

# HAMPSHIRE COUNTY COUNCIL

## Decision Report

<b>Decision Maker:</b>	Leader and Executive Member for Hampshire 2050 and Corporate Services
<b>Date:</b>	22 January 2024
<b>Title:</b>	Guidance on Planning Obligations and Developer Infrastructure Contributions
<b>Report From:</b>	Director of Hampshire 2050

**Contact name:** Emily Howbrook

**Email:** emily.howbrook2@hants.gov.uk

### Purpose of this Report

1. The purpose of this report is to explain the role of the Guidance on Planning Obligations and Developer Infrastructure Contributions and seek approval for its publication and adoption by the County Council.
2. A Cabinet decision from September 2020 agreed that authority be delegated to the Leader for final approval of a corporate policy setting out the County Council's infrastructure and developer contribution requirements.

### Recommendations

3. That the Leader and Executive Member for Hampshire 2050 and Corporate Services approves the Guidance on Planning Obligations and Developer Infrastructure Contributions.
4. That the Director of Hampshire 2050 is given delegated authority to approve minor updates to the Guidance to reflect changes to national policy, guidance and best practice as appropriate.

### Executive Summary

5. This paper seeks to:
  - set out the background to the County Council's Guidance on Planning Obligations and Developer Infrastructure Contributions
  - summarise the consultation feedback received from local planning authorities
  - highlight the demand for the Guidance and how it will be utilised in plan-making and decisions
  - highlight the constraints and opportunities available to seek planning obligations and contributions towards infrastructure costs from developments

- consider the preferred approach to refreshing the guidance to reflect best practice

### Contextual information

6. The County Council is responsible for delivering key services which support the infrastructure requirements of both existing and new development. Investment in infrastructure is required to support long-term planned housing growth across the County. Hampshire’s population (estimated at 1.41 million in 2021) has grown by 6.3% since 2011. A growth in households of 7.8% in the same period demonstrates the requirement for new homes and supporting infrastructure across the County.
7. The County Council’s land supply monitoring data enables it to identify planned housing and associated population growth at a local level. This growth often results in demonstrable pressures on infrastructure, for example on roads and transport (e.g. peak vehicle movements or demand for bus services). According to local planning authorities, concerns about infrastructure provision remain one of the most cited comments in Local Plan consultations.
8. As part of the planning process, the County Council can seek planning obligations to help mitigate the impacts of development and has done this for a number of years. A Cabinet decision in September 2020 agreed that corporate policy in the form of guidance was required to guide this activity, following important changes to the planning system. This included amendments to regulations which came into force in September 2019 which relaxed the restrictions around the use of section 106 agreements for most developments.

### Background to the Guidance

9. *Guidance on Planning Obligations and Developer Infrastructure Contributions (2023)* (the Guidance) has been prepared to clarify the role of the County Council in assessing infrastructure needs, securing developer funding, and its approach to utilising section 106 legal agreements.
10. The Guidance will play a key role in providing a joined-up consistent approach to infrastructure funding, and support discussions about balancing funding priorities. A summary of the range of infrastructure requirements covered by the Guidance is shown below:

Infrastructure/ planning obligation	Hampshire County Council Directorate	Evidence/ strategy (key documents)
Highways, transport & travel	Hampshire 2050 (Local Highway Authority)	<ul style="list-style-type: none"> <li>• Local Transport Plan 4 and area action plans</li> <li>• Local Cycling &amp; Walking Infrastructure plans</li> </ul>
Primary & Secondary schools (new and extensions) Special Educational Needs & Disabilities (SEND), early	Hampshire 2050 / Children’s Services (statutory duty to ensure a sufficiency of school	<ul style="list-style-type: none"> <li>• Development Contributions towards Children’s Services Facilities (March 2022)</li> </ul>

Infrastructure/ planning obligation	Hampshire County Council Directorate	Evidence/ strategy (key documents)
years and post-16 Contribution	places for Hampshire children)	<ul style="list-style-type: none"> <li>Hampshire Schools Places Plan 20223-2027</li> </ul>
Countryside, Public Rights of Way & Green Infrastructure	Universal Services (statutory duty as local highway authority to protect and maintain the network of public rights of way (PROW))	<ul style="list-style-type: none"> <li>2015-2025 Hampshire Countryside Access Plan (CAP)</li> </ul>
Extra Care housing	Adults' Health & Care	<ul style="list-style-type: none"> <li>Adults' Health and Care Strategy</li> </ul>
Library and archives provision	Children's Services	<ul style="list-style-type: none"> <li>Library Service Transformation - Strategy to 2025</li> </ul>
Household waste management	Universal Services (Waste and Environment)	<ul style="list-style-type: none"> <li>Joint Municipal Waste Management Strategy (2022)</li> </ul>

