

**MERTHYR TYDFIL**



**Local**

**Development**

**Plan**

**2006-2021**



**Supplementary Planning  
Guidance Note No. 2**

# **Planning Obligations**

**March 2012**

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## 1.0 INTRODUCTION AND PURPOSE

- 1.1 As new developments often place a burden on existing infrastructure and create requirements for new or enhanced facilities, it is only appropriate that a proportion of the increased value of the land should be returned to the community through appropriate benefits and that these benefits should be reasonably related in scale and kind to the development proposed.
- 1.2 Planning obligations are a mechanism used to address the additional impacts that new development can place upon local communities. Obligations have a key role in ensuring positive planning so that new development supports and enhances legitimate social, environmental and economic requirements in order to create and maintain sustainable local communities.
- 1.3 When granting planning permission, the Council may, amongst other things, seek to enter into a planning obligation with a developer to:
- restrict development or use of the land;
  - require operations or activities to be carried out in, on, under or over the land;
  - require the land to be used in a specified way; or
  - require payments to be made to the authority either in a single sum or periodically.
- 1.4 This Supplementary Planning Guidance (SPG) Note
- explains how the Council will use planning obligations;
  - identifies the type of developments from which obligations will be required; and
  - outlines both the legal content and the procedures involved when entering into obligations.
- 1.5 The overall aim is to provide clarity and certainty to developers, statutory consultees, local residents and other stakeholders involved in the planning and development process.

## 2.0 POLICY CONTEXT

- 2.1 Section 106 of the *Town and Country Planning Act 1990* (as amended by Section 12 the *Planning and Compensation Act 1991*) gives powers to local authorities for Agreement to be negotiated within the context of the granting of planning consent. Such agreement enables developer contributions to be made towards the infrastructure and services necessary to facilitate development.
- 2.2 Section 106 Agreements (bilateral or multilateral) or Unilateral Undertakings provide an important means by which benefits or obligations to the community are legally secured, particularly when such obligations cannot be met by the imposition of planning conditions. The relevant guidance that currently exists in relation to planning obligations is set out below.

### National policy

- 2.3 *Welsh Office Circular 13/97, 'Planning Obligations'*, provides local planning authorities (LPAs) with the Welsh Government's current guidance and sets out the benefits which can be secured from such Agreements together with the role of development plan policy.

2.4 Both the Circular and paragraph Para 3.7.2 of *Planning Policy Wales (Edition 4, 2011)* highlight the requirements in relation to planning obligations and state that “amongst other factors, planning obligations should only be sought 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;
- and
- reasonable in all other respects.

Where planning obligations are sought, the parties should work for an early agreement to avoid unnecessary delay in the planning process.”

### **Merthyr Tydfil County Borough Council policy**

2.5 The policy context for negotiating planning obligations is set out in the Council’s adopted Local Development Plan (LDP), which states:

#### **Policy BW17: Securing community infrastructure benefits**

***Development proposals will only be permitted where adequate community infrastructure capacity exists or where additional capacity is capable of being provided as part of the development without unacceptable impacts on people or the environment. In order to address the impacts of particular developments, the Council will seek to secure community infrastructure benefits through planning obligations. Such obligations may relate to:***

- ***affordable housing***
- ***suitably designed and located public open space and play, recreation, sport and leisure facilities***
- ***education provision***
- ***specialist social care accommodation***
- ***other community facilities***
- ***highway works, pedestrian and cycling facilities, and public transport improvements***
- ***improvements to the public realm***
- ***waste management and recycling***
- ***drainage and sewerage works***
- ***flood risk mitigation measures***
- ***nature conservation.***

2.6 For the purposes of the LDP and this SPG, community infrastructure is considered to be the structural elements that provide the framework for supporting the activities of society.

2.7 Where allocated sites in the LDP have been identified as requiring essential infrastructure works that may not be funded through the public purse, the need for planning obligations has been identified / prioritised as part of the schedule of housing sites at Appendix 4 of the Plan.

## 3.0 TYPES OF CONTRIBUTION

3.1 Planning obligations will be negotiated on individual schemes as appropriate. The circumstances of each development can be unique, therefore a variety of different mechanisms are available for use:

- a) **One-off payments** – A single payment to the Council for a new facility as a result of the demand created directly from a new development. The facility should be provided either within the site or within close proximity to it in order to be accessible to the community that has created the increased demand.
- b) **Financial contributions** – A standard contribution paid by the developer to the Council for the creation or improvement of a facility within the vicinity of a development.
- c) **On-site provision or development in kind** - Where a developer is providing a facility in kind, the Council will ensure that the facility is either incorporated into the proposed development (i.e. on site) or is in close proximity to the development, and that the S106 Agreement states the necessary build standards and specification for the facility. Should the facility be transferred to the Council, a commuted sum would be expected from the developer for the on-going maintenance of the facility for the next 20 years (see (e) below).
- d) **Phased payments** – When a development itself is phased, and where the scale of payment or facilities is significant relative to the size of the development it may be appropriate to phase obligation payments or provision. The Council will ensure that the S106 Agreement clearly sets out the stages within the development process when payments are to be delivered – known as ‘trigger points’.
- e) **Maintenance payments** – a financial contribution that contributes towards the physical upkeep of infrastructure or facilities for a set period of time once development on site has finished (normally 20 years). The Council and developer should formally agree the expected time period for which maintenance payments will be made, and when they will be due, normally on a monthly or yearly basis. The Council recognises that in some cases it may be preferable for the money to be paid as a ‘commuted sum’; this gives the Council greater certainty for the future funding of the facility and saves cost for the developer as they are not tied to making relatively small payments over a longer period of time. In some cases it may also be beneficial for a management company to be established to manage the facilities in perpetuity.
- f) **Pooled contributions** – It is recognised that, in some cases, the essential infrastructure required to make a development acceptable (e.g. the provision of a new access road, or junction improvements) may go beyond the scope of an individual project. In such cases, it may be appropriate to pool contributions from several developments to achieve the required provision. Where a pooled contribution is required, it will be necessary for all parties concerned, including the Council, to enter into an agreement regarding the timescale within which the money is to be spent.

## 4.0 CATEGORIES OF OBLIGATION

- 4.1 A list of potential planning obligations is provided below; however, it should be noted that the list is not intended to be exhaustive, and the Council reserves the right to seek obligations relating to other matters where there is sufficiently robust evidence to justify such obligations.
- 4.2 The primary categories of obligation relate to:
- Affordable housing.
  - Community facilities.
  - Education.
  - Employment and local enterprise.
  - Environment, landscape and biodiversity.
  - Recreation and outdoor play space.
  - Public art.
  - Transportation.
  - Historic environment.
- 4.3 With the exception of affordable housing (which is the subject of a separate SPG), the following pages provide more detail on each of the above.
- 4.4 The Council recommends that a developer contacts the Town Planning Division as early as possible in the development process to ascertain which obligation(s) may be required, and the scale of the contribution(s) likely to be necessary.

## 5.0 COMMUNITY FACILITIES

- 5.1 Community facilities play an important part in people's lives and contribute strongly to community cohesion, especially in the more remote or deprived areas of the County Borough. In order to ensure that no section of the local community is excluded from basic community services and facilities, the Council will protect and support the enhancement of existing facilities, and will also support the creation of new facilities.
- 5.2 For the purposes of securing planning obligations and any future negotiations, a community facility is defined as a space or building managed, occupied or used primarily by the voluntary, community or public sectors for community-led activities. This definition does not include privately run amenities, such as members-only clubs, private schools, religious buildings, police stations and commercial children's play facilities.
- 5.3 Although local authority educational establishments are a community facility, for the purpose of this document and in relation to planning obligations, education is considered as a separate category. This is due to the complex nature of educational contributions and the need for community facilities and schools to be dealt with independently (see Section 6).

