

## **PLANNING OBLIGATIONS ADVICE NOTE:** **Service And Amenity Infrastructure Related To New Development.**

### **What are Planning Obligations?**

Infrastructure, services and amenity facilities are important within the Stroud District. The planning system operates in the public interest and aims to foster sustainable development, providing homes, investment and jobs in a way that adds to rather than detracts from the quality of the environment. These objectives are achieved through the preparation of Development Plans and exercise of our development control functions. Planning Obligations, also known as Section 106 Agreements, are negotiated between local authorities and developers in the context of granting planning permission. They provide a means to ensure that a proposed development contributes to the provision of necessary infrastructure and facilities required by national and local planning policies.

### **When and where are Planning Obligations used?**

Section 106 of the Town and Country Planning Act 1990 provides for any person with a legal interest in land to enter into certain types of obligation whether by agreement or unilaterally. A planning obligation may:

- *restrict the development or use of land;*
- *require specified operations or activities to be carried out in, on, under or over the land;*
- *require the land to be used in a specified way; and*
- *require a sum or sums of money to be paid to the local planning authority on a specified date or dates, or periodically to enable provision of and/or maintenance of infrastructure as and when it is required.*

Case law has established that there must be a connection between the Planning Obligation and the development sought. Where such a connection is demonstrated, the Council can decide the weight to be given to the obligation(s) in determining the planning application. Planning Obligations are unlikely to be required for all developments, however there are no hard and fast rules about the size and type of development that should attract obligations. Circular 1/97 emphasises the need for any obligations required from a development to meet five stringent tests:

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

### **Why are Planning Obligations necessary?**

In dealing with planning applications, the Council considers each case on its merits and reaches a decision based on whether the application meets the requirements of the relevant Development Plan, unless material decisions indicate otherwise. Where applications do not meet those requirements, they may be refused. Planning Obligations may prescribe the nature of the development (e.g. by requiring that a given proportion of new homes are affordable) or to compensate for loss or damage created by a development (e.g. loss of open space) or to mitigate a development's impact on a locality (e.g. through increased public transport provision). There is a choice between imposing planning conditions and entering into a planning obligation. The Government advises that Planning Obligations should only be required in circumstances where the imposition of planning conditions could not achieve the same result.

Planning Obligations must be operated in accordance with the fundamental principle that planning permission may not be bought or “sold”. National Government planning advice has an emphasis on the overall quality of a development proposal rather than on the number, nature and value of any planning benefits that can be obtained or offered. Used properly, developer contributions can remedy genuine planning problems and enhance the quality of development.

### **How does the Council take Planning Obligations into account?**

Developers are strongly advised to initiate negotiations at a pre-application stage with officers of the Council, since it may be necessary to take into account several potential Planning Obligations in their calculations of the development value of a site and to ensure that they are reasonable and related in scale and kind.

Staff in the Development Control Section act as the first point of contact. They will outline to developers the areas where Planning Obligations may be required at the preliminary stages of their development appraisals, and liaise with their colleagues in other services and Councils. The Council stresses the importance of pre-application discussions, as this can significantly reduce the time taken to reach the release of a planning permission.

Developers should allow sufficient time to negotiate and prepare Planning Obligations.

In making an assessment for any planning contribution, it will be for the Council to make the final decision, having taken account of comments, information (with justification), and recommendations made by other interested parties. In assessing proposed Planning Obligations, the Council will take into account all relevant planning policies, development briefs, planning guidance and any other relevant strategies. The absence of detailed guidance for a particular Planning Obligation does not rule out the Council requiring one where that request meets national guidance.

The Council will not fetter its judgement of planning applications because the developer has offered a contribution through a Planning Obligation. A planning application linked with an offer of Planning Obligations that are incompatible with the Council's planning policies will not be considered favourably. The Council will not accept poor schemes because of potential contributions offered by developers.

Flowcharts showing procedural stages of the consideration of Planning Obligations (from pre-application advice to the granting of a planning permission) are attached to this advice.

Councillors are able to publicly debate the contents of Section 106 Obligations at the Development Control Committee. Also, draft and final Planning Obligations will be available on a public register kept by the Council.

