

Leicester
City Council

WARDS AFFECTED
All

DECISION TIMETABLE

Cabinet

13th October 2003

Developer Contributions and the Planning Process

Report of the Corporate Director of Environment, Regeneration and Development

1 Purpose of Report

- 1.1 The purpose of this report is to clarify the process and framework for negotiating developer contributions that can be sought as a result of development in the City. This report also takes forward issues arising from the report 'Affordable Housing and the Planning Process' which was considered by Cabinet on 27th January 2003. Cabinet approved the creation of a dedicated 'Developer Contributions' post, resolved that proposals for a framework and process for securing developer contributions be brought to Cabinet, and that officers explore the role of Members in the process of seeking contributions.
- 1.2 This report sets out a draft protocol and working procedures for securing contributions. It also proposes for the next stage, the production of detailed Supplementary Planning Guidance which will set out the Council's priorities in seeking developer contributions. The report examines the role of the post created to co-ordinate work on this issue, and the possible role of a Member Advisory Panel.

2 Summary

- 2.1 The supporting information document sets out a draft protocol (Appendix A) and guiding principles for seeking developer contributions as defined by Government guidance, and the procedure for assessing the measures and benefits to be applied by officers to each development proposal. A key consideration is the balance that needs to be achieved in pursuing strategic planning objectives such as regeneration and also seeking to secure developer contributions to meet other specific policy requirements such as affordable housing or open space. However where it is not possible to achieve all the desired benefits, I consider that development should not be prejudiced and the achievement of wider planning objectives should remain the key focus.
- 2.2 In addition to the draft protocol, I intend producing Supplementary Planning Guidance (SPG) which builds on the current set of planning policies and will set out the Council's priorities for seeking contributions. The protocol and SPG will make the process more transparent and robust, in line with Government

guidance. SPG will ensure that developers are able to assess the financial implications of their proposals from the outset.

2.3 The report considers the potential funding available for the 'Developer Contributions' post, and its role. I consider that the post should not be limited to seeking contributions, but to have a wider strategic remit including the development and implementation of the protocol.

2.4 There are a number of issues to consider in establishing a Member Advisory Panel and I have sought advice from Anthony Cross, Assistant Head of Legal Services regarding a possible role for a Panel. I feel there will be difficulties in establishing a panel especially with regard to its status and relationship with the Development Control Committee, and its role in seeking contributions .

2.5 The implications for departments in tracking and monitoring contributions are also highlighted in the protocol (Section 10). The Assistant Head of Legal Services has suggested that an annual report containing the information highlighted in 10.2 could be prepared for Development Control Committee and Cabinet.

3.0 Comments from Scrutiny Committees and Development Control Committee

The report was considered by the following Scrutiny Committees:

- Arts, Leisure and Environment (13th August 2003)
- Highways and Transportation (13th August)
- Housing Scrutiny (21st August)
- Strategic Planning and Regeneration (10th September)

Development Control Committee considered the report on 16th September.

3.1 The key resolutions from the Scrutiny Committees and Development Control Committee are:

- General support for the Protocol and the recommendation not to establish a Members Advisory Panel (All Committees)
- Consideration be given to a role for Ward Councillors in applications generating planning gain (Highways and Transportation, Strategic Planning and Regeneration, (SP&R) and Development Control Committees)
- The Developer Contributions post should be a mainstream full time officer post and that consultants should not be used. (Housing, and SP&R Scrutiny)
- Consideration should be given to funding the post through a system of recharging departments for the developer contributions they receive. (SP&R Scrutiny and Development Control Committee)
- That Developer Contributions should not be sought for public art but should be used for enhancing and maintaining parks. (SP& R Scrutiny)
- That contributions be used to ensure contract compliance .(SP&R Scrutiny)

The issues are discussed further in section 5 of the supporting information. In light of these, the following recommendations are made.