11. The table above also demonstrates the strategic framework within which the Guidance sits, namely the statutory duties for infrastructure provision and the adopted strategies and aims for which infrastructure improvements help to deliver.
12. The National Planning Policy Framework (NPPF) and guidance already sets out the expected approach to planning obligations (legal obligations entered into to mitigate the impacts of a development proposal). This encourages local planning authorities in two tier council areas to work with county councils at an early stage of the planning process when planning obligations are being discussed in order to prevent delays to the agreement of planning obligations. Standardised or formulaic evidence can be used to inform the identification of needs and costs and the setting of plan policies by local planning authorities (districts and boroughs). The County Council Guidance seeks to provide or signpost such evidence. All planning obligations sought must meet the statutory tests including funding a project that is directly related to that specific development.

### **Rationale for the new Guidance**

13. The publication of detailed advice and guidance on the approach sought by the County Council to secure developer contributions towards infrastructure has varied across Council's services, and to date has not been coordinated into one comprehensive source of information.
14. In March 2023 following engagement with relevant services across the Council, draft guidance was subject to a public consultation exercise. Following further

engagement with service areas, and feedback from Local Planning Authorities, the Guidance has been finalised and is attached as Appendix 1.

15. The main audience for the Guidance includes the development sector, as planning applicants for major developments have to consider the totality of planning obligations sought when calculating development viability. Upfront information about development costs is critical to the sector, especially against the backdrop of inflation and increased build costs.
16. The Guidance includes other important areas, such as flood and water management, where planning obligations are not sought, but where clear upfront advice on satisfying requirements of the Lead Local Flood Authority assists the development process.

### **Purpose of the Guidance**

17. As suggested above, the Guidance is non-statutory unless local planning authorities (district and borough councils) choose to incorporate the advice through the plan making process. For example, several authorities have an adopted Supplementary Planning Document on planning obligations and could be subject to revision and update in future. Local Planning Authorities require information about County Council services to be able to evidence policies for planning obligations set out in Local Plans.
18. Consultation and engagement with local planning authorities shows a strong demand for comprehensive guidance on infrastructure contributions which may be sought from the County Council in response to planned development. The specific recommended uses of the Guidance are detailed in the document itself.
19. The information in the Guidance is not an exhaustive list and the exact requirements for planning obligations will be decided on a case-by-case basis with the individual circumstances of each site being taken into consideration.
20. The Guidance can be used as supporting evidence when bidding for Community Infrastructure Levy (CIL) funds for infrastructure projects in local planning authority areas in Hampshire which operate a CIL. Eastleigh, Hart, New Forest National Park and Rushmoor local planning authorities do not currently operate CIL, and in these four authorities planning obligations only are sought to fund mitigating infrastructure.
21. The Guidance is caveated by explaining that mitigation required is largely subject to negotiation and that formulaic approaches often provide a starting point only. The Guidance signposts to several supporting strategies and detailed guidance and is not able to be fully comprehensive.

### **Keeping the Guidance up to date**

22. The Guidance is subject to changes in Government policy and updated evidence studies (e.g., increased demand for services) and therefore the recommendation is to approve the Guidance as a 'living document', able to be updated as required. Updates will be clearly communicated to users of the Guidance.
23. The Levelling up and Regeneration Bill, introduced to Parliament on 11 May 2022, included proposals which could change the way in which developer

funding is delivered. The bill was given Royal Assent on 26 October 2023 and the Levelling up and Regeneration Act introduces a new Infrastructure Levy (IL) replacing the current s106 and Community Infrastructure Levy (CIL) regime.

24. A role for Section 106 agreements in relation to larger sites is still envisaged and it is anticipated that there would be a lengthy transitional period as the new levy would be introduced through a 'test and learn' system over a 10-year period. Before the Act can take full effect there will need to be a raft of technical consultations, secondary legislation and an update to the National Planning Policy Framework (NPPF). The current proposed changes to the National Planning Policy Framework (as consulted upon in December 2022) are still to be finalised, which may trigger a review of the Guidance (for example about meeting specialist housing needs).

## **Finance**

25. This report does not seek additional revenue funding for services, and the costs of updating the Guidance are covered by existing budgets (the Spatial Planning service).
26. The Guidance highlights the importance of experienced staff resources necessary to demonstrate the need for infrastructure funding and negotiating implementation through legal agreement and other mechanisms. There is also a cost associated with preparing updated evidence to justify the request for planning obligations.
27. The published Infrastructure Funding Statement 2021/22 (December 2022) reports that approximately £12 million of developer contributions were agreed in legal agreements that year (including associated fees and cash deposits). Planning obligations also come in the form of land in-kind, offsite works and services such as bus services (i.e. non-monetary).
28. The cost of monitoring and collecting developer contributions to fund the capital programme is covered by a monitoring fee. The Director of Hampshire 2050 agreed an increase in the planning obligations monitoring fee in June 2022 to ensure the cost is fully covered. In 2021/22 a total of £47.45 million of developer funding was received towards a range of infrastructure.
29. There are additional services offered by the County Council to support applicants navigating the planning system in the two-tier council area, including compliance with legal agreements and infrastructure delivery. This includes a Highway Development Coordinator Service and pre-application highway advice service for developers. Resourcing these services supports the efficient implementation of the infrastructure sought as set out in the Guidance.