There is scope for input by Councillors in to the consideration of Planning Obligations to ensure that any obligation take account of corporate priorities. However an individual Councillor cannot make a decision on behalf of the Council.

Further details and advice on Planning Obligation implementation is contained in Appendix B attached to this advice.

### **Future changes to Planning Obligations advice?**

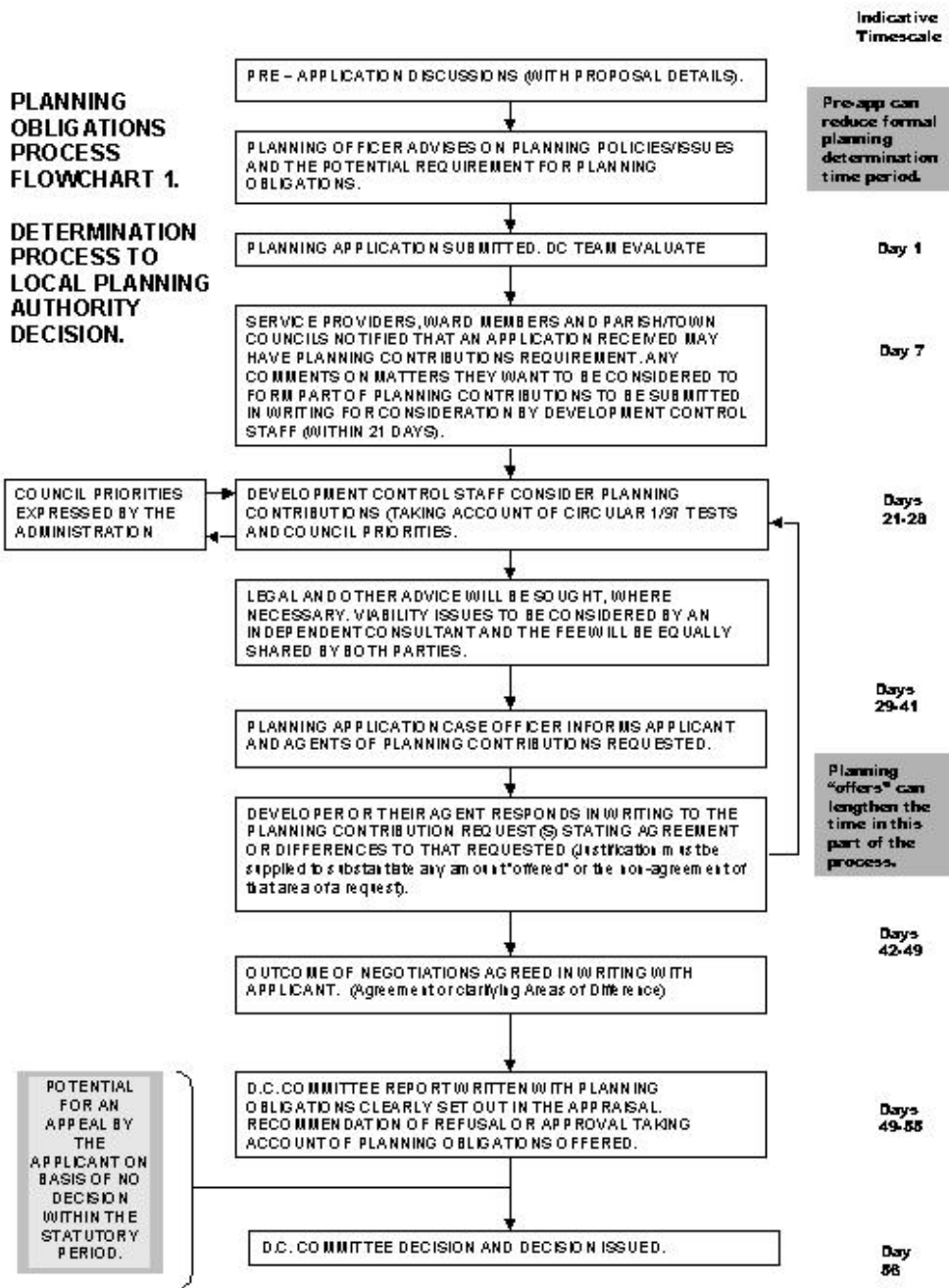
At the local level, the Council has timetabled the production of future Supplementary Planning Document (SPD) on Planning Obligations in our Local Development Scheme (LDS). It will provide guidance on interpretation of policies in Development Plan Documents.