4 Recommendations

4.1 Recommendations for Cabinet

- 4.1.1 That Cabinet agree the draft protocol as set out in Appendix A as Corporate Procedure for the assessment of development proposals, and the production of Supplementary Planning Guidance.
- 4.1.2 That Cabinet note the Cabinet decision in January 2003 to create the Developer Contributions post and note that this could be funded for a 12 month period from the Planning Delivery Grant.
- 4.1.3 That Cabinet note that Strategic Planning & Regeneration Scrutiny Committee and Development Control Committee had suggested a system for departments benefiting from developer contributions to be recharged or to contribute towards the developer contributions post and that Cabinet is asked to consider this matter as part of the Revenue Budget discussions.
- 4.1.4 That in light of advice from the Assistant Head of Legal Services and the issues highlighted in this report a Members Advisory Panel should not be established.
- 4.1.5 That Cabinet endorse the involvement of Ward Councillors in planning applications generating developer contributions as set out in paragraphs 5.1 and 5.2 of the supporting information.
- 4.1.6 That developer contributions should be continued to be sought where appropriate for public art.

5. Headline Financial (provided by Neal Evans and Kate McGee), and Legal Implications (Anthony Cross)

5.1 The Developer Contributions post was approved by Cabinet but the source of funding was not identified at that time. An alternative is to fund the post from the Planning Delivery Grant, but the Grant is allocated on an annual basis and is not a permanent source of funding. It may only be available for twelve months which could make recruitment difficult. An alternative would be to use a consultant to carry out the role for an initial 12 month period. In addition the use of the Grant is subject to competing priorities within the Planning Service.

5.2 Mention must also be made of the wider financial consequences of developer contributions and the potential impact they could have on the value of the City Council's land holdings. Developers can finance the required contributions in a number of ways (e.g. increasing the price of any houses to be sold). However if it is clear from the outset what contributions are likely to be required then the developer will initially seek to fund these contributions by paying less for the land in the first place. As the City Council owns a substantial amount of land allocated for residential development then this could impact directly on the capital receipts

we receive when selling land for development. It is also important to note that the Protocol and provisions of supplementary planning guidance will also apply to the Council in its role as a developer.

5.3 Although it is not possible to indicate an overall “cost” to the Authority, the Council’s affordable housing requirement is one aspect that will have an impact. Potential housing development land owned by the Council (e.g. at Hamilton and Ashton Green) could provide up to 4,000 units with, depending on negotiations, the possibility of 1,200 (30%) of them being required for affordable housing. As developers invariably argue that affordable housing units cannot be sold at market value, this could clearly impinge significantly on the capital receipts for the Council. (The number of housing units involved will be spread over a period of time; approximately 12 years being the life of the Replacement Local Plan). Affordable housing is just one example of developer contributions that may well be sought, for example, contributions to schools, open space provision and other public realm matters are likely. In terms of capital receipts to the Council a policy of seeking developer contributions may have the effect of ring fencing or prioritising monies to housing, education, open space etc (as the case may be), rather than a higher gross figure being received, the spending of which is prioritised as part of the Council’s Capital Programme.

5.4 The Director of Housing has commented on the financial implications as follows. “The Council’s policy for its own land disposals clearly must be informed and indeed informs its policy for developments on private land. To that extent, a policy that seeks, for example, 30% affordable housing from private developments will lead to a reduction in capital receipts from the sale of Council owned land. This loss of receipts needs to be considered in the context of a current significant shortage of affordable housing and leading to increased general fund costs arising from homelessness including provision of bed and breakfast accommodation.”

5.5 Planning Obligations (agreements) are permitted by Section 106 of the Town and Country Planning Act 1990. Guidance into how local planning authorities should use these obligations and what they can/cannot contain appears in Circular 1/97. The Government’s Planning Green Paper of December 2001 envisaged changes to planning obligations with a focus on a ‘tariff – based’ system (a standard percentage rate developer contribution applied to all developments). The Planning and Compulsory Purchase Bill currently before Parliament, however does not have any new provisions dealing with obligations and does not include any provision for the introduction of tariffs. It is currently envisaged by the Government that revised guidance will be issued to replace Circular 1/97 and to replace affordable housing guidance later this summer.

Report Author

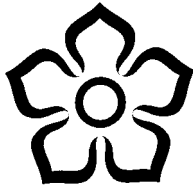
Peter Connolly, Corporate Director, Environment, Regeneration and Development

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Jeevan Dhesi, Extension 7232.