### Type of development where obligation would be applicable

- 5.4 Any type of development that will create an increased demand on local community facilities to a level that could exceed the existing and/or planned capacity of local facilities.

## Threshold trigger

- 5.5 There is no minimum development size for which a community facility contribution may be required; consequently, a small-scale development might be required to contribute a proportion of the cost of delivering the obligation rather than being required to fully fund it. A case-by-case assessment will be conducted by the Council to establish whether there would be an increased need that exceeds an existing or planned facility's capacity. If no need is identified, a planning obligation will not be sought.
- 5.6 The Council has the option to use a variety of methods to establish the level of need for a particular facility, including audits of existing facility use, needs assessments, public consultation, and the use of existing information held within the Council. The need for a new community facility or for improvements to an existing facility will be assessed at the beginning of the planning process (as part of pre-application discussions). For sites that require on-site provision, this should be included as part of the planning application.

## What is a typical community facility contribution?

- 5.7 The Council may seek a variety of community facility contributions, including, but not exclusively confined to:
- The direct provision of a new facility by the developer, e.g. new community hall, either on-site or close by.
  - Community Facilities Payment – the provision of a financial sum paid to the Council at an agreed stage of the development, often used to improve or extend off-site facilities located close to the new development, which would be used by residents of the new development.
  - Transfer of land to the Council together with a financial payment to deliver the facility.
  - Improvement to existing facilities, e.g. improvements to local library services or community centres.
- 5.8 The following LDP Policy and supporting text is relevant to this category of obligation:
- BW15: Community facilities (particularly, paragraph 3.15.3).

## 6.0 EDUCATION

- 6.1 The Authority seeks to improve the life chances of all children and young people in Merthyr Tydfil by raising standards and ensuring children and young people have access to a comprehensive range of education and learning opportunities, thus increasing their potential to avoid poverty through gainful employment. Improving attainment and life skills is a core aim and objective of several plans and strategies for the County Borough including the *Merthyr Tydfil Community Plan 2020*; the *Children's and Young People's Transition Plan for Merthyr Tydfil 2011-2014*; and the *Merthyr Tydfil Local Development Plan 2006-2021*. As indicated at Para 5.3, local authority educational establishments are community facilities, but for the purpose of planning contributions, education is classified as a separate, independent topic. Contributions will be restricted to provision associated with primary and secondary school facilities, i.e. the education of children of compulsory school age.

## Type of development where obligation would be applicable

- 6.2 All developments (including mixed use developments) that contain a residential element. The only exemptions to this being sheltered/elderly person housing, rest homes and nursing homes, hostels, student accommodation and one-bedroom / studio flats.

## Threshold trigger

- 6.3 There is no minimum development size for which an educational contribution may be required. All residential developments that are reasonably expected to generate need for additional pupil spaces in excess of that which local schools can accommodate will be eligible to make an educational contribution. A case-by-case assessment will be conducted by the Council to establish whether there would be an increased need that exceeds an existing or planned facility's capacity. If no need is identified, a planning obligation will not be sought. School capacities and places are calculated by the Council in accordance with Welsh Government Guidance - 'Measuring the Capacity of Schools in Wales'.

## What is a typical educational contribution?

- 6.4 The Council may seek a variety of educational contributions, including, but not exclusively confined to:
- the provision of new classrooms, learning environments, or a new school;
  - the replacement of demountable facilities with permanent facilities;
  - the provision of additional capacity through the improvement and refurbishment of existing facilities;
  - the provision of additional facilities or improvements to existing facilities necessitated by the additional demand.

*(N.B. Circular 09/2006: Measuring the Capacity of Schools in Wales, identifies that demountable accommodation is usually considered as being unsuitable permanent accommodation and such accommodation is therefore excluded from capacity calculations for the purposes of planning obligations).*

- 6.5 When a large-scale development is proposed that is likely to generate adequate pupil numbers to justify a new primary school or secondary school, the developer will be required to provide a suitable school on site. Where this is not possible, a financial contribution will be required, equivalent to the land purchase and building costs for a comparable off-site facility.
- 6.6 The following factors will be considered when calculating the necessary contributions that may be needed for additional or improved school facilities:
- The number of residential units likely to accommodate children of school age.
  - The number of school age children projected to be generated by the development in the relevant catchment area, and age groups (whether primary or secondary).
  - The cost of providing additional school places dependent on the scale of additional provision required.
  - Existing school capacity (and any planned expansion).
  - Any necessary land cost.

*(N.B. At present, secondary schools in Merthyr Tydfil are below pupil capacity, therefore, it is unlikely that secondary school contributions will be requested, although this situation may change in future).*

6.7 The following LDP Policy and supporting text is relevant to this category of obligation:

- AS13: Life-long learning facilities (particularly, paragraphs 4.13.5 - 4.13.6).

## 7.0 EMPLOYMENT AND LOCAL ENTERPRISE

7.1 Merthyr Tydfil functions as the main commercial, retail and service centre of the Heads of the Valleys Region, but continues to face considerable economic and social challenges arising from the historic decline in traditional manufacturing and heavy industry. This includes high levels of economic inactivity, low skills levels, poor quality jobs /job opportunities compared to previous economic times, and high incidences of long-term health problems.

7.2 It is considered that sustained, targeted intervention is required if Merthyr Tydfil is to fully regenerate in future, and securing employment benefits through planning obligations is considered an important factor in an overall, coordinated response to addressing the negative effects arising from historic trends.

### Type of development where an obligation will be applicable

7.3 Any type of development that is suitable to implement a locally targeted recruitment plan or the sourcing of local materials /services.

### Threshold trigger

7.4 Any type of application where the nature and scale of development is suitable to provide important recruitment /training opportunities for job seekers and the local workforce. This could be during the construction phase or, where appropriate, as part of the business of the end user. The type and level of obligation sought will be negotiated on a case-by-case basis, and will depend on a number of factors, including:

- The nature and scale of development.
- Likely employment generation from the development.
- The number of jobs and gross floor-space to be lost or replaced.
- The nature and number of existing jobs affected by the proposed development.
- In the case of vacant sites or premises, the previous use and job creating potential / employment levels based upon worker floor-space ratios for those uses.
- Identified recruitment and training issues, or problems related to specific uses and local areas in general.

### What is a typical employment and local enterprise contribution?

7.5 Employment and local enterprise obligations are often referred to as 'social benefits'. Under the umbrella of 'employment and local enterprise', the Council may seek a wide variety of contributions, including, but not exclusively confined to:

- targeted recruitment and training opportunities, or funding for training relevant to the development;
- development of local procurement and supply chains;
- provision of affordable business space;
- direct labour agreements, work experience or apprenticeship schemes with local education establishments.

7.6 Where an employment and local enterprise payment is agreed, contributions could be used to support existing training initiatives or new programmes carried out by the Council, the developer or other partners (as agreed by the Council and developer) in support of local regeneration. Wherever possible, the project to be funded will be set out in the legal agreement together with the timing of payments and the timing of the delivery of the project.

## 8.0 ENVIRONMENT, LANDSCAPE AND BIODIVERSITY

8.1 The Council recognises that successful, thriving communities are formed through many social interactions taking place in a high quality environment. Whilst it is essential that the County Borough develops and prospers in the future, it is important that this does not occur at the expense of the environment, which often requires protection and/or enhancement through sensitive management. Development of all kinds can put pressure on our natural environment, both directly and indirectly.

8.2 For the purposes of this SPG, 'biodiversity' is the term used to describe the variety of all living things, not just rare or threatened species, but the whole of the natural world. 'Landscape' is the space in which we live and the area that surrounds us, from the commonplace to the protected, landscapes can be both rural and urban in character.

### Type of development where obligation will be sought

8.3 Any type of development has the potential to impact upon the landscape and /or biodiversity. The Council will consider development proposals on their own merits and will carry out assessments for planning obligations on a case-by-case basis.

