Developer Obligations
Frequently Asked Questions

Aberdeenshire COUNCIL

What are developer obligations?

Developer obligations cover both developer contributions and affordable housing.

When a development takes place there is a need for infrastructure and services to accompany it. This can include roads, schools or a wide range of facilities depending on the scale and location of development.

Developer contributions are intended to ensure that developers make appropriate provision for any losses, or supply additional facilities that are required to mitigate the impact of a development in the local community.

Does Aberdeenshire Council have a policy on developer contributions and affordable housing?

Yes, policies are contained within the Aberdeenshire Local Development Plan and Supplementary Guidance. Policy 6: Affordable Housing and Policy 9: Developer Contributions set out the Council's approach on both these areas. These policies are supported by related supplementary guidance policies SG: Affordable Housing 1, SG Developer Contributions 1 and SG Developer Contributions 5. These provide detailed policy guidance as well as setting out the methodology for how contributions should be calculated.

Copies of these can be found online at: www.aberdeenshire.gov.uk/planning/plans_policies/plan.asp

Who signs up to developer obligations?

When a developer submits a planning application the Council assesses the actions required to mitigate the impact of the proposed development and negotiates with the developer to pay for all or part of this work. An assessment report is issued to the developer which sets out the obligations, the methodology as to how these obligations have been calculated and the justification for securing these.

Obligations are agreed before work on a development starts and are between the Council and developer. The majority of obligations are met through upfront payments prior to the release of the planning decision notice and this would be a personal agreement between the developer and Council in line with the assessment report. Where larger obligations are required then a legally binding Section 75 agreement would be required which may secure contributions as phased payments and runs with the land. If the developer sells the site the new owner takes on the responsibility of meeting the obligations.

What can you seek developer obligations for?

When the council is considering what obligations there may be for a particular development they must refer to the Development Plan and also apply all five 'tests' which are set out in national government legislation Circular 3/2012: Planning Obligations and Good Neighbour Agreements:

THE 5 POLICY TESTS

Necessary to make the proposed development acceptable in planning terms

Obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider objectives which are not strictly necessary to allow planning permission to be granted for the particular development. Where the need to improve, upgrade or replace that infrastructure does not arise directly from the proposed development then planning authorities should not seek to address this through a developer obligation.

Serve a planning purpose and where it is possible to identify infrastructure provision requirements in advance, should relate to development plans

An obligation must be related to the use and development of land and be set out in the Development Plan. Information on the items for which contributions will be sought and the occasions when they will be sought require to be set out in the Development Plan. The methods and exact level of contributions required to be set out in statutory supplementary guidance. This is to provide as much certainty as possible to the developer early in the process to allow these to be factored in.

It is therefore important to ensure that information on infrastructure and community requirements to support a development are included at the development plan stage.

For example the replacement of the heating system in the local village hall is not relevant to the planning process therefore could not be funded through developer obligations.

Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area

Any obligations must be directly related to the development. We therefore require to clearly set out the purpose for which any contribution is required and the infrastructure to be provided. It is not sufficient to simply advise that an obligation is required for community facilities. We require to evidence that there is a clear link between the mitigation and development proposed.

Fairly and reasonably relate in scale and kind to the proposed development

Contributions should always be proportionate to the scale of the proposed development. Planning obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow permission to be granted for the particular development.

For example where there is an existing shortfall in the sports facilities within a local community the developer cannot be expected to fully meet this shortfall through obligations but could potentially make a proportionate contribution towards additional infrastructure required as a result of their development.

Be reasonable in all other respects

For example obligations could not be used to fund a private facility such as a golf club where only selected members would benefit.

What gets funded through developer obligations?

Each council has policies and guidance relating to developer contributions and affordable housing which determine what contributions are sought. There is no definitive list of what can be secured through developer obligations as each development and community is different.

The most common obligations within Aberdeenshire are:

- affordable housing
- education
- transportation
- community halls
- sports and recreation facilities
- health facilities

The use of funds received from developer contributions must be in line with the original agreement under which they were secured. Contributions are directed towards capital costs.

Affordable Housing

The obligations will secure the level of affordable housing to be provided on site and the mix and tenure, in conjunction with the Planning Service.

Councils often require a percentage of homes on developments over a certain size to be affordable. There are different options for the delivery of these homes. The obligation could be met through the provision of units for social rent, mid market rent, low cost home ownership or commuted sums.

Units for social rent are generally delivered through

serviced land being provided from the developer to the council who can then develop as part of their new house build programme. Alternatively the developer may build the houses in partnership with the council or a housing association that will manage them in the long term. These methods of delivery are very much tied in with the availability of grant funding.

Properties for low cost home ownership are provided by the developer at discounted prices and are aimed at first time buyers or people with an exceptional change of circumstance.

In some limited circumstances and for smaller developments (below 5 units) the affordable housing obligation is often met through the provision of a commuted sum. This is currently £25,000 for the Aberdeen Housing Market Area and £15,000 for the Rural Housing Market Area.

Education

Where a development will bring more children to an area and the school is projected to exceed capacity then a contribution might be sought to re-configure the existing space within the school to create additional capacity through an extension or new build.

Community Facilities

Obligations are used to pay for the provision of additional capacity, for example, the reconfiguration of an existing space to allow more activities to take place or the provision of new community space. Running and maintenance costs cannot be funded through developer obligations.

Sports & Recreation and Playing Fields

Obligations are often used to provide sports and recreation facilities such as changing rooms or new playing fields. Sometimes contributions are provided towards improving drainage on a pitch or providing floodlighting in order for it to be used for a longer period.

Health Facilities

These include health centres, dental and GP practices. Contributions are directed towards the provision of new facilities or extensions to existing facilities.

When is money from developer obligations available?

A planning application has to be implemented for planning obligations to be triggered. Just because a developer has signed a Section 75 agreement which provides £500,000 for primary education. This does not mean that the council receives that money as soon as permission is granted.

Payments within Section 75 agreements are generally made quarterly based on the number of building control completions in that quarter. If the rate of building on that site is particularly slow then it may take some time for contributions to be made. Also if the development is not completed then the full anticipated contribution may not be received.

Can developers get out of obligations?

A developer can apply to the council to modify or discharge an obligation within a Section 75 legal agreement and has a subsequent right of appeal to the Directorate of Planning and Environmental Appeals if the authority refuses the application. These applications are assessed against the relevant development plan policies and five tests.

If a new planning application on a site under development is submitted this has no impact on the existing Section 75 agreement unless a new planning permission is granted with an associated Section 75 that replaces the original agreement.

Development appraisals and developer obligations?

In order to assess the financial viability of a development a developer will undertake a development appraisal. This takes into account the cost of the land, the cost of construction, financing costs, value of the completed development and their profit.

There are lots of factors that can impact on a development appraisal.

The developer will allow for a certain level of obligations in their development appraisal and the inclusion of infrastructure requirements in the Development Plan assists in providing certainty

early in the process. For a developer, uncertainty equals risk so they are keen to determine costs as early as possible.

Further Information

For further information please contact a member of the Developer Obligations Team on 01330 825518 or email: developerobligations@aberdeenshire.gov.uk