DECISION STATUS

Key Decision	No
Reason	N/A
Appeared in Forward Plan	No
Executive or Council Decision	Executive (Cabinet)



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Developer Contributions and the Planning Process

SUPPORTING INFORMATION

1. Report

The Developer Contributions Post.

1.1 Funding

As highlighted within the covering report, the developer contributions post was approved by Cabinet but the source of funding was not identified at that time. Using the Planning Delivery Grant is one option and Leicester's allocation for 2003/ 04 is £119,296. However the Grant is allocated on an annual basis subject to improvements in performance which focus primarily on the Development Control service. The Grant is not a permanent source of funding and should the required performance improvements not take place then it will not be available next year. Whilst a full time officer post is desirable, recruitment to the post on this basis could therefore be difficult. One option for use of the Grant is to appoint a Consultant to fill the post for the first year.

1.2 A bid has also been submitted to the Leicester Shire Economic Partnership to fund the post for three years. The annual funding sought to cover the salary costs is £35k.

1.3 The possibility of the post being funded by developer contributions has been suggested. However, there could be concerns over probity with such a course of action and the Assistant Head of Legal Services has also expressed his concerns over the potential conflict between the aspirations of developers funding the post and the Council's Local Plan policies. I do not consider this to be a viable option. Advice in Circular 1/97 is clear on the need for negotiations to be fair, open and reasonable.

1.4 Taking account of these considerations, I would recommend that the Council seeks to appoint a consultant for 12 months funded by the Planning Delivery Grant. This will provide the Council with the opportunity to see how the post

works and should also allow us to draw on the expertise of someone who will have experience from elsewhere.

Role of the Postholder

- 1.5 I consider that the post should have a remit which includes not just providing a list of developer requirements but also liaising between departments, involvement in negotiations on major applications which trigger the need for contributions as well as monitoring and tracking of funds received. Valuation and surveying skills would be useful. I intend that this should be a 'Co-ordinator' post which complements existing working procedures.
- 1.6 The aims of the post would be to seek to increase the levels of contributions sought, provide additional expert advice to developers and to contribute to the efficient delivery of the Development Control service.
- 1.7 I have also considered the implications of an inter departmental officer group which would meet to discuss planning applications which generate the appropriate contributions. I feel that referring each application to such a group would cause considerable delay in the handling of planning applications. Negotiation by committee is not very practical. There may however be merit in a group to oversee and develop further our work on developer contributions. This could be led by the co-ordinator postholder.

2.0 The Member Advisory Panel.

- 2.1 There are a number of issues to consider here. These are - how the Panel will engage in the process, how it will operate in the process of considering development proposals and securing contributions, and its relationship to the Development Control Committee.
- 2.2 The Assistant Head of Legal Services considers that if the Panel was established panel members would need to be trained in the Planning process and the Code of Practice in dealing with planning applications would apply and may need amendment. He does, however, have concerns about such a Panel.
- 2.3 The Panel's role in the consideration of proposals also raises a number of concerns. There is the potential for delay in convening a panel meeting. Will the panel assess all planning applications where contributions are relevant?. It will be difficult to ensure that development proposals considered by the panel are not seen to be pre-judged before decisions by the Development Control Committee, and that any logistical arrangements would not impact on the time period for assessing applications. Would the panel act as an arbiter of different requests from departments and applicants, with the potential for applicants who are not in agreement with the panel to seek further consideration of matters?
- 2.4 The Panel could act in a similar manner to the Conservation Advisory Panel. One option is that a panel is convened in an advisory capacity to consider major developments only. A number of checks and balances would be needed in its role. I however feel that the Panel would undermine the role of

the Development Control Committee. It is that Committee which would have to make the decision on a planning application and associated developer contributions. As far as I am aware, other planning authorities have not sought to establish a separate Member's Panel.

- 2.5 The draft protocol will assist in a more transparent process, where early negotiations on planning obligations and the summary of the obligations agreed in Committee reports will enable Members to assess and debate the officer view prior to decision.
- 2.6 Taking all these matters into consideration and the potential difficulties associated with a Panel, I would not recommend that one be established.