## **Performance**

30. As mentioned above, Children's Services and the Highway Authority have been negotiating and securing planning obligations for many years to support the capital programme. The success of approving the Guidance will be measured by the improved efficiencies achieved in providing upfront advice to developers and plan-making authorities grappling with the competing expectations of planning gain sought. Support in justifying obligations can help speed up the

process of resolving Section 106 legal agreements, which is a longstanding Government objective.

31. The Department of Levelling Up, Homes and Communities launched a technical consultation (17 March – 9 June 2023) on the proposed Infrastructure Levy and changes to the way developer contributions will be sought. Despite the Levelling up and Regeneration Act (2023) and plans to introduce a new Infrastructure Levy (IL), the County Council still relies on section 106 and so the success of the Guidance will be in making the continued case for what should be in scope for securing funding via section 106 or superseding mechanisms.
32. The revised Guidance (Appendix 1) includes a summary of developer contributions secured in the last three years, with total spending averaging £27 million per annum. The overall financial success of the approach to planning contributions embedded in the Guidance can be measured by monitoring this financial data, and in particular how funding has been spent and thus benefitted local communities.

### **Consultation**

33. A draft version of the Guidance was subject to an online consultation in February- March 2023. The majority of Hampshire's local planning authorities responded to the consultation, along with six town or parish councils. There was no feedback or engagement from the development sector itself.
34. Local planning authorities must balance the viability and deliverability considerations of seeking planning obligations, including those sought by applying Local Plan policy. The totality of obligations sought (including a proportion of affordable housing), alongside abnormal developer costs and marginal viability, can in some cases necessitate difficult decisions about competing priorities. This challenge was reflected in a number of the responses received which challenged the justification for some obligations proposed.
35. A summary of the consultation responses is as follows (see Appendix 2 for further details):

#### **General comments:**

- provides a good overview for developers in terms of infrastructure requirements and expectations (contributions secured, both financial and non-financial)
- guidance is helpful to inform the preparation of Infrastructure Delivery Plans and the viability work for Local Plans
- the County Council will need to work closely with the local planning authorities if the government proceeds with a transition towards the proposed Infrastructure Levy
- the Guidance will be used differently by CIL and non-CIL charging authorities
- the County Council's prioritisation of infrastructure required should be clear

**Evidence of needs:**

- where infrastructure is the statutory responsibility of the County Council, there must be robust and detailed justification which includes an explanation of the provider's existing funding arrangements, statutory responsibilities and delivery planning
- the County Council should provide its own Infrastructure Delivery Plan

**Viability:**

- should place stronger emphasis on authorities working together to ensure the County Council's infrastructure requirements are factored into local plan viability assessments
- more evidence required on the viability of County Council obligations alongside the requirements in adopted Local Plan policy and District/ Borough planning obligation guidance

**Expenditure:**

- should avoid the inclusion of clauses (Section 106) that may result in an open-ended timeframe for delivery of infrastructure
- the County Council should develop a clear programme for delivery of specific identified projects (spending plans) and delivery reported alongside its annual Infrastructure Funding Statement

**Guidance on specific planning obligations:**

- a strong justification for contributions towards libraries is required given the recent closures of libraries in some areas
- clearer guidance should be provided on the need for Extra Care accommodation and how that is to be delivered to support planned communities
- clarify guidance on post-16 education provision and more detailed evidence about the need for SEN (Special Educational Needs) provision
- advice on accessibility standards of new homes to be revised to reflect national policy and building regulations (and avoid duplication)
- should provide tool for developers to be able to assess impacts on Public Rights of Way
- should make it clear when the County Council as Public Health Body considers a Health Impact Assessment (HIA) should be completed

36. In response to the comments received, the finalised Guidance set out in Appendix 1 includes the following key modifications (in summary):

- inclusion of a single point of contact for infrastructure planning
- restructure the guidance using a consistent approach across the individual sections
- clarify the status and weight to be given to the Guidance
- clarify the strategic basis and evidence used to justify seeking contributions

- strengthen the link between strategic outcomes, evidence and requirements for contributions
  - section on Children's Facilities (schools) to reflect updated DfE best practice on *Securing Developer Contributions for Education* (August 2023)
  - section on highways and transport to include explanation of how contributions are calculated on a case by case basis
  - additional information provided about spending plans and approach to seeking CIL funds
37. No specific comments on the draft Guidance were provided by the Parish and Town Councils which responded. In some cases the opportunity was taken to flag some identified deficiencies in local provision (e.g. early years places), and requests for local spending on communities to be reported.