### Threshold trigger

8.4 There is no trigger below which an obligation will not be required.

### What are typical landscape and biodiversity contributions?

8.5 Biodiversity and landscape impacts do not always observe planning application site boundaries, and therefore, both immediate impacts and impacts remote from the development site will be considered. Planning obligations (as opposed to planning conditions) may be used where mitigation, compensation or enhancement measures require a long-term or complex commitment, or where a financial contribution and / or transfer of land is required. The nature and scale of the obligation will reflect the impact of development and the need for improvements, management and monitoring of biodiversity. The Council may seek a wide variety of landscape and /or biodiversity contributions, including, but not exclusively confined to:

- Restricting development in identified / sensitive areas to avoid harm to existing biodiversity features.
- Improving access for the public to appropriate areas of green space and biodiversity.
- Providing on-site public information / interpretation boards, either directly or through a financial contribution.
- Improving habitat of significant specific species.
- Securing on-site works to enhance existing features such as woodlands, hedgerows, ponds, grasslands, bird nesting boxes, bat boxes, or bat roosting boxes.
- Setting aside and preparing land for natural regeneration.
- Establishing and monitoring of habitats.
- Habitat creation, protection, restoration and /or future management for targeted species or habitats.

8.6 The Council will use the systematic 'Five Point Approach' to planning decisions for biodiversity, as set out by the Royal Town Planning Institute (RTPI) in their *Good Practice Guide: Planning for Biodiversity (1999)*, and advocated in *TAN 5: Nature Conservation and Planning (2009)*. The 'Five Point Approach' is as follows:

- Adequate Information** – appropriate information will be required at the outset whenever development proposals are likely to affect, either directly or indirectly, nature conservation interests. This information will include the nature conservation value of the sites affected, and the magnitude of the potential impact such as providing a biodiversity / ecological survey, Environmental Impact Assessment, or Appropriate Assessment (see Paras 8.7 and 8.8 below).
- Avoidance of Harm** – Wherever possible, all adverse effect on wildlife species and habitats should be avoided.
- Mitigation to Reduce Unavoidable Harm** – Where adverse effects are unavoidable, negative impacts on biodiversity as a result of development should be minimised through appropriate mitigation (such as by conditions or planning obligations or Agreement).
- Compensation to offset Residual Harm** – When mitigation is not possible and loss or damage to natural habitats is inevitable, compensatory measures will be required (such as new habitat creation or habitat enhancement works).
- Enhancement / New Benefits** – Wherever possible, opportunities to improve the ecological value of all or part of the development site should be pursued, for instance, through habitat creation or enhancement. In addition to providing biodiversity gain, such enhancement can often contribute towards a high quality, aesthetically pleasing development.

- 8.7 Many planning applications will be expected to be accompanied by a biodiversity /ecological survey that will inform the ecological implications of a proposal and provide details of what measures the developer intends to take to conserve and enhance the biodiversity /ecology of the site. Records held by the South East Wales Biodiversity Records Centre (SEWBRC) may assist the developer in providing this information.
- 8.8 There are occasions where an Environmental Impact Assessment (EIA) may be required – appropriate proposals for development being screened at the pre-application stage. EIA will contain assessments and reports covering a number of matters such as transport or the historic environment, and goes beyond the realm of biodiversity/ecology. The need for EIA will be determined by the Council in consultation with CCW and a number of other statutory consultees.
- 8.9 Should a development have potential to affect an international nature conservation designation, even if outside Merthyr Tydfil County Borough, regard should be given to the Conservation of Habitats and Species Regulations (2010). In this respect, reference should be made to Section 5.3 of Technical Advice Note 5: Nature Conservation and Planning (2009), which clarifies the requirements of proposals affecting European sites.
- 8.10 The need for a Habitat Regulation Assessment (HRA) will be determined by the Council in consultation with statutory consultees appropriate to that proposal. HRA includes a Test of Likely Significant Effect and if it cannot be demonstrated that a proposal will not result in such effect, an Appropriate Assessment (AA) of the impacts of the proposed development on the integrity of relevant European sites will be required.
- 8.11 It is advised that should any type of biodiversity or ecology assessment be required, the developer should employ the services of an ecological consultant to conduct such survey work. It should also be noted that ecology surveys are often restricted to certain times of the year; therefore, early contact with the Council is advised in order to incorporate seasonal restrictions /survey work into the development programme.
- 8.12 Planning permission cannot normally be granted until survey work has been completed, and then, only if the results show that the proposal, including any modifications, conditions or restrictions will not adversely affect biodiversity. Where the survey findings detail the need for mitigation or compensation and enhancement measures, the implementation, management or monitoring of these measures will be secured either through conditions or a Section 106 Agreement.
- 8.13 The following LDP Policies and supporting text are relevant to this category of obligation:
- BW5: Natural heritage;
  - AS6: Local nature conservation designations.

## 9.0 RECREATION AND OUTDOOR PLAY SPACE

- 9.1 The Council's *Health, Social Care and Wellbeing Strategy (2008)* acknowledges the importance of regular exercise as part of everyday activity and the valuable benefits that are likely to arise. Ready access to recreation and play facilities is therefore considered essential, and the Council recognises the importance of the provision of facilities to ensure that the widest range of local needs is met.
- 9.2 For the purposes of this SPG, 'play' is taken to mean those activities defined in the Welsh Government's *National Play Policy (2002)* which recognises the need for varied play facilities to meet community needs.

### Type of development where obligation will be sought

- 9.3 Most residential developments, with the exception of sheltered /elderly person housing, rest homes and nursing homes, hostels, and one bedroom/studio flats. It should be noted that affordable housing developments, either as part of a site or forming the whole development site, may be required to contribute. Where a development is proposed on the site of an existing recreation/outdoor play space, LDP Policy BW16 will apply; this requires an alternative provision of at least equivalent value to be provided nearby, unless the developer can provide evidence that the facility is inappropriate or surplus to local need.

### Threshold trigger

- 9.4 Any size of residential development that creates added burden on Council maintained facilities. It is anticipated that a financial contribution towards improving existing facilities, or the provision of new equipment, will result from a large majority of LDP housing allocations in order to increase levels of availability throughout the County Borough in line with the Plan's overall aspirations for growth.
- 9.5 The contributions expected from LDP allocations are based on the findings of the *LDP Background Paper - Play Space Requirements (incorporating open space assessments) (2008)*. This publication indicates where deficiencies, both qualitative and quantitative currently exist per thousand head of population. It concludes that the provision of play space across the County Borough is currently insufficient to meet community needs, and fails to satisfy the benchmark standards set by Fields in Trust (FIT).

### What is a typical outdoor play space contribution?

- 9.6 The Council may seek a variety of outdoor play space provision (either on or off-site, but preferably on-site), including, but not exclusively confined to:
- Facilities for pitch-based sports, such as football or cricket, including training areas.
  - Facilities for outdoor sports such as bowls, athletics and tennis, including training areas.
  - Designated areas for children's play containing a range of facilities and an environment designed to provide focused opportunities for outdoor play, including play areas and playgrounds of all kinds.
  - Amenity open space suitable for casual or informal play, particularly in residential areas.
  - Facilities for teenagers and young people.