3.0 The Draft Protocol

- 3.1 The current policy framework as defined in the Replacement Local Plan (set out in section three of the draft protocol) reflects the need to focus on the overall planning objectives whilst also seeking from developers the necessary costs, infrastructure and needs arising as a result of development.
- 3.2 The Protocol refines current working practice and meets the Government's agenda for making Planning Obligations and the process of securing developer contributions more transparent and open. It is important that the way development proposals are considered, and the criteria and circumstances for securing developer contributions are set out clearly. The procedures for monitoring and accounting will maintain the integrity of the system and help ensure that the contributions obtained for specific purposes have been appropriately spent. Consideration has been given to the use of a tariff but as this has not been pursued by the Government, and as it does not specify how contributions will be used, it is not recommended in this report.
- 3.3 Future guidance will need to incorporate the Government's proposed revisions to Circulars 6/98 on Affordable Housing and 1/97 on Planning Obligations. It is intended that the draft protocol be adopted as Corporate procedure.
- 3.4 The process of negotiating and securing contributions is a significant part of the protocol.
- Section two summarises Government Guidance – particularly Circular 1/97 on 'Planning Obligations and the circumstances where it is appropriate to seek contributions.
 - Section three includes a list (from the Replacement Local Plan) of the types of requirements that may be sought in accordance with statutory guidance.
 - Section five highlights the potential costs and competing priorities that are borne by each development and the need to take these into account .
- 3.5 The protocol will also assist in securing contributions by

- Setting out the relevant requirements in pre – application discussions (para.6.1) with applicants.
- seeking consideration of the planning application and the planning agreement at the same time. This will ensure that Committees' are able to examine the agreements and where appropriate details of financial payments. (para.7.1 and 7.2)

3.6 It is important that in – house procedures are clear so that future SPG can then be implemented effectively.

4.0 Supplementary Planning Guidance and Prioritising Contributions

4.1 It is intended that the SPG will set the Council's priorities for seeking contributions and to provide a framework to ensure that current requirements are known and applied. It will enable developers to be aware at an early stage in the development process as to what infrastructure, services and facilities are likely to be sought and how they are to be provided. This will enable developers to take into account these requirements when formulating their development proposals. The contents of the guidance are not intended to establish precise requirements or impose rigid formulae for every development.

4.2 The setting of a list of contributions which are considered a priority will need to be supported by assessments. For example the Local Housing Needs Survey for seeking affordable housing, or assessments that are being proposed for open space and for City Centre Access. Education requirements will need to show vacancy rates in schools and possible formulae for contributions per classroom. The proposed SPG will therefore have priorities that are justifiable and evidence based. This will be a complex and detailed area of work and will require input from officers across the Council.

4.3 Work has recently been completed on the Local Housing Needs Survey and guidance on affordable housing. Work is underway on the provision of open space, highway contributions and a strategy for developer contributions within the Leicester Regeneration Company area; all these and others will contribute to a City wide SPG.

5.0 Issues arising from Scrutiny Committees and Developer Control Committee.

Role of Ward Councillors .

5.1 I consider that the issues highlighted in section two above on the Members Advisory Panel are also relevant here. The involvement of Ward Councillors who serve on the Development Control Committee in respect of planning applications that justify a Section 106 Agreement that will include financial or other contributions in relation to the development has to be considered carefully. For such Members the suggested involvement would be contrary to the spirit of the Council's Code of Practice relating to Member involvement in the development control process.

5.2 As an alternative Councillors (except those on Development Control Committee) can use the weekly list of planning applications to check the applications within their respective wards and make written representations on major applications and potential developer contributions. I consider that this would be the most appropriate way for ward councillors to be involved.

Funding the Post.

5.3 The issues relating to the Post – especially the difficulties in securing permanent funding - have been highlighted above. The resolution of the SP&R Scrutiny, and Development Control Committee for departments to be recharged for the contributions they receive could present a solution to maintaining a permanent post. Housing Scrutiny Committee noted that a consultant may have conflict of interest and may not be able to fulfil the demands of the post.

Not seeking contributions for Public Art.