## **Equalities**

38. Whilst the Guidance provides a policy basis for seeking infrastructure, it does not however deliver change itself. Therefore, whilst infrastructure schemes (e.g. extra care housing) are expected to have positive impacts on the protected characteristics of age and disability, they will be subject to their own Equalities Impact Assessment as schemes progress to delivery. This decision therefore has the potential to contribute to a positive impact for age and disability, and a neutral impact for other statutory protected characteristics. The decision could also have a positive impact on those in poverty, as the guidance supports the provision of social infrastructure, and also rural residents, through contributions to green space and public rights of way.
39. The approach to infrastructure planning and funding in the guidance is supported by the National Planning Policy Framework, and its accompanying Equality Impact Assessment (2018) states:
- “The changes to policy on viability should streamline how funding for infrastructure and affordable housing is secured and increase certainty around the likelihood of delivery, which should benefit all people accessing services including health centres, transport services and affordable housing – including people who share protected characteristics. People who access affordable housing are likely to include a high proportion of those who share protected characteristics compared to people accessing market housing and the environment.

## **Climate Change Impact Assessments**

40. Hampshire County Council utilises two decision-making tools to assess the carbon emissions and resilience of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.



41. The tools to assess specific impacts on climate change adaptation and mitigation were found not to be applicable on the grounds that the decision relates to publication of Guidance which is a procedural document and not a project. The preparation and adoption of the Guidance will not, in itself, have any discernible impact on climate change, until any infrastructure is delivered, which will be assessed at an appropriate time. The Guidance does seek to influence development projects however and includes some references to achieving sustainability objectives. For example:

- sustainable waste management (supporting the provision of Household Waste Recycling centres)
- support for seeking low and net zero carbon building for new schools
- emphasis on promoting alternatives to the private car and reducing carbon emissions (sustainable transport infrastructure and initiatives)
- reducing car use through investment in rights of way
- advising on the provision of Sustainable Drainage Systems (SuDS)

## **Conclusions**

42. Approval is sought to formally adopt the Guidance on Planning Obligations and Developer Infrastructure Contributions (2023) as non-statutory policy. Planning obligations assist in mitigating the impact of development which benefits local communities and supports the provision of local infrastructure.

43. In a two-tier council area, authorities are expected to work together to agree the appropriate funding priorities and mechanisms to support planned growth. Approval of the Guidance is supported by Hampshire local planning authorities, many of which are keen to continue working together on refining the evidence base required to support obligations towards County Council infrastructure.

44. Up to date and robust evidence is continually required to support the seeking of planning obligations and approval is sought to keep the Guidance up to date, with revisions approved by the Director of Hampshire 2050 under delegated authority.

45. The cost of preparing, coordinating, and implementing the Guidance is covered by the existing revenue budgets of relevant services, and led by the Spatial Planning team. Adequate resources to operationally support the system of securing, collecting and monitoring planning obligations is necessary to deliver the commitments and level of service outlined in the Guidance.

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	yes
<b>People in Hampshire live safe, healthy and independent lives:</b>	yes
<b>People in Hampshire enjoy a rich and diverse environment:</b>	yes
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	yes

**Other Significant Links**

<b>Links to previous Member decisions:</b>	
<u>Title</u> Changes to the Planning System, Major Developments and Infrastructure Funding	<u>Date</u> 29 September 2020
<b>Direct links to specific legislation or Government Directives</b>	
<u>Title</u> Community Infrastructure Levy Regulations (2010) (as amended).	<u>Date</u> 2010

<b>Section 100 D - Local Government Act 1972 - background documents</b>	
<p>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</p>	
<u>Document</u>	<u>Location</u>
None	

## **EQUALITIES IMPACT ASSESSMENT:**

### **Equality Duty**

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

### **Equalities Impact Assessment:**

Whilst the Guidance provides a policy basis for seeking infrastructure, it does not however deliver change itself. Therefore, whilst infrastructure schemes (e.g. extra care housing) are expected to have positive impacts on the protected characteristics of age and disability, they will be subject to their own Equalities Impact Assessment as schemes progress to delivery. This decision therefore has the potential to contribute to a positive impact for age and disability, and a neutral impact for other statutory protected characteristics. The decision could also have a positive impact on those in poverty, as the guidance supports the provision of social infrastructure, and also rural residents, through contributions to green space and public rights of way.