At the national level, draft guidance on Planning Obligations was out to consultation in November 2004. Hence the Stroud LDS timing intends to take account of any new government guidance and/or procedures on Planning Obligations as a result of the current

consultation process. The final national guidance is expected to be available in Summer 2005.

Please contact the Planning Strategy Team on progress of national guidance as well as the production of our Planning Obligations SPD. We can be contacted on telephone numbers (01453) 754326 or 754327.

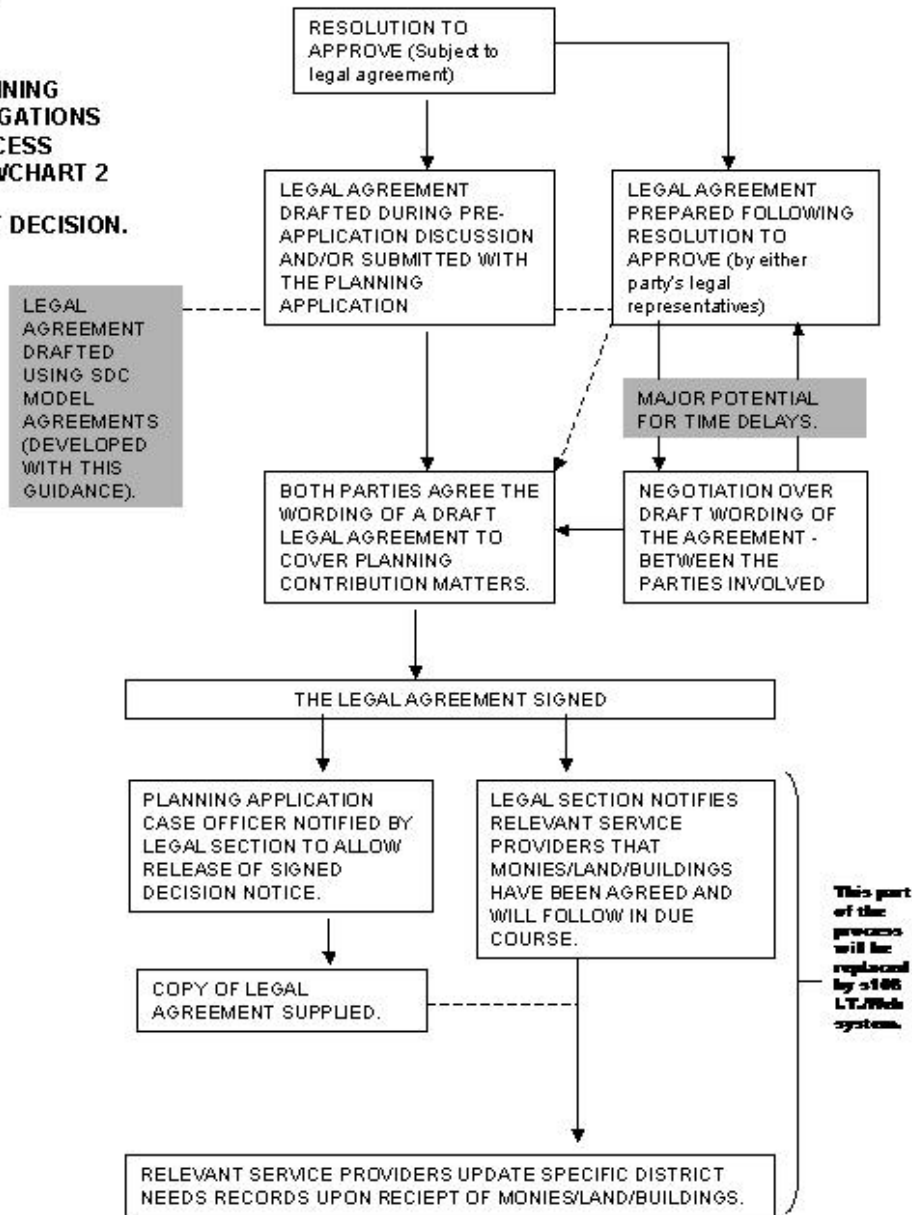
**Appendix A**



Indicative  
Timescale

86 Days

**PLANNING  
OBLIGATIONS  
PROCESS  
FLOWCHART 2  
POST DECISION.**



## **Appendix B** **Advice on Implementation Matters**

### **Timing and Phasing of Provision**

The Council will expect Planning Obligations to match the additional demands that the development creates on existing services, landscape, ecology, amenity and infrastructure as they arise. Hence the Council may specify the point(s) at which obligations need to be implemented. Within a comprehensive development scheme it may be necessary to require some infrastructure as part of a first phase to ensure new residents/employees have the necessary amenities upon initial occupation of the first units.

### **Previous Permissions**

An obligation may be used to rescind an earlier planning permission without recourse to compensation.

### **Restrictions on Use of Land and Occupancy of Buildings**

Where it is deemed inappropriate to restrict land use or building occupation by means of planning conditions, a Planning Obligation may be used to secure the same end. A development size threshold could be linked to the capacity of the local road and public transport network that would serve it. Limiting sub-division of property could assist where an agricultural land unit and/or set of farm buildings and their use, have justified a dwelling to serve it.

### **Monitoring**

Where a development requires monitoring over time, the Council will seek a contribution towards the cost of future monitoring made necessary by the approval of the development. These could include the monitoring of travel plans and wildlife management plans for example.

### **Maintaining the Value of Financial Contributions**

In order to maintain the real value of a payment to the Council, as development progresses, the financial sums are credited with interest while held by the Council. This is calculated on a daily basis from the day the Council receives the payment (cheque or bank transfer) until the day the payment is drawn, either full or in part. The interest rate paid is 1% below the Bank of England base rate. Any interest earned by 31<sup>st</sup> March is compounded to the principal sum & also earns interest in following years. Where there is a time limit on the use of the funds, this needs to be noted so that accrued interest & the unspent principal can be repaid.