5.4 This was resolved at SP&R Scrutiny Committee. I feel it would not be appropriate to stop seeking contributions towards public art. Indeed in accordance with government guidance as set out in Circular 1/97 and highlighted in the draft protocol, contributions should be sought for specific needs arising from a development, and there may well be cases especially on city centre regeneration sites where contributions towards public art are relevant and where alternative diversion to the maintenance of parks would be inappropriate and contrary to guidance.

5.5 The Replacement Local Plan which has been through its second public deposit stage contains policy UD 18 which seeks the appropriate provision of public art. I therefore recommend that contributions should continue to be sought towards the provision of public art. However contributions could include artist involvement with the design of buildings and public spaces, as well as specific craft or art features within buildings.

Developer Contributions and Contract Compliance

5.6 This is at present contrary to Statutory Guidance and as such it is inappropriate for contributions to be sought to be used in this area of work. This is a matter which can instead be explored via the Council's economic development work.

FINANCIAL, LEGAL AND OTHER IMPLICATIONS

1. Financial Implications

These are set out in the covering report.

2. Legal Implications (A. J. Cross, Assistant Head of Legal Services)

These are set out in the covering report.

3. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	Yes	Whole Report	
Policy	Yes	Whole Report	
Sustainable and Environmental	Yes	Whole Report	
Crime and Disorder	No		
Human Rights Act	No		
Elderly/People on Low Income	No		

4. Background Papers – Local Government Act 1972

Replacement City Of Leicester Local Plan (Deposit Copies 2001 , 2003)
Town and Country Planning Act 1990 (Section 106)
Circular 1/97 – ‘Planning Obligations’
Circular 6/98 - ‘Affordable Housing’
Town and Country Planning (General Development Procedure) Order 2002
Planning and Compensation Bill 2002
Cabinet Report, 27th January 2003, ‘Affordable Housing and the Planning Process

5. Consultations

Leicester Regeneration Company (LRC) – John Nicholls, Chief Executive. (The LRC support the report , and the production of Supplementary Planning Guidance).

Anne Branson – Assistant Director, Housing Department
Martin Field – Group Manager, Housing Department
Richard Welburn – Head of Parks and Environmental Services, Cultural Services and Neighbourhood Renewal
Anthony Cross -Assistant Head ,Legal Services, Resources Access and Diversity
Neal Evans – Team Leader Investment and Development, Property Division, Environment, Regeneration and Development Department
Kate McGee – Head of Finance, Environment, Regeneration and Development Department.

6. Report Author

Peter Connolly – Corporate Director, Environment, Regeneration and Development

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APPENDIX A - DRAFT PROTOCOL

Introduction

1.1 In making decisions to allocate land or to determine planning applications, the City Council as the local planning authority needs to take account of all material considerations, including the provision of infrastructure necessary to support development, and the reasonable need arising as a direct result of development, for amenities and facilities. The development of land without the proper provision of facilities and infrastructure increases the burden on existing facilities and services to the detriment of those who use them. The principle that such contributions will be required is set out in the Replacement City Of Leicester Local Plan.

2.0 Statutory Context

2.1 Government guidance makes it clear that the community at large should not be disadvantaged as a result of development proposals, and that it is reasonable to expect developers to contribute towards the cost of infrastructure arising directly from their development.

2.2 Section 106 of the Town and Country Planning Act 1990 (as amended by Section 12 of the Planning and Compensation Act 1991) establishes the statutory framework for developer contributions through the use of planning obligations. The Act provides that an Obligation may:

- be unconditional or subject to conditions
- impose any restriction or requirement for an indefinite or specified period
- provide for payments of money to be made, either of a specific amount or by reference to a formula, and require periodical payments to be paid indefinitely or for a specific period.

Circular 1 / 97 : ‘Planning Obligations’

2.3 The Circular is fundamental to the implementation of the Act, and provides the basis upon which local authorities can seek developer contributions towards infrastructure, service, and facility requirements arising from new development. Properly used, planning obligations may enhance the quality of the development and enable proposals to go ahead which otherwise might be refused.