- 9.7 The exact form and type of play space will be determined having regard to the individual characteristics of the development site, the nature and size of the proposed development, the type of units to be built, and the quality, quantity and accessibility of recreation and play space facilities in the local area. The Council will use *FIT Benchmark Standards (2009)* as a target for the provision of all outdoor playing space, including outdoor sport and children's playing space.
- 9.8 Children's play provision requirements will be evaluated on a site-by-site basis. An indication of the types of provision expected is given below. All provision is to be in line with FIT standards:
- **Local Area for Play (LAP)** – Informal provision: an unsupervised play area equipped for children of early school age;
  - **Local Equipped Area for Play (LEAP)** – Equipped provision: a small area of unsupervised open space specifically designed for young children for play activities close to where they live;
  - **Neighbourhood Area of Play (NEAP)** – Formal provision: an unsupervised site serving a substantial residential area, equipped mainly for older children with opportunities for play for younger children.
- 9.9 Where it is identified that an on-site facility is necessary, the developer must first agree a specification with the Council, fund the development of the detailed scheme, carry out the works to the appropriate standard, and complete the facility within an agreed timeframe.
- 9.10 The future management of the facility should be planned, for instance, through the establishment of a management company. However, as an alternative, the Council may agree to adopt a formal play facility on condition that the land /facility is transferred to the Council at nil cost, and a commuted sum equivalent to 20 years management costs provided. Additionally, the facility must be constructed to the required standard and pass an independent post-installation inspection by RoSPA (Royal Society for the Prevention of Accidents) or FIT (Fields in Trust). Where a facility is not adopted by the Council, the liability to maintain the facility will remain with the developer or property owners.
- 9.11 Where there is opportunity for the provision of publicly accessible informal open space in association with major residential or commercial development (such as when an area of land may be set aside due to the need to provide a Sustainable Drainage System, or as part of a biodiversity mitigation scheme), the Council will seek to secure the long-term management of the area through the establishment of a management company.
- 9.12 The size and scale of some developments within the County Borough dictate that it will not always be feasible or practical to request on-site provision. In such instances, as indicated at Para 9.4, the Council will require the developer to make a financial contribution. A commuted 'Open Space and Recreation Payment' will be necessary to mitigate the impact of the development by upgrading existing facilities within the vicinity of the site. The commuted contribution is calculated in accordance with the aforementioned FIT standard.

## Design guidance for recreation and play space

- 9.13 The Council will assess proposals for new recreation and play space facilities taking into account guidance set out in the FIT document *Planning and Design for Outdoor Sport and Play (2009)*. The main aim of the guidance is to create and maintain usable spaces that have a positive impact on the health and wellbeing of surrounding occupiers and raise the quality of the development.
- 9.14 All facilities will be required to be of current European and British Safety standards for the level of equipment, installation and surfacing. All new facilities must also comply with the *Disability Discrimination Act (DDA) 1995*. The gradients of footpaths, size of steps, and height of handrails and visual obstructions that may be encountered on route to a play or recreation facility are among the factors to be considered.

## Natural green space

- 9.15 According to the *LDP Background Paper - Play Space Requirements (incorporating open space assessments) (2008)*, the County Borough has no deficit in natural green space. However, the paper highlights that when using the preferred 400m standard derived from the *Countryside Council for Wales - Green Space Toolkit (2006)*, access to green space is often limited owing to the topography and historic settlement patterns of the County Borough. As a result, as part of the development process, the Council may seek obligations that would help improve access to such space.
- 9.16 The following LDP Policy and supporting text is relevant to this category of obligation:
- BW16: Protecting /enhancing the network of leisure facilities.

## 10.0 PUBLIC ART

- 10.1 “Public art plays an important part in creating or enhancing individuality and distinctiveness, and in raising the profile of our towns, villages, cities and urban and rural landscape. The integration of the skills or work of a professional artist can add value and can also be employed at key locations to enhance legibility and public realm...” (*TAN 12: Design (2009), Para. 5.15.1*).
- 10.2 Public art can take a wide variety of forms in public locations. For example, it can be a permanent or temporary work inside or outside a building, as an integrated part of a building, or freestanding in an open space or a cultural event.

### Type of development where obligation will be sought

- 10.3 Any type of development is considered suitable for public art provision and public art will be welcomed in any appropriate location. However, there are certain types of development where a provision of public art would be strongly favoured by the Council, these being:
- Development in or in close proximity to town and local centres.
  - Development at ‘key locations’ within the County Borough, such as entry points to the Town Centre, at major road junctions or transport interchanges, and sites of local significance.

- Developments accessible to the community.
- Construction hoardings – large-scale hoardings although ‘temporary’ can be in place for a significant length of time and the incorporation of public art can make a significant positive contribution to the area for the length of time that they are in place.
- Major development proposals (normally defined as 10 dwellings and above, or 1000sqm and above of commercial floor-space, or development sites over 1ha).
- Large-scale redevelopment /regeneration proposals.

### Threshold trigger

- 10.4 It is not considered appropriate to set a trigger or minimum threshold for public art provision; however, it is anticipated that major development schemes and development proposals that are publicly accessible will be most likely to accommodate public art provision.

### What is a typical public art contribution?

- 10.5 The Council may seek a variety of public art contributions, including, but not exclusively confined to:

- Sculptures
- Stained glass and metalwork features
- Murals
- Memorials
- Street furniture
- Lighting
- Facilities for performance arts
- Creative landscape design
- Elements of architectural enhancement

- 10.6 Due to the individual nature of public art, the provision sought in relation to development proposals will almost certainly differ on a case-by-case basis.

- 10.7 Where public art is required, the Council would prefer that public art be integrated into the development scheme as part of the design process; however, there may be occasions when this is not possible, or it is preferable to provide public art off-site to meet an identified local need. Where this is the case, a commuted sum will be sought, which will be used by the Council to implement public art. It should be stressed that the Council’s preferred choice is for public art to be provided on-site in lieu of a financial contribution.

- 10.8 The long-term maintenance and duty of care for public art will normally be the responsibility of the developer or landowner in perpetuity. As a general rule, where public art is proposed within a scheme, the Council will require the following details to be submitted for approval with the application:

- Public liability insurance and payment of premiums.
- Frequency of health, safety and deterioration surveys, and by whom.
- Responsibility of the owner of the site and the owners of the work.
- Responsibilities for the cost of maintenance.
- The payment of maintenance.
- The method and manor recommended by the artist for maintaining the work.

## 11.0 TRANSPORTATION

- 11.1 Merthyr Tydfil fulfils a key strategic role at the centre of the Heads of the Valleys region, benefiting from high levels of accessibility through its location at the intersection of the A470 (T) and the A465 (T) strategic transport corridors in the north, and the A470 (T) and the A472 strategic transport corridors in the south. Accessibility by public transport both to and within the County Borough varies considerably and, in certain areas, remains quite poor. Insufficient public transport limits the ability and choice of the local labour force without access to a car to seek employment opportunities and to have equal access to shopping, cultural and leisure opportunities. The proportion of working age population without a car in Merthyr is 26%, the highest rate in Wales.
- 11.2 All qualifying development will be expected to demonstrate how it makes a realistic contribution to improving the sustainability of travel patterns. By way of an example, the Council wishes to bring forward schemes that deliver environmental benefits such as those resulting in improvements to the quality of life via the enhancement of air quality and through noise reduction. The contribution to improved road safety will also continue to be a consideration for all highway proposals.

### Type of development where obligation will be sought

- 11.3 There are two main areas where transportation obligations will be focussed - 'Highway Infrastructure' and 'Travel Plan /Public Transport Infrastructure'.
- 11.4 **Highway Infrastructure** - Highway infrastructure work normally comprises local works specific to the site; either works within the site itself, or within the immediate vicinity of the site.
- 11.5 Any development is eligible (regardless of size, scale and type), where highways and transport measures are necessary to make the development acceptable in planning terms, and where acceptability cannot be secured through planning condition(s).
- 11.6 **Travel Plan /Public Transport Improvements** – A key theme of national and local policy is to encourage greater use of walking, cycling and public transport as alternatives to the private car. Therefore, wherever possible, new developments should encourage the use of non car-borne journeys.
- 11.7 Any development is eligible (regardless of size, scale and type), where there is scope to improve the accessibility of a site via bus, cycle, walking or other sustainable means. Normally, but not exclusively, these measures are provided within the immediate vicinity of the site.