### **Outline Applications**

On matters where the details of the proposal are reserved for subsequent decision, it may be necessary to frame the Planning Obligation to ensure that payment towards the provision of facilities and infrastructure will be required and assessed on the basis of subsequent details.

### **Development Frameworks & Design Codes**

In the case of larger sites, development frameworks and design codes will facilitate acceptable good quality schemes and this will enable a clearer picture of facility and infrastructure requirements (and their associated land take, if any) to be identified at an early stage. This will provide certainty to developers and will enable the Council to consider a development more rapidly. In these circumstances the Council will seek to recoup from the developer the costs of preparing the framework or design code.

### **Disagreements Between Council & Developer**

Any Planning Obligation will contain clauses that set out how any disagreements will be resolved.

### **Commuted Sum**

A "Commuted Sum" involves a payment in lieu of services or infrastructure that cannot, or in policy terms should not, be accommodated on site. For example, if parking spaces cannot be accommodated on site, the Council may use a money payment to either provide or improve existing public car parking nearby, or to improve access by modes of transport other than the car.

### **Legal Procedures and Costs**

If obligations are being sought for a range of facilities, it will be expedient to address them in a single legal agreement. If outside agencies are involved, such as the Environment Agency or Network Rail for example, separate legal agreements may be necessary under other legislation. It is important that both conditions and legal agreements are clear and transparent to all parties. The type and amount of contributions required, whether material or financial, and the time at which they are to be paid must be clearly and unambiguously stated. The applicant will be required to pay the Council's legal costs in connection with the preparation and execution of an agreement. The Council's Solicitor will require an undertaking from the Solicitor acting on behalf of the applicant to pay the Council's reasonable legal costs in full whether or not the agreement is completed. The Council is prepared to provide an estimate of costs at the commencement of the legal process.

The Council's Solicitor will also require evidence of the developer's legal title to the development site.

The developer will be expected to produce unilateral obligations promptly in the event of appeals to the Planning Inspectorate.

Any legal agreements requiring developer contributions will be enforceable against any future freehold or leasehold owners of the land who may derive the title from the person who originally entered into the agreement. This would include subsequent freehold or leasehold owners of any property developed on a site but not usually individual householders.