2.4 The circular notes that planning obligations are to be sought only where they are

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

2.5 Planning Obligations can play a positive role in remedying genuine planning problems and enhancing the quality of the development . Developers may reasonably be expected to pay for or contribute towards the cost of infrastructure

which would not have been necessary but for their development, and to pay for facilities to remedy existing deficiencies which may be materially exacerbated by the proposal. However they should not be expected to pay for facilities which may be needed solely to resolve existing deficiencies. Local Authorities should not try to seek more benefit than is justified.

2.6 Circular 1/97 notes that if there is a choice between imposing conditions and entering a planning obligation, the imposition of condition which satisfies the policy tests of Circular 11/95 is preferable because it enables a developer to appeal. The Circular emphasises that arrangements should be in accordance with the fundamental principle that planning permission may not be bought or sold. Negotiations should be conducted in a way that is seen to be fair, open and reasonable.

2.7 Sections B3 and B4 of the Circular also state:

B3 'Acceptable Development should never be refused because an applicant is unwilling or unable to offer benefits. Unacceptable development should never be permitted because of unnecessary or unrelated benefits offered by the applicant.'

B4 'The Secretary of State considers that local planning authorities and developers should place more emphasis on the overall quality of a development proposal than on the number and nature (or value) of planning benefits they can obtain or offer.'

2.8. The Government is intending to revise 1/97 and new guidance will need to be incorporated in this Protocol.

3.0 Local Plan Context:

3.1 The Replacement Local Plan (RLP) contains Policy IMP01 on Planning Obligations which sets out the principle need for developers to provide for the necessary costs, infrastructure, and needs arising from the development. The Policy states:

'In the case of new development proposals planning obligations will be sought in order to secure from developers the necessary costs and provision of infrastructure, facilities, and needs arising directly as a result of the development. Any provision will relate to the scale and nature of the development'

3.2 Appendix 04 in the Replacement Local Plan gives examples of the appropriate measures and areas where contributions will sought through negotiating planning obligations.

3.3 Policy CL02 in the Plan refers to Community and Leisure Facilities within New Housing Development. The policy states:

'In the case of new housing development, the provision of a range of appropriate community and leisure facilities will be sought as part of the development, or by way of financial contribution.

Improvements or extensions to existing facilities may be required as a result of new development.'

Other requirements such as open space are set out separately in the relevant chapters of the Plan. Paragraphs 12.14 and 12.15 of the Plan refer to the key

requirements for commuted sums and maintenance arrangements. Policies H06 and UD18 set out the provisions on Affordable Housing and Public Art.

3.4 The RLP sets out the general requirements for infrastructure, services and amenities and the areas where contributions will be required. However the exact requirement generated by a proposal is unlikely to be known until the planning application stage. The type of obligations required will be identified as early as possible in the planning process through published policy statements, supplementary planning guidance, and during the initial stages of the planning application process.

3.5 It is important to note that the following list of examples of the types of possible obligations which may be sought is not a 'shopping' list but an illustration to developers of the possible types of measures that may be sought in the appropriate circumstances. Government guidance as highlighted in section two is clear on the circumstances where planning obligations can be sought.

EXAMPLES OF OBLIGATIONS WHICH WILL BE SOUGHT	
TYPE OF MEASURE/BENEFIT	EXAMPLES
ENHANCING THE BUILT ENVIRONMENT/CONSERVATION	<ul style="list-style-type: none"> • Archaeology - retention/preservation/improved facilities at Scheduled Ancient Monument • Archaeology - retention/recording of other feature • Restoration of listed building • Restoration of building of local importance • Environmental enhancement/pedestrian facility including off site landscaping • Public access within development
ENHANCING & IMPROVING THE ENVIRONMENT/ECOLOGY	<ul style="list-style-type: none"> • Public access to open space • Land reclamation • Retain feature/enhance nature conservation value
MEETING EXTERNAL COSTS	<ul style="list-style-type: none"> • Physical measures to alleviate impact, e.g. traffic management, landscaping, noise insulation • Habitat creation & management
MEASURES TO OFFSET LOSS OF/IMPACT ON AMENITY/RESOURCE ON SITE	<ul style="list-style-type: none"> • Replacement/retention of recreation/environmental facilities for those lost on site, e.g. playing field, nature conservation area, litter, waste recycling • Replacement/retention of social economic facilities, e.g. training scheme, community facilities
PROVISION OF FACILITIES/SERVICES TO SUPPORT DEVELOPMENT	<ul style="list-style-type: none"> • Education facilities - new schools • Contributions to additional classrooms • Affordable housing & access housing • Public (open) space, including improvements & maintenance • Play space, including maintenance • Sports facilities or improvements to existing • Community facilities to support