### Threshold trigger

- 11.8 There is no trigger point for transportation contributions - either Highway Infrastructure or Travel Plan /Public Transport Improvements. The following factors are considered by the Council when determining whether transportation contributions are required:
- Residential proposals -
    - Number of units
    - Average daily trips
    - Accessibility multiplier
    - Local transport provision

- Commercial proposals -
  - Gross floor area (m<sup>2</sup>)
  - Average daily trips
  - Accessibility multiplier
  - Local transport provision
  - Parking provision
  
- Hotels and other tourist accommodation -
  - Number of beds
  - Average daily trips
  - Accessibility multiplier
  - Local transport provision
  
- Public facilities -
  - Gross floor area (m<sup>2</sup>)
  - Average daily trips
  - Accessibility multiplier
  - Local transport provision
  - Parking provision
  
- Religious establishments -
  - Gross floor area (m<sup>2</sup>)
  - Average attendance figure
  - Accessibility multiplier
  - Local transport provision
  - Parking provision

11.9 Developments likely to result in a significant number of trips will be required to incorporate a Transport Assessment as part of the proposal's submission.

### **What is a typical highway infrastructure contribution?**

11.10 The Council may seek a variety of highway contributions, including, but not exclusively confined to:

- Junction improvements.
- Traffic management schemes.
- Alteration or introduction of traffic signalisation at junctions.
- Road safety schemes and controlled parking zones.
- Signage
- Funding of mitigation measures such as off-site car parking /public off-street parking where this complements local strategies.

11.11 Where potential impacts from a proposed development may affect a trunk road, it is advisable for the applicant to consult the Welsh Government.

### **What is a typical travel plan /public transport contribution?**

11.12 The Council may seek a variety of travel plans and/or public transport contributions, including, but not exclusively confined to:

- Provision of public transport facilities or infrastructure to serve the site, such as bus stops, lay-bys, dedicated bus lanes, and dedicated taxi bays.

- Contribution towards developing a 'park and ride' service.
- Provision of new /improved bus services to link the site with existing facilities.
- Funding for, or provision of new /improved pedestrian and cycle routes serving the site, including enhancement of public rights of way.
- Provision of secure cycle parking.
- Funding towards a car club where parking is limited.
- Travel plan initiatives to reduce travel and car use and promote non-car modes of transport.
- Developing school travel initiatives.

11.13 It is anticipated that highway and transportation works will be delivered directly by the developer in accordance with details and specifications to be agreed with the Council. The developer would be required to fund the development of the detailed scheme and carry out the works to the appropriate standard. Only in exceptional circumstances will the Council consider a financial contribution towards off-site facilities or infrastructure to be delivered by the Council rather than the developer; where this is the case, the developer will be required to provide a detailed scheme of works accompanied by full costing to be agreed with the Council. Upon agreement the full payment should be made to the Council, and the works should be undertaken in accordance with the agreed scheme.

11.14 The following LDP Policies and supporting text are relevant to this category of obligation:

- BW12: Development proposals and transport;
- TB11: Access, parking and accessibility of local facilities.

## 12.0 HISTORIC ENVIRONMENT

12.1 Merthyr Tydfil retains a valuable but very vulnerable heritage of historic landscapes, buildings, structures and archaeology associated with the iron industries of the past. Its historic development has left a precious inheritance of historic assets that contribute to the unique character and identity of the County Borough. These heritage assets also have economic value through their contribution to the quality of the built environment. Merthyr Tydfil's heritage has been recognised as being of particular historic or archaeological interest by means of the designation of over 200 Listed Buildings, over 50 Scheduled Ancient Monuments, 7 Conservation Areas, 2 Landscapes of Historic Interest, 3 Parks and Gardens of Special Historic Interest and thousands of other recognised historic environment records.

12.2 The LDP considers the historic built environment as a precious resource that can be used to inform / underpin the process of regeneration and be integrated sensitively with new development as part of a vibrant local economy. The Plan considers it important to preserve or enhance the best elements of the historic environment, not only for the variety it offers in terms of its townscape, archaeology and architectural character, but for its contribution to defining the distinctive physical characteristics of the area.

## Type of development where obligation will be sought

- 12.3 Any type of development that has potential to impact upon historic environment assets within the County Borough. Each instance is unique, and where a proposal is likely to affect the historic environment, it will be considered on its own merits and assessed on a case-by-case basis. Listed Buildings, Scheduled Ancient Monuments, Conservation Areas, Landscapes and Parks and Gardens of Historic Interest, Historic Environment Records, and National Monuments Records will be used to ascertain the historic value of a site. In developments of an appropriate scale, developers will be required to supply this information in the form of a Cultural Heritage Statement.

## Threshold Trigger

- 12.4 Any type of development, irrespective of size, has the potential to impact upon the historic environment. This includes developments that may directly impact upon archaeological, historical or architectural assets, or development impacting on the character or setting of designated sites of national and local importance.

## What are typical historic environment contributions?

- 12.5 Development sites that are close to historic assets, or that directly impact upon or fall within a historic asset will present an opportunity for specific improvement works or for a commuted sum of money to be set aside for maintenance or restoration.

- 12.6 The Council may seek a variety of historic environment contributions in order to mitigate against the impact of a development in the long-term. This includes, but is not exclusively confined to:

- Contribution towards improved interpretation and signage in or around an historic asset. Developers will be expected to make full use of an historic asset as an information /education resource, with relevant material being used to explain the historical and archaeological background of the asset;
- Contribution towards the repair, restoration or maintenance of an historic asset;
- Production of management and maintenance plans of an affected historic asset within or in close proximity to a development site;
- A requirement to restore a historic building or site prior to the commencement of any approved development;
- Contribution towards better understanding, education and research of an archaeological site or resources that have not only wider community benefits but an identifiable relationship with the development area.

- 12.7 The following LDP Policies and supporting text are relevant to this category of obligation:

- BW6: Townscape and built heritage;
- AS4: Historic landscape.

## 13.0 SECURING PLANNING OBLIGATIONS

13.1 A planning obligation will not be required for every planning application, only those that would create a significant impact, or create a need above that which already exists. Planning obligations will not be sought to rectify existing under provision or deficiencies in facilities unless the proposed development would exacerbate the situation. The potential need for planning obligations should be assessed at the beginning of the planning process as part of the pre-application discussions and, where they are required as part of a development, their provision should form part of the planning application.

### Who may enter into a planning obligation?

13.2 As planning obligations run with the land, all owners, lessees, mortgagees and any other person having an interest in the land should be signatories. Planning obligations are legally enforceable against the owner(s) (including their successor in title) of the land to which the obligation relates. This means that, generally, only parties with an interest in land can enter into obligations, even if a prospective purchaser/developer has applied for the planning permission (although it is possible for prospective purchasers to be party to the obligations where they have exchanged contracts to purchase).

13.3 It is not only larger developments which may be subject to planning obligations; it is conceivable that a single dwelling may have the effect of reaching (or contributing to reaching) a criteria/saturation point and could therefore be subject to a planning agreement.

13.4 Where the local authority is the landowner, it is a generally accepted legal principle that a single legal entity cannot contract with itself; therefore, a Section 106 agreement would not be possible. In such instances, the developer and the Council will contract with one another that they will enter into an agreement immediately on completion of the land transfer, possibly with a draft form of the Section 106 agreement; this being the case, this draft form of the agreement would have previously been decided between both parties.

### How are planning obligations secured?

13.5 It is anticipated that the majority of planning contributions will be secured through the prior completion of a Section 106 Agreement. This is a legally-binding agreement between the Council and a landowner in association with the granting of planning permission.

13.6 A Section 106 Agreement will usually contain the following details:

- Date of the Agreement, and the parties involved.
- Definition of words or phrases contained in the Agreement, which may require referencing or clarification.
- If the Agreement is being drawn up during the processing of the planning application, it will include the condition that planning permission must be granted for the Agreement to be valid.
- The Applicant's liabilities and how they are affected following any sale of the land.
- Land Registry registration details.
- Site details and nature of development.
- Provision or restrictions required in the Agreement (i.e. detail of the actual undertaking). This may include a description of provisions required and an explanation of important elements.

