>500m	0	
	Distance to nearest railway station from main entrance to building	<400m	3	0
		<1km	2	
		>1km	0	
Cycling	Proximity to defined cycle routes	<100m	3	1
		<500m	2	
		<1km	1	
Public Transport	Bus frequency of principal service from nearest bus stop during operational hours of the development*	15 minutes or less	5	5
		30 minutes or less	3	
		>30 minutes	1	
	Number of bus services serving different localities stopping within 200 metres of main entrance	Localities served		0
		4 or more	5	
		3	3	
		2	2	
		1	1	
	Train frequency from nearest station (Mon-Sat daytime)	30 minutes or less	3	3
		30-59 minutes	2	
		Hourly or less frequent	1	
	Drive to nearest station	10 minutes or less	2	1
		15 minutes or less	1	
Other	Travel reduction opportunities	Facilities on-site or within 100 metres that reduce the need to travel:		0
		* food shop/cafe	1	
		* newsagent	1	
		* crèche	1	
		* other	1	
Sustainability Score				10

Sustainability assessment

$$(1711/30) \times (30 - 10) = 1141$$

Contribution/Trip

1141

Table 4: Example Sustainability Assessment (Residential, 19 dwgs – Maximum Score 48)

Residential				
Access Type	Criteria	Criteria Scores	Score	Sub-Score
Walking distance From centre of site to facilities using a safe, direct route	Distance to nearest bus stop	<200m <400m <500m >500m	5 3 1 0	5
	Distance to nearest railway station	<400m <800m >800m-1000m >1km	3 2 1 0	3
	Distance to nearest Primary School	<200m <400m <600m >600m	5 3 1 0	3
	Distance to nearest food shop	<200m <400m <600m >600m	5 3 1 0	3
Cycling distance from centre of site	Proximity to defined on or off-road cycle route	<100m <500m >1km	3 2 1	3
	Distance to nearest Secondary School	<400m <600m <1km >1km	3 2 1 0	2
	Distance to nearest town centre	<1km <3km <4km	3 2 1	2
	Distance to nearest business park or employment concentration	<1km <3km <4km	3 2 1	1
Public transport	Bus frequency from nearest bus stop (Mon-Sat daytime)	15 minutes or less 30 minutes or less >30 minutes	5 3 1	5
	Train frequency from nearest station (Mon-Sat daytime)	30 minutes or less 30-59 minutes Hourly or less frequent	3 2 1	2
Accessibility to other basic services	Accessibility to other basic services (GP, Post Office, Library, Bank and Pub)	At least 3 within 400m At least 3 within 800m At least 3 within 1.5 km	5 3 1	3
	Accessibility to Play Area or Park	<200m <400m <600m >600m	5 3 1 0	3
Sustainability Score				35

Sustainability assessment

$$(1711/48 \times (48 - 35)) = 463 \text{ Contribution/Trip}$$

463

Table 5: Estimation of Trip Rates for Small Developments

Use	Trip Rate	Estimated Development	Estimated Trip Rate
A1 Food Retail	1.17 per sq.m		0
A1 Non-food Retail	3.8 per sq. m		0
A4&A5 Public Houses and Hot Food Takeaways	1.54 per sq.m		0
B1 including offices	0.11 per sq.m		0
B2 Industry	0.13 per sq.m		0
B8 Warehousing	0.05 per sq.m		0
C1 Hotels	10.1 per bedroom		0
C2 Hospitals/Nursing Homes	-		
C3 Dwelling Houses	3.9 per dwelling	19 dwellings	74.1
D2 Assembly & Leisure	-		
Medical Establishments	44.74 per doctor		0
Higher & Further Education	0.55 per student		0
Stadia	Discuss with Highway Authority		

The trips are per sq.m gross

(Please refer to worked examples on pages 41 – 42)

Example 1

	Total Trips (from TA)	1300		
Accessibility	Existing trip rate	1235		
Assessment:	Contribution per trip	£1141	Contribution: 65 x £1141=	<u>£74,165</u>

Example 2

	Total Trips (from Table 5)	74.1		
Accessibility	Existing trip rate	0		
Assessment:	Contribution per trip	£463	Contribution: 74.1 x £463 =	<u>£34,308</u>

Further information

Detailed information relating to Planning Obligations in respect of transport infrastructure improvements can be obtained from the Councils Transportation Policy Team.

Travel Plans

Policy Background

The justification for seeking obligations in respect of Travel Plans is set out in Government Guidance within Planning Policy Guidance Note 13 'Transport' (March 2001), and the Office for the Deputy Prime Minister and the Department for Transport Best Practice Guide titled 'Using the Planning Process to Secure Travel Plans' (July 2002). The Council's approach, which is set out in Policy AM16 'Travel Plans' which is considered to be in accordance with PPG 13.

Further guidance relating to Dudley's approach to Travel Plans is set out in the 'Parking Standards and Travel Plans' Supplementary Planning Document (March 2007).

Trigger for the Obligation

Travel Plans will be sought in line with the guidance set out Paragraph 89 of PPG13 and Policy AM16 of the UDP 'Travel Plans'.

What is expected from developers

Travel Plans should be prepared in association with a Transport Assessment and should set out the travel characteristics of a development. Travel Plans will be expected to consider the following five types of initiative:-

- Physical infrastructure such as public transport stops, cycle parking stands, changing rooms, showers, luggage lockers and new cycle and/or pedestrian paths
- Service Improvements such as subsidised bus services, managed car parking schemes, car sharing, flexible work patterns
- Encouragement and Information Schemes such as help with car sharing, public transport information, discount public transport tickets, maps for cycle/pedestrian link
- Travel Plan Coordinator to ensure implementation, monitoring and updating of Travel Plans; and
- Targets set with regular reports and penalties if targets not met

The 'Parking Standards and Travel Plans' SPD provides further advice and guidance to developers as to what the expected scope and content of Travel Plans is and measures have to be taken to secure and deliver Travel Plans.

Further information

Detailed information relating to Planning Obligations in respect of Travel Plans can be found in the Parking Standards and Travel Plans SPD and through consultation with the Council Transportation Policy Section.

Appendix One – Thresholds for Planning Obligations

Type of Obligation	Residential (1 or more dwellings)	Residential (Other)	Industrial/ Commercial (more than 1000 sq m)
Affordable Housing	-	15 or more dwellings	-
Economic Well Being	Contributions calculated on a site by site basis		
Education	Contributions calculated on a site by site basis		
Environmental Protection	Contributions calculated on a site by site basis		
Highway Infrastructure Works	No threshold below which Highway Infrastructure obligations will not be required (no types of development exempt from Highway Infrastructure Requirements)		
Site Specific Measures	Obligations must satisfy the policy tests set out in Circular 05/2005 which states that obligations must be "... fairly and reasonably related in scale and kind to the proposed development"		
Historic Environment	Contributions calculated on a site by site basis		
Libraries	1 or more dwellings	-	-
Nature Conservation	Contributions calculated on a site by site basis		
Open Space, Sport and Recreation	Up to 49 and thereafter on a site by site basis	-	-
Public Art	-	10 or more dwellings or site area of 0.5 ha or more	>1000 sq m or site area of 1 ha and above
Public Realm	1 or more dwellings	-	On suitable sites >100 sq m or site area of 0.1 ha and above
Transport Infrastructure Improvements	Contributions sought on any developments that generate a net increase in the number of trips from a site.		
Travel Plans	Travel Plans will be sought in line with the guidance set out in Paragraph 89 of PPG13 and the Parking Standards and Travel Plans SPD.		