	<ul style="list-style-type: none"> development, libraries • Other community facilities, e.g. health centre, leisure • Public art • Childcare/creche/nursery • Training/employment facilities • Access for people with disabilities • Crime prevention measures • Facilities for children • Toilet facilities, parent and child facilities • Waste recycling facilities
IMPLEMENTING POLICIES/PROPOSALS IN THE PLAN OR SUPPLEMENTARY PLANNING GUIDANCE	<ul style="list-style-type: none"> • Enabling measures, e.g. infrastructure works • Complete linear open, space walkway/country park • Environmental enhancement
HIGHWAY/PHYSICAL INFRASTRUCTURE	<ul style="list-style-type: none"> • Highways e.g. improvements to road network and access to site, provision of access roads, public transport • Drainage/sewerage/flood defence • Operational parking off site • Improvements to public parking • Traffic signals • Public transport provision • Travel Plans • Monitoring of travel plans as a result of development • Public transport, e.g. land for park and ride, LRT facilities • Cycle & pedestrian facilities, footpaths etc

4.0 Definition of Developer Contributions

4.1 Throughout this guidance the term ‘developer contributions’ will be referred to in relation to the practice of seeking contributions – monetary or otherwise – from developers. These contributions will be made under an agreement between the developer and the local planning authority. The detailed arrangements necessary to secure a planning obligation will vary according to individual circumstances and will be determined on a case by case basis.

5.0 Determining Priorities

5.1. Each development has a set of costs, ranging from the purchase of a site, to land assembly, and the provision of infrastructure and other enabling measures which will allow the site to be developed. In addition there will be the requirements of the Local Authority in seeking the proper development of the site. The costs and risks on brownfield development sites can be higher especially where there are complex land assembly arrangements, or where relocation and remedial works are necessary. This is particularly relevant to the LRC area where a strategy for enhanced public realm, infrastructure, and improved maintenance is being drafted.

5.2. In assessing the type and scale of developer contributions, the City Council will have regard to:

i) The extent to which the works to be provided are essential for the development to take place and the needs arising as a direct result of the development. This could include for example a new access road to open up the development, or education facilities where no such facilities exist.

ii) The extent to which there are additional abnormal costs associated with the development. This is most often applicable with brownfield sites.

iii) The availability of facilities in the surrounding area. For example, residential development requires the provision of open space but this may not be needed if there is appropriate readily accessible existing open space nearby which is able to serve the needs of the development .

iv) The extent to which contributions provide for facilities which are reasonably required to meet wider City needs as supported by policies in the Local Plan. The provision of public art or affordable housing would fall in this category. Circular 6/98 on Affordable Housing seeks the provision of affordable housing and policy H06 in the Replacement Local Plan sets out the Council's policy.

5.3 Government guidance in PPG 3 places emphasis on the development of brownfield sites. Whilst the scale of contributions required will take account of the development costs of each proposal, developers will need to take into account the Local Plan policy provisions which apply to their development sites.

5.4 If a contribution to meet identified needs or community facilities arising out of a development is not forthcoming, and facilities are considered essential in the interests of proper planning and are material to the planning decision, then it may be necessary to consider whether it is appropriate to permit the development.

5.5 Any contributions that are required will be in addition to the normal planning standards required by a development proposal such as densities, car parking, amenity space and other standards set out in the Local Plan or supplementary guidance.

6.0 Implementation Procedure.

6.1 The City Council as the local planning authority will seek to ensure that the full range of relevant facilities and needs arising from any particular development are identified and agreed before planning permission is granted.

6.2 In the first instance discussions will take place between those submitting proposals for development and the Development Control officer who will lead discussions with Council Officers in order to ascertain the requirements for particular sites. These discussions will take full account of the existing development plan policy framework, and any requirements set out within published policy statements or supplementary planning guidance relating to the site.