- Signatures of applicant, landowners, Council officials and witnesses. This is subject to amendment depending on the issues involved. Applicants can be assured that all the issues will be explained fully to prevent any uncertainty.
- 13.7 When an obligation is entered into by Agreement, this is usually drafted by the Council's in-house solicitors, although, there is no objection to the developers arranging for their own solicitors to draft the Agreement if preferred. The Agreement will contain covenants (the planning obligations) covering the matters the landowner agrees to carry out and/or agrees not to carry out, and the circumstances and timescales within which these matters will occur.
- 13.8 As an alternative, Unilateral Undertakings may be undertaken. These are usually drafted by the developer's solicitors, and the Council will only consider them where they are appropriately worded.
- 13.9 In most cases, where appropriate, the Agreement or Unilateral Undertaking will be accompanied by a plan showing the land to which it relates.

### **How will costs /funds be administered?**

- 13.10 The Council will hold all financial contributions that have been received in an interest bearing account, which will be allocated a unique financial code. With the exception of Unilateral Undertakings, contributions remaining unspent at the end of the specified period will be returned to the payee along with any interest accrued, unless alternative provision is agreed between the payee and the Council.
- 13.11 Whether an Agreement or Unilateral Undertaking is used, the developers will be responsible for the Council's legal costs incurred in relation to the process of drafting, approving and completing any Deed of Obligation, including costs of title investigation which is necessary to ensure the correct parties enter into the Deed. The Council's legal costs must be paid even when the development does not go ahead. In addition to covering the legal costs, the developer will be expected to pay a Monitoring Fee, which covers the Council's costs incurred in entering into early negotiation and ongoing monitoring of the obligations. Applicants will be expected to contractually agree within the legal agreement that they will make this payment prior to, or on the commencement of development (as defined by Section 56 of the Town and Country Planning Act 1990) – further information on Monitoring Fees and Maintenance are outlined in Section 16 of this report.

### **What is the likely timing for finalising legal agreements?**

- 13.12 The Council will seek to agree the Heads of Terms of the legal agreement prior to the planning application being presented to Planning Committee or receiving a resolution to grant planning permission. The planning report accompanying the recommendation will detail the draft Heads of Terms together with the reasons that they are being requested. Following the date of a resolution to grant planning permission subject to the completion of a legal agreement to secure planning obligations, the applicant will have a period of 6 months to finalise and sign the legal agreement. Any agreement that has not been signed in this period and cannot be signed imminently, will need to be reconsidered by delegated powers or by Planning Committee. It is the Council's intention to finalise all legal agreements well within the six-month period in the interests of good practice and facilitating sustainable development across the County Borough.

## 14.0 SITE VIABILITY AND PRIORITISATION OF OBLIGATIONS

### Site viability

- 14.1 Developers should make themselves aware of the likely planning obligation liabilities at the earliest opportunity to ensure that these obligations are reflected in any land value assumptions and site layouts, where necessary.
- 14.2 Depending on the nature and complexity of the proposed development scheme, the Council will seek verification of viability information either from the Council's own Estates Department or from the District Valuer; the latter at the expense of the developer. Where the Council undertakes a viability appraisal in-house it will use the Three Dragons Development Appraisal Toolkit (DAT), which has been commissioned by Local Planning Authorities in South East Wales and used by the Council. The DAT uses a residual method to calculate land value, which enables a determination of the economic viability of a development based upon a variety of circumstances. The District Valuer may be engaged to undertake a development appraisal for larger-scale and more complex schemes, or where an applicant wishes an independent third party to carry out the assessment.
- 14.3 Where a development appraisal indicates the planning obligations should be reduced in order to make a scheme viable, any subsequent reduction in obligations is only likely to be justified where there may be planning merit and/or public interest in the site being developed, e.g. the development of a contaminated site or regeneration of an urban area. Each case will be considered on its own merits and any decision to reduce obligations will not constitute a precedent in relation to future development schemes.

### Prioritisation of obligations

- 14.4 It may be necessary to determine the relative priority of different forms of provision within the context of planning objectives and individual site circumstances relative to each particular development proposal. Amongst these, it may be necessary to consider whether the proposed development would be unacceptable without the obligation as to present a reason for refusal of the planning application.
- 14.5 Appendix 4 of the LDP identifies all the sites allocated for housing in the Plan, and where appropriate, prioritises a range of planning obligations for each site in order of their perceived importance based on local circumstances. Whilst the Council considers that each obligation remains realistic and deliverable, it is recognised that matters of viability have the potential to influence the actual delivery of obligations positively or negatively according to market conditions.
- 14.6 It is also recognised that, whilst the site obligations set out in the LDP are considered comprehensive, they are not completely exhaustive and further requirements may arise as developments come forward. For instance, the requirement of the Water Framework Directive (WFD) will be taken into account in seeking the reduction of pollution and the promotion of the sustainable use of water.

## Re-negotiation / modification and deferment of planning obligations

- 14.7 Should the situation arise whereby a development already granted approval cannot proceed due to the cost of planning obligations and/or unusual market conditions, the Council will consider re-negotiating the planning obligations, albeit subject to a time limited clause to take account of any subsequent up-turn in market conditions that would make additional planning obligations feasible.
- 14.8 The re-negotiation of planning obligations will only be considered in exceptional circumstances and the developer must provide evidence that the existing obligations are prohibiting development on financial grounds.

## 15.0 PHASING AND TRIGGER POINTS

- 15.1 When assessing major strategic developments or mixed-use schemes, phasing will often be an important consideration. Therefore, the Council will employ the use of legal agreements to secure the timely and appropriate delivery of development and infrastructure.
- 15.2 Legal agreements for phased developments generally contain 'trigger points' which specify when a particular planning obligation is due with a view to ensuring the delivery of that obligation in a timely manner. Trigger points are normally placed at key stages of the implementation of the planning permission such as 'commencement of development' or 'first beneficial occupation'. When deciding upon appropriate trigger points, the Council and the developer will need to consider when the facilities or services to be provided under the planning obligation are required to serve the development. It is essential that the trigger points are clear, specific and enforceable to ensure that planning obligations will be delivered.
- 15.3 Where a site is to be sub-divided, the Council will treat such sites in their totality. In these circumstances, each sub-subdivided site will be required to provide a contribution towards the relevant obligation proportionate to its size and relative to the impact of the development. Where the new development involves more than one developer, the Council may seek joint contributions from developers to mitigate the combined impacts.
- 15.4 When stipulating phasing obligations, the Council will have regard to planning objectives, site-specific circumstances, and viability issues.

## 16.0 MAINTENANCE, MONITORING AND ENFORCEMENT

- 16.1 The Council's Planning Policy & Obligations officer will monitor planning obligations to ensure that they are complied with in full. It should be noted that it is the responsibility of the developer to notify the Council upon commencement of development and also when any triggers specified in an agreement are reached.
- 16.2 The costs incurred by the Council in the management and monitoring of the obligations will be contained in the Section 106 Agreement or Unilateral Undertaking. For further details of how the fees are calculated, refer to Appendix 1 overleaf.

- 16.3 The Council has created a database to record and monitor all planning obligations and establish whether or not the terms have been adhered to. The Town Planning Division has the responsibility for monitoring this process to ensure that all obligations are met. An annual monitoring report will be prepared at the end of each financial year summarising the types of planning obligations secured and how any financial contributions were spent.
- 16.4 Where it is found that an agreement is not being complied with, the Council will, in the first instance, informally seek to enforce compliance with the legal agreement. If this approach remains unsuccessful, the breach will be recorded on the Local Land Charges Register and the County Borough Solicitor will consider the most appropriate course of action to be taken. This may comprise serving a Mandatory Injunction upon the landowner and/or signatory of the agreement, or debt recovery proceedings to ensure compliance.