Development Control officers will be responsible for liaising with the relevant

consultees, City Council departments and service providers in order to establish requirements relating to the development.

The Development Control case officers will be responsible for –

- pre application enquiries, negotiations, and setting out the requirements for possible planning obligations. These will normally be identified at the earliest possible stage or as soon as the application is submitted. In some cases the need for an obligation may be identified later in the process eg as a result of consultation. Negotiations on matters to be included in any agreements will run in parallel with the consideration of the planning application.

Following the submission of a planning application the case officer will –

- Consult with the all relevant consultees and seek information on requirements that are relevant to the application.
- Define the type, scale and mix of measures/benefits relating to the proposal
- Check whether a planning condition would suffice. Wherever possible planning conditions should be used in preference to planning obligations.
- Negotiate and confirm with the applicant the measures and benefits to be applied to the proposal and matters to be included in any planning obligation.
- Assess whether planning permission should be recommended for refusal in the absence of the required measures or obligation or whether a desired measure or obligation could not justify refusal if it were withheld.

6.3 The responsibility and recommendation on the scale, type and mix of contributions to be sought will rest with the case officer who will liaise with the relevant departments and bodies. The decision to seek final approval of any planning obligation sought and the Section 106 Agreement is the function of planning officers, who will where appropriate report to the Committee responsible for Planning matters or recommend approval under delegated matters.

7.0 Reporting to Committee

7.1 Committee should consider the planning application and the agreement relating to the obligation at the same time. Committee reports will be placed on the open agenda and include a summary of the contents of the obligations agreed (Heads of Terms) in the agreement and details of financial payments where appropriate. The recommendation to grant planning permission will be subject to the completion of a satisfactory legal agreement.

7.2 Committee reports will highlight within the description of development whether the proposal is subject to, or where a Section 106 Agreement has been signed. Following the decision a 'Note to Applicant' will be included in the decision notice which will summarise the areas covered by the agreement . The 'Decision Notice' will only be issued once the Section 106 Agreement has been signed. The provisions of legal agreements will be made clear and transparent to all parties. It is important that both the type and amount of contribution required, whether material or financial and the time at which it is to be paid is clearly and unambiguously stated.

8.0 Legal Agreements

8.1 Following the Committee decision, or in the case of delegated decisions a memorandum from the Head of Development Control, the Council's legal services section will prepare and check the draft agreement and confirm its terms with each department and the applicant. Following confirmation a final agreement will be sealed by all parties and planning permission will be issued.

8.2 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. The agreement should provide for the payment of legal costs by the applicant. These costs should be paid before consent is granted. Planning Obligations are also registered as local land charges.

9.0 Financial Payments

9.1 The level of contributions required will depend on the size of the development and in the event of a cash sum being required this will be placed in a fund set aside for the provision of that service or facility. Monies will be paid in accordance with the terms of the obligation directly to the relevant Council department who will be responsible for overseeing its implementation.

9.2 Any financial contributions that are required as part of a development proposal will normally be required to be paid prior to the commencement of development or on a date specified in the legal agreement. However, there may be occasions, for example, where the contribution is to be placed in a fund awaiting expenditure on works at a future date, when the landowner covenants to pay the contributions to the relevant authority when the works are to be implemented.

10.0 Monitoring

10.1 Legal Services will draft the planning obligation and on completion copies will be provided to Development Control and all departments that are to receive benefit (financial or otherwise) under the obligation. Initial responsibility for enforcing provisions in the legal agreement (financial payments) will rest with the receiving department subject to notification to Development Control and Legal Services. Where the agreement is not complied with, Legal Services should be consulted on the appropriate method of enforcement.

10.2 Each department will maintain a system of monitoring the provisions contained in the legal agreement and a statement of all financial contributions received, including how they have been spent. Contributions should be utilised within a set timescale, and for the purposes specified within the agreement. Departments should have information available on the agreements completed, money spent, and if not, a timescale for when it is to be spent. This information can then be made available in an annual report.

10.3 In accordance with Statutory Order 2002 No. 828 copies of Planning Obligations will be placed on the Planning Register