## 17.0 FURTHER INFORMATION AND ADVICE

Copies of this guidance and other relevant documents can be downloaded from the Council's website at [www.merthyr.gov.uk](http://www.merthyr.gov.uk)

Further information is available from:

**Planning Policy and Implementation**

Merthyr Tydfil County Borough Council

Town Planning Division

Ty Keir Hardie

Riverside Court

Merthyr Tydfil

CF47 8XF

Tel: 01685 726277

E-mail: [devplanning@merthyr.gov.uk](mailto:devplanning@merthyr.gov.uk)

## S106/UNILATERAL MONITORING

The S106 monitoring fee is based on the time spent on each type of obligation; either a financial contribution monitor or a physical monitor (a site visit), further to this the hourly rate charged by the Council is based on the monitoring officer's salary and supporting infrastructure costs such as Telephone, Personal Computer, office, transport costs etc.

### Estimated costs of financial monitoring

- Hourly rate £35
- 7 hours average officer time handling the contribution
- £245 per financial monitor

### Estimated costs of physical monitoring

- Hourly rate £35
- Checking triggers – Assuming a commencement/completion check on a 6 visit cycle per year basis throughout the duration of development (e.g. 6 visits = £210 per clause)
- A minimum monitoring period of 1 year should be applied. If it can be shown that monitoring will be for a greater period of time, the charge will be increased proportionately.
- For obligations where there is not a definitive timescale, a maximum 10 years should be used with a quarterly monitor, e.g. 1 clause to be monitored indefinitely would incur a charge of £35 x the number of quarterly visits over 10 years (40) = £1400

Where there is only physical monitoring to be carried out, refer to the table below.

Expected yearly duration of Physical Monitoring at 6 visits per year					
Clauses	6 (1 year)	12 (2 years)	18 (3 years)	24 (4 years)	30 (5 years)
1	£210	£420	£630	£840	£1,050
2	£420	£840	£1,260	£1,680	£2,100
3	£630	£1,260	£1,890	£2,520	£3,150
4	£840	£1,680	£2,520	£3,360	£4,200
5	£1,050	£2,100	£3,150	£4,200	£5,250
6	£1,260	£2,520	£3,780	£5,040	£6,300
7	£1,470	£2,940	£4,410	£5,880	£7,350
8	£1,680	£3,360	£5,040	£6,720	£8,400
9	£1,890	£3,780	£5,670	£7,560	£9,450
10	£2,100	£4,200	£6,300	£8,400	£10,500

### General Example

In order to arrive at a monitoring fee it will be necessary to consider the number of clauses which require financial monitoring and multiply this by £245 (at current rates). So, for example, 2 financial clauses would result in a charge of £490.

This would then be added to the charge applied for physical monitoring by considering the number of clauses that require a physical monitor. For example, if the above financial clauses each required trigger checks (i.e. payments due at different stages of development) the charge should be applied as follows.

2 clauses: £210 per clause per annum. (Assuming 2 year development period) = £840

Total monitoring charge for this development would therefore be £490 + £840 = £1330

Case example 1 – residential development of unspecified size

**Money:**

Clause	Summary	Amount due	Amount received	Outstanding balance
1.1	Payment of leisure contribution	£5,000	£	£5,000

**Financial Monitoring Charge :**

1 clause x £245 (current rate) = £245

**TOTAL CHARGE = £245**

Case example 2 – residential development of unspecified size

**Money:**

Clause	Summary	Amount due	Amount received	Outstanding balance
2.1	Payment of education contribution	£10,000	£	£10,000

**Trigger:**

Clause	Summary	Trigger	Description
2.1	Payment of education contribution	£5,000 to be paid at completion of 5 dwelling, £5,000 to be paid at completion of 10 dwelling	Developer shall pay £10,000 towards education provision in the locality of the development

**Financial Monitoring Charge :**

1 clause x £245 (current rate) = £245

**Physical Monitoring Charge :**

1 clause: £210 x monitoring period (2 years) = £420

**TOTAL CHARGE = £665**

## Case example 3 – development of 20 dwellings

### Money:

Clause	Summary	Amount due	Amount received	Outstanding balance
3.1	Payment of education contribution	£10,000	£	£10,000
3.2	Payment of leisure contribution	£15,000	£	£15,000
3.3	Provision of 3 affordable homes	n/a	n/a	n/a
3.4	Construction of on site play space	n/a	n/a	n/a

### Trigger:

Clause	Summary	Trigger	Description
3.1	Payment of education contribution	£5,000 to be paid at completion of 5th dwelling, £5,000 to be paid at completion of 10th dwelling	Developer shall pay £10,000 towards education provision in the locality of the development
3.2	Payment of leisure contribution	£10,000 to be paid at commencement, £5,000 to be paid at completion of 5th dwelling	Developer shall pay £15,000 towards leisure provision in the locality of the development
3.3	Provision of 3 affordable homes	3 affordable dwellings to be completed by occupation of 12th market dwelling	Developer shall provide 3 affordable homes on site
3.4	Construction of on site play space	Play space to be completed by occupation of 20th dwelling	Play space to be provided on site by the developer.

### Financial Monitoring Charge :

2 clauses x £245 (current rate) = £490

### Physical Monitoring Charge :

4 clauses: £840 x monitoring period (3 Years) = £2520

**TOTAL CHARGE = £3010**

## SUMMARY OF COMMENTS RECEIVED TO DRAFT SPG CONSULTATION WITH COUNCIL RESPONSE IN EACH CASE

**Representor:** The Coal Authority

**Issue:** No comments to make.

**Council response:** The Council welcomes the Coal Authority's consideration of the SPG.

**Recommended changes:** None

**Representor:** Home Builders Federation

**Issue:** The SPG should have regard to the Community Infrastructure Regulations.

**Council response:** Reference to the Community Infrastructure Levy is made within Para. 3.17.4 of the LDP which sets the context for the SPG. This states that 'Planning obligations will only be sought where they satisfy the criteria set out in Paragraph 122 of the Community Infrastructure Levy Regulations (2010).' As the SPG is intended to be read in conjunction with the LDP, it is not considered necessary to amend the document.

**Recommended changes:** None

**Representor:** Home Builders Federation

**Issue:** The SPG should recognise the possible effects on viability arising from the requirement for developments to incorporate national building standards, such as the Sustainable Buildings Policy, and changes to Part L of the Building Regulations.

**Council response:** The issue of viability will be considered on a site-by-site basis; therefore, any matters that affect the viability of a site will be taken into account as an integral part of the planning process.

**Recommended changes:** None

**Representor:** Home Builders Federation

**Issue:** The SPG should contain a section covering the renegotiation of planning obligations whilst recognising that certain planning obligations are not negotiable as they are required to bring the site forward for development, e.g. transport improvements.

**Council response:** Where a site requires transport infrastructure works or similar fundamental works to enable the development to proceed, it is recognised that these obligations are non-negotiable. For this reason, the cost of such necessary work will be accounted for when considering viability and the request for additional contributions. Should an applicant wish to vary or renegotiate a planning obligation at a future date, it will be considered on a case by case basis at that particular time. Sections 14.6 and 14.7 of the SPG provide relevant guidance should an applicant wish to re-negotiate, modify or defer a planning obligation. The Council therefore considers it unnecessary to amend the SPG.

**Recommended changes:** None

**Representor:** Home Builders Federation

**Issue:** Monitoring costs and fees will affect the viability of sites and such fees should be abolished.

**Council response:** In order to ensure that contributions are made as necessary and that obligations are fulfilled in the required manner, a process of monitoring is essential. Circular 05/05 'Planning Obligations' recognises that when obligations are imposed, it may be necessary for the incurred monitoring costs to be recouped through the use of a monitoring charge for each obligation providing the charge is realistic and proportionate to the costs incurred. The Council therefore considers that monitoring costs and fees are a necessity in helping to achieve good quality sustainable development and no change to the SPG is proposed.

**Recommended changes:** None

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**Representor:** Theatres Trust

**Issue:** The Trust is pleased that existing community facilities will be protected and enhanced. However, there is no glossary of terms in the SPG; are 'performance spaces' included within the term 'community facility'?

**Council response:** The Council welcomes the support of The Theatres Trust for the protection and enhancement of community facilities through the SPG. It is intended that performance spaces are included within the term 'community facility' provided that the spaces are as defined at Para. 5.2. of the document i.e. 'a space or building managed, occupied or used primarily by the voluntary, community or public sectors for community-led activities.'

**Recommended changes:** None

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**Representor:** Theatres Trust

**Issue:** The Trust refers to theatre space within the University of Glamorgan and implies the Trust's understanding is that universities are eligible to receive money/ improvements through the planning obligations process.

**Council response:** For the purposes of the SPG, theatre/ performance space belonging to a university/ higher level education facility (or a private owner) would not be eligible to receive contributions through the planning obligations. Education is intended to comprise primary and secondary level establishments for children of compulsory school age only.

Justification for this arises from the fact that it is possible to estimate the number of school-age children that a new residential development will generate and the schools they are likely to attend. In contrast, higher level educational institutions draw students from a wider catchment, even internationally, so the ability to calculate the number of potential additional students as a direct result of a new residential development is not possible.

For reasons of clarity, it is proposed to include an additional sentence within the 'Education' section of the SPG as set out below.

Recommended changes: Addition of sentence to the end of Paragraph 6.1 to read:

*Contributions will be restricted to provision associated with primary and secondary school facilities, i.e. the education of children of compulsory school age.*

**Representor:** Theatres Trust

**Issue:** The Trust suggests a definition of ‘community facilities’ be included on page 8 of the document as follows:

*‘Community facilities provide for the health, welfare, social, spiritual, recreational, leisure and cultural needs of the community.’*

**Council response:** Whilst the suggested definition is noted, the Council does not consider that it provides further clarification to the definition already included at Para 5.2 of the document.

**Recommended changes:** None

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**Representor:** Countryside Council for Wales

**Issue:** CCW welcomes improvement of access to natural green space for the public but draws attention to the fact that, in some instances, improved access to some sensitive habitats can damage their habitat interest. CCW therefore suggests an amendment to bullet point 2 of Para 8.5 so that it reads:

*‘Improving access for the public to appropriate areas of green space and biodiversity.’*

**Council response:** The Council accepts that Para 8.5 would benefit from further clarification and proposes an amendment to the wording of the second bullet point as set out below.

**Recommended changes:** Amendment to bullet point 2 of Para. 8.5 in order that it reads:

- *Improving access for the public to appropriate areas of green space and biodiversity.*

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**Representor:** Countryside Council for Wales

**Issue:** Further clarity is required in Para 8.8 to make clear the difference between Appropriate Assessment (AA) and Environmental Impact Assessment (EIA). The need for EIA at screening stage will not only be decided in consultation with CCW, but a number of other statutory consultees.

**Council response:** It is recognised that the distinction between the two assessments could be made clearer and that they represent separate processes. The Council therefore proposes to reword Paragraph 8.8 as set out below. A new paragraph 8.9 is to be added (see Council response to next issue), a new Para 8.10 is to be added as set out below, and existing Paras. 8.9 – 8.11 are to be renumbered 8.11 – 8.13 respectively.

**Recommended changes:** Reword Para 8.8 to read as follows:

*8.8 There are occasions where an Environmental Impact Assessment (EIA) may be required – appropriate proposals for development being screened at the pre-application stage. EIA will contain assessments and reports covering a number of matters such as transport or the historic environment, and goes beyond the realm of biodiversity/ecology. The need for EIA will be determined by the Council in consultation with CCW and a number of other statutory consultees.*

Add new Para 8.10 as follows:

*8.10 The need for a Habitat Regulation Assessment (HRA) will be determined by the Council in consultation with statutory consultees appropriate to that proposal. HRA includes a Test of Likely Significant Effect and if it cannot be demonstrated that a proposal will not result in such effect, an Appropriate Assessment (AA) of the impacts of the proposed development on the integrity of relevant European sites will be required.*

**Representor:** Countryside Council for Wales

**Issue:** Although there are no international nature conservation designations within the LDP area, proposals within the LDP area that have the potential to affect a European site outside the LDP area will need to be considered under the requirements of Regulation 61 of the Conservation of Habitats and Species Regulations (2010). SPG Para 8.11 should therefore include a reference to Section 5.3 of TAN 5: Nature Conservation and Planning (2009) to clarify how proposals affecting European sites will be assessed.

**Council response:** Paragraph 8.11 replicates the format of the final paragraph in other sections of the SPG and is intended as a cross-reference to the relevant LDP policies rather than national policy documents. Whilst it would therefore be inconsistent and inappropriate to list National policy at this point of the document, the Council considers it acceptable to include a reference to TAN 5 elsewhere in the same section and this is set out below.

**Recommended changes:** Inclusion of additional paragraph within Section 8 as set out below.

*8.9 Should a development have potential to affect an international nature conservation designation, even if outside Merthyr Tydfil County Borough, regard should be given to the Conservation of Habitats and Species Regulations (2010). In this respect, reference should be made to Section 5.3 of Technical Advice Note 5: Nature Conservation and Planning (2009), which clarifies the requirements of proposals affecting European sites.*

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**Representor:** Countryside Council for Wales

**Issue:** CCW supports Para 9.15 which seeks obligations that would improve access to natural green space.

**Council response:** The Council welcomes CCW's comments.

**Recommended changes:** None

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**Representor:** Environment Agency

**Issue:** EA is unclear as to where obligations such as drainage and sewerage works, flood risk mitigation measures, and waste management /recycling would fit within the categories listed in Paragraph 4.2.

**Council response:** In order to provide clarity, the Council considers that a small amendment to the relevant bullet point in Para 4.2 and the corresponding heading of Section 8 are necessary and appropriate.

**Recommended changes:** Amend bullet point 5 of paragraph 4.2, and the heading of Section 8, to read:

*Environment*, landscape and biodiversity

**Representor:** Environment Agency

**Issue :** The SPG should provide examples of environmental planning obligations that might arise. In addition, the document should define an obligation as opposed to what is more likely to be a unilateral undertaking, especially in relation to environmental enhancements, PPW and Circular 13/97.

**Council response:** Regarding the first issue, the Council considered it inappropriate to include 'example' obligations within the SPG as it is not possible to cater for every situation that may arise. Instead, it is advised that applicants contact the Council at an early stage to discuss possible obligations relevant to a particular proposal. Pre-application discussions with potential planning applicants are both prudent and welcomed.

Regarding the second issue, Section 2 of the SPG makes reference to advice contained within Circular 13/97 'Planning Obligations' and PPW. It is not the purpose of the SPG to repeat advice provided with national guidance as there is a presumption that any advice provided within these documents will be adhered to.

**Recommended changes:** None

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**Representor:** Environment Agency

**Issue:** EA recommends incorporation of advice on contributions relating to the Water Framework Directive (WFD).

**Council response:** The Council considers a reference to the Water Framework Directive (WFD) within the SPG would help provide clarity on the context for contributions. Due to the broad range of topic areas that the WFD covers, the Council considers a general reference to the WFD should be included within Section 14: Site Viability and Prioritisation of Obligations.

**Recommended changes:** Additional paragraph to be added to Section 14 as set out below. Subsequent paragraph numbers to be changed to reflect the addition of the new paragraph.

The additional paragraph should read:

*14.6 It is also recognised that, whilst the site obligations set out in the LDP are considered comprehensive, they are not completely exhaustive and further requirements may arise as developments come forward. For instance, the requirements of the Water Framework Directive (WFD) will be taken into account in seeking the reduction of pollution and the promotion of the sustainable use of water